

The Law and Practices of the International Atomic Energy Agency

PAUL C. SZASZ

LEGAL SERIES No.7



INTERNATIONAL ATOMIC ENERGY AGENCY, VIENNA, 1970

THE LAW AND PRACTICES
OF THE
INTERNATIONAL
ATOMIC ENERGY AGENCY

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The Agency's Statute was approved on 23 October 1956 by the Conference on the Statute of the IAEA held at United Nations Headquarters, New York; it entered into force on 29 July 1957. The Headquarters of the Agency are situated in Vienna. Its principal objective is "to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world".

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FOREWORD

The law of the International Atomic Energy Agency is continually evolving in step with the evolution of the Agency's functions. This state of affairs, though healthy, presents considerable difficulty to students and practitioners, especially as the position of the Agency within the United Nations family is unique and its structure differs in many features from that of the other members.

The present study was conceived and written by Mr. Paul C. Szasz with these considerations in mind. It is based on official documents and the author's direct personal experience as a staff member for many years. In view of the thoroughness of the study and the familiarity of the author with international law, it is felt that the book will be of real value to all those interested in the work of the Agency and that it will contribute greatly both to a better understanding of the role of the Agency and to the development of its law, as well as to the more general field of international organization studies.

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PREFACE

During my eight years of legal service for the International Atomic Energy Agency, I was often asked – and not only by naïve ladies at cocktail parties – "Why does a scientific organization need any lawyers? Just what do you do?"

This study might be considered as a massive reply to these inquiries – presented in written form, for I soon learned that my questioners would rarely stand still for a serious answer.

Whenever I considered it sensible or prudent to give a brief but immediate response to a genuine query of the type quoted above, I would summarize what I myself had learned since joining the staff of the still very young Agency, bringing with me substantial education in but no experience with international law and clutching the two instruments in which I expected to find all the answers: the IAEA Statute and the UN Charter. Soon I discovered that every international organization has a unique internal law of its own, expressed in a variety of legal instruments (for instance: Staff and Financial Regulations, Rules of Procedure), and most of the resident lawyers' time is spent in formulating, interpreting and applying that law. The most visible and significant part of this law, but by no means all of it, concerns the relationships established with Member States, with other international organizations and with various other persons, and these relationships in turn may be conditioned by general international legal principles, as well as by the special law of other organizations, and sometimes even by national laws.

Happily I also discovered that in the field of international organization law, particularly when practised in a new institution whose procedures have not yet become fixed – especially one concerned with a subject, such as nuclear energy, the law of which is still in a state of flux – there is considerable scope for innovation and imagination. In this rapidly developing field it is naturally easier for a jurist to make a significant impact than in the more settled, classical areas.

Finally I learned to exercise due caution when faced by either of the three types of clients or opponents with whom a lawyer in a technical international agency must regularly deal:

- The scientist or engineer who is certain he can draft a legal instrument faster and more clearly than any lawyer and whose efforts along these lines are often concealed from the legal staff, coming to light only after the omission or misconstruction of some "legalism" has caused a minor crisis or a major breakdown;
- The international politician or diplomat, whose eyes are always set on achieving an immediate (even if only an apparent) agreement, no

matter that it may contain obvious faults or subtle gaps fraught with potential disputes;

- The international lawyer (usually in a foreign office) who, unfamiliar with or insensitive to the special practices of the particular organization, assumes that all legal questions can be resolved from a distance by the application of general principles or by analogies from other organizations.

In this study, which is naturally addressed largely to the last-mentioned group, I have tried to convey (albeit perhaps unconvincingly in view of the apparent dryness of the subject matter) the fascination of international organization law – to which I hope to have, hereby, made some contribution. This interest, however, lies not in the simplicity and clarity of this field but rather in its complexity and frequent untidiness: in the interaction of legal instruments of many different levels of solemnity (ranging from general international agreements such as the IAEA Statute, to Rules promulgated by the Agency's Director General, and to decisions of its Staff Association) as well as of organs of various types (including the IAEA General Conference of governmental political representatives, the UN's Administrative Committee for Co-ordination on which the Director General represents the Agency, and Secretariat committees in which the Deputy Directors General compromise their national as well as departmental differences). Few legal problems can be properly resolved without considering the entire nexus of these legal relationships, which may include formal decisions of senior organs as well as unrecorded gentlemen's agreements. Yet this complexity should not be mistaken for chaos, nor the political flexibility successfully maintained on many issues for an absence or uncertainty of law. The law is always present, sometimes as a constraint and always as a guide, but fortunately it has not yet hardened into such a rigid or detailed system that necessary freedom of action is fatally abridged for formal reasons – though it may all too often be for political ones.

It happens that the IAEA is a particularly suitable subject for a complete legal analysis of an international organization – it is neither too large and widely engaged nor too small and specialized. Moreover, although firmly part of the United Nations system, the Agency has a number of unique features of special legal interest:

- The complex formulae defining the composition of its Board of Governors;¹
- The relationship among its organs, superficially resembling a Board-of-Directors dominated corporation;²
- Its non-specialized agency status in the UN system;³
- The "Agency Projects" through which it assists its Members, particularly in securing nuclear fuels on quasi-commercial terms;⁴
- The safeguards controls it exercises pursuant to a complex construct of international agreements;⁵
- Its "two-budget" system through which certain activities are financed from assessed contributions and others from voluntary ones.⁶

There is also a special justification for presenting such a study at this time (aside from the fortuitous opportunity of covering the first decade of

the Agency's work): due to extraneous factors, for which the Agency cannot realistically claim much credit, the long flagging interest in it has lately revived. In part this is due to the recent decrease in the estimated cost of nuclear power to be produced by a new generation of large reactors; in part it results from the related concern to halt at this late stage the further proliferation of nuclear weapons capabilities.

PURPOSES

More specifically, this study has two different yet harmonious purposes: one encyclopedic and the other didactic.

First of all, this volume is intended as a work of reference, in full recognition of the fact that the attainment of this goal necessarily reduces its readability. Though inspired by, it is by no means as massively executed as the Repertory of Practice of United Nations Organs nor does it follow the fully systematic but constraining format of that study. As a resource book it is addressed to the needs of two quite different groups:

- Those persons directly interested in the Agency, whether working in its Secretariat (with its relatively rapid turnover), in the foreign offices or nuclear commissions of its Members, or merely from a scholar's vantage;
- Practitioners and students of the law and the operations of international organizations who evidently find it difficult to study the Agency or to compare its practices with those of other institutions, because of the diversity and lack of codification of its legal instruments and because of the confidentiality or sparse distribution of many of its documents and records.

The secondary, but by no means entirely subservient, objective is to provide an educational tool useful in teaching or studying international organization law – a massive case-study of the anatomy of a single institution, all of whose bones, ganglia, and arteries – down to the smallest capillary – are exposed.

It is also proper and prudent to state what this study is not. Strictly speaking, its slender claim to the status of a work of scholarship rests entirely on its structure – that is, on the systematization and organization of the information presented. It is, however, neither essentially analytical, critical, speculative (in the sense of suggesting solutions for problems that might arise in the future), or even comparative. Rather its aim is to present the raw material from which the analysts and the critics, the comparers and the syncretists can fashion their conclusions – perhaps giving the present study footnote recognition. These limitations were adopted as a means of self-restraint: to prevent this volume from becoming even more massive and to preserve its claim to objectivity. Equally, it should be understood that the following does not contain either a full account or an evaluation of the Agency's programmes and activities – for these can no doubt be better presented in a non-legal work. Finally, this study is not a contribution to

"atomic energy law" in the conventional sense,⁷ except to the extent that that narrow speciality overlaps⁸ the field of public international law as related to the Agency.

METHODOLOGY

In order to achieve the stated purposes, and in particular to assist those who do not wish to immerse themselves in the entire law of the IAEA in order to find information relating to particular questions of interest to them, an attempt has been made to present on each subject a total, lawyer's-eye view of all the relevant instruments and practices and of the appropriate functions of all competent organs. Thus, instead of merely cataloguing every legal instrument promulgated by, or relevant to the Agency, a more issue- or problem-oriented approach has been used. The object has not been to simplify questions at the expense of completeness, but rather to clarify them by showing the interaction and interrelation of all relevant factors. For this reason a certain amount of bureaucratic trivia has also been related, for this is a very real factor in the operations of any international organization.

This type of presentation of course involved particular structural problems. In order to produce a series of complete pictures and to show each such scene from every relevant viewpoint, it was necessary to make multiple references to certain subjects: for example, a given instrument may be referred to in the Chapter(s) relating to the organ(s) that promulgated it, in those relating to the subjects on which it has a significant impact, and finally may be analysed again for pertinent administrative, legal or procedural issues in the final parts of the study. To avoid excessive repetition, each incident or instrument is only once described in full, but ancillary features are covered in other appropriate Sections, to which the reader is guided by a generous number of cross-references in the notes to each Chapter.

A somewhat history-oriented approach has been chosen - and some lawyers may be inclined to fault the study on that ground. In particular, the first part presents historical background for the Agency as a whole, and almost each subsequent chapter (and even some of the principal sections) are introduced by a chronological background of the relevant issues and instruments. Nevertheless, historical material has not been included gratuitously but only where:

- A particular event is significant, whether as typical of other incidents or because of its uniqueness.
- Historical considerations may aid in interpretation. Without expressing any views on the proper role of travaux préparatoires in legal analysis,⁹ it should be recognized that in practice the interpretation of the IAEA Statute (and of its subsidiary instruments) is largely the responsibility of the political organs of the Agency (the Board of Governors and the General Conference), rather than of any judicial bodies, and that the members of such organs are generally more impressed by arguments

based on colourable precedents and on the original context of a formulation (in whose development they may well have participated) than they are by purely verbal or structural sophistry. These persons realize how irrelevant strictly verbal considerations might have been in drafting a compromise passage of a proposed instrument, and how misleading it would be to draw, years later, far-reaching legal conclusions from a comparison of the terminology used in one part of the instrument with that used in another part or in another document. Thus, the imperfections of the international legislative process, which are responsible for the quite unsatisfactory formulation of instruments like the IAEA Statute,¹⁰ as well as the political exigencies characteristic of all vital constitutional instruments, frequently necessitate an analysis based on evolutionary considerations rather than on purely textual ones.

- Implicit rules or practices, often but not always based on unwritten "gentlemen's agreements", can by their nature sometimes only be detected empirically — which may require a study spanning part or all the life of the organization.

Two further criticisms may be anticipated and might therefore be answered in advance. One is that in spite of the almost obtrusively structured presentation of this study — amounting perhaps to an indecent celebration of system — it includes too much trivial detail and not enough juridical systematization. To this it can be replied that the Agency's legal affairs are not as neatly structured and clearly defined as might be hoped in view of the anticipated future importance of the organization. Thus certain practices can only be identified by analysing the available examples, i.e., through inductive approaches, rather than deductively in terms of postulated rules or principles. Indeed, as to many points, a lawyer unfamiliar with the Agency can only rely at his peril on any generalizations or simplified rules. It was this lack of natural systematic that made the structuring of this study an intellectual challenge: to present all the relevant legal data in a logical order and without excessive duplication.

A related objection may be that this study does not always clearly separate law and practice — an ambivalence already projected by its title. But this failure to distinguish consistently between what might appear to be two different regulators of Agency action is frequently unavoidable. Law and practice in the Agency are not always separable — principally because in so many areas the former is so incompletely developed that it is impossible to assert with any reasonable assurance whether an observed regularity is in response to a legal constraint or merely represents unforced but uniform reactions to certain situations — i.e., practice.

As already mentioned, I made no thorough comparison of the practices of the Agency with those of other organizations. Where some comparisons were introduced, this was done for either of two purposes:

- Where the Agency's practice is similar to that of some other well-known organization (in particular the United Nations), this fact is mentioned as a short-hand method of incorporating the relevant features into this study by reference rather than through laborious restatement.

- Where the Agency's practice differs significantly from established international practice, this fact too is mentioned, and the unique features (such as the special relationship to the United Nations) or activities (such as safeguards) are described extensively — in some instances, perhaps even disproportionately to their inherent importance to the Agency. Again, it will be for other scholars to evaluate the ultimate significance of each of these departures and to decide whether it constitutes, within the entire development of international organization law, a retreat, an aberration, or a promising initiative.

My direct association with the Agency ceased in the fall of 1966, and the data on which this study is based is complete only to that point. Subsequently, I followed the affairs of the organization from a distance — perhaps gaining perspective but certainly losing some detail. Nevertheless, I have endeavored to reflect all significant developments up to the present. It is of course clear that any effort to keep a massive study of an active organization completely and homogeneously up to date would be self-defeating, for during the time required to incorporate the revisions relating to one period, many further developments take place.

This study is based almost entirely on the documents of the Agency and of the organs that formulated its Statute. Though appropriate references are made to the sparse outside literature, little could be learned from these sources, which with few exceptions were written by persons only casually familiar with the Agency and having only limited access to its documents; most of these studies were indeed published during the earliest days of the Agency, when operating experience was minimal and significant conclusions and predictions had to be extrapolated from an exceedingly small base of largely untested statutory provisions.

In contrast to outsiders, I benefited from a complete command of the Agency's documentation and from access to many of the even more extensive internal files, and the information and insights thus gained are incorporated in this study. However, I did consider myself bound by the implicit restrictions on the use of classified documents¹¹, so that I have generally avoided quoting from and in particular citing such papers — especially those of the Board of Governors.

After agonizing extensively, I concluded that no index need be appended to this study — a decision reached with full knowledge of the more-in-sorrow-than-in-anger critique with which reviewers of scholarly books greet such an omission. The justification lies in the structure of the work: every significant subject (such as would be listed in an index) is covered in one or more logically placed Sections or sub-Sections, which are identified by appropriate titles and are locatable through the Table of Contents — and to some extent also through Annexes. These sections contain all the information of primary relevance to the indicated subject, as well as notes cross-referencing every other Section in which matters of secondary relevance appear. Consequently, for most practical purposes, the Table of Contents together with the extensive network of cross-references largely performs the functions of an index — and does so in a manner designed to yield information more readily and usefully than the conventional type of list.

ACKNOWLEDGEMENTS

This massive study would not have been started without the encouragement, and could not have been completed but for the assistance of many of my former colleagues at the IAEA. Though I cannot credit all my friends there, I feel compelled to mention some.

Dr. Leon Steinig, whose experience with international organizations commenced with the League of Nations, had inspired in me a fascination for this subject – not only as a field of study but primarily as one to which a life's work might be dedicated; it was consequently to him that I first revealed my ambitious plans and it was he who urged me to realize them. Dr. John A. Hall, at that time serving the US Atomic Energy Commission between terms of office as Deputy Director General for Administration of the Agency, reinforced this counsel and further encouraged me by suggesting sources of possible assistance. But even earlier, long before my plan was conceived, Gurdon Wattles, then serving the Agency as Acting Director of the Legal Division while on temporary secondment from the United Nations, revealed to me the delicate functioning of intergovernmental organizations, thus setting me on the course that culminated in this publication. Fittingly, it was another Legal Adviser, Dr. Werner Boulanger, who afforded the final but all-important assistance to this project by arranging for publication in the Agency's Legal Series.

Having departed Vienna before the first draft of my manuscript was completed, it was particularly important to secure the assistance of some of my former colleagues, located in various parts of the Agency, to read the Chapters for which each was particularly competent and to inform me of mistakes, misconceptions and omissions, and particularly of any developments since I left the Agency. The co-operation in response to my purely personal requests was magnificent and truly gratifying. Thus the remaining weaknesses and any errors in this study are largely due to my failure to accept all the generously proffered advice and suggestions.

Two officials rendered particularly extensive and useful service in this regard: Mr. David A. Fischer, Director of the Division of External Liaison and Protocol, and Dr. Reinhard Rainer, a former colleague in the Legal Division – both of whom read almost the entire manuscript and commented on it extensively. Others who examined one or more Chapters, or in some instances major Sections, were: Mr. Frank Arsenault, Mr. Patrick J. Bolton, Mr. Robert A. Borthwick, Mr. Carlos L.A. Buechler, Mr. Howard R. Ennor, Dr. Norbert Grell, Mr. Ha-Vinh Phuong, Miss Mary Jeffreys, Mr. Oliver Lloyd, Mr. Luis Meana, Mr. Alfred M. Moebius, Mr. Clarence R. O'Neal, Mr. Ole Pedersen, Mr. Peter Pfund, Mr. Stuart Rison, Mrs. Ulrika Schiller, Dr. Henry Seligman, Dr. Leon Steinig, Mr. Haakon H. Storhaug, Mr. Gerald E. Swindell, and Mr. John C. Webb. Similar assistance was rendered by Mr. Bernard G. Bechhoefer, a member of the American delegations to all of the organs that formulated the Agency's Statute and also to the Preparatory Commission, and Mr. Robert B. von Mehren, the Legal Adviser of the Preparatory Commission.

Mrs. Elisabeth Wallace, who assembled the legal collection of the Agency's Library, helped greatly in locating references; and Mrs. Renate E. M. J. Macmillan repeatedly supplied me with information about the status of the

Agency's agreements as well as about official transactions relating to the Statute.

Finally I gladly express my gratitude to two magnificent young ladies, both now the wives of colleagues of mine in the World Bank. Miss E. Elin Clague (now Mrs. Paul Knotter) brought to paper the first draft of the manuscript: working first as my Agency-assigned secretary and later, having in a unique display of personal loyalty left her secure international employment, as my personally employed assistant. Mrs. Gregory B. Votaw ably and rapidly produced the subsequent drafts as quickly as I could revise the texts – and thus atoned to the Agency for her husband's successful persuasion which led me from Vienna to the World Bank in Washington.

This study has largely been a labour of love, carried through not with hopes of remuneration or glory, but with genuine affection for the organization and spurred by the thought that it and its legalisms are interesting and indeed becoming increasingly important. It is therefore in this sense that I wish to record my special appreciation to the Agency itself for having enabled me to present this portrait of it in print. The assistance I received included a period of special leave at the end of my service in Vienna, access to documentation even thereafter, a cash payment largely covering my secretarial expenses and principally the fact of publication itself – thus providing auspices under which I am particularly proud to see my name appear.

I would also like to acknowledge with gratitude a small grant from the Ford Foundation, which covered my out-of-pocket expenses during the crucial early stages of the project.

In conclusion, I should point out that the views expressed in this study are entirely my own, and do not necessarily reflect those of the Agency, or those of the International Bank for Reconstruction and Development, on whose legal staff I am at present serving.

Paul C. Szasz

Washington, D.C.
April 1970

NOTES

- 1 Section 8.2.
- 2 Chapter 10.
- 3 Section 12.1.
- 4 Chapter 17.
- 5 Chapter 21.
- 6 Section 25.2.1.
- 7 See the definition by Dr. Werner Boulanger, "The development of nuclear law", *Nuclear Law for a Developing World*, Legal Series No. 5, IAEA, Vienna (1969) 55-63.
- 8 In particular Chapter 23.
- 9 Cf. Articles 31 and 32 of the Vienna Convention on the Law of Treaties (UN doc. A/CONF.39/27).
- 10 Chapter 2 and Section 5.2.
- 11 Section 34.4.

PART A.
FOUNDATION

CHAPTER 1. ANTECEDENTS

Strictly speaking, the story of the International Atomic Energy Agency starts with President Eisenhower's speech to the General Assembly of the United Nations in December 1953, but, like all important institutions, the Agency cannot be completely understood without some historical background. Fortunately the background to be scanned is not extensive - in time it spans at most the short atomic era and its scope extends at most to a few successive, related international instruments and organs.

It is significant that the Charter of the United Nations is not one of these instruments. The San Francisco Conference ended and the Charter was signed about a month before the first, secret experimental explosion at Alamogordo, and some six weeks before the destruction of Hiroshima dreadfully heralded to the world the new accessibility of a tremendous source of energy. It is useless to speculate whether the Charter would have been changed had it been drafted as the first instrument of the nuclear era rather than as the last of pre-atomic times. As a constitutional document it has proved itself flexible enough to accommodate other radical developments, and it would seem that given the political will the Charter and the organization it established could have been sufficient to deal with this new force. At any rate, before it was established that the political climate was unpropitious, the first attempts at international control of atomic energy were oriented toward or made within the United Nations.

Though these early efforts largely failed and the IAEA itself is not their direct product, some of the conclusions reached, decisions taken or profound disagreements discovered in the early years of the United Nations, a decade later significantly influenced the foundation of the Agency. Thus no complete understanding of the Statute or status of the IAEA is possible without some knowledge of these earlier debates.¹

1.1. THE 3-NATION AGREED DECLARATION ON ATOMIC ENERGY

It was characteristic of the international mood following immediately on the conclusion of the Second World War that the first move to control atomic energy did not originate with the States not in possession of this new force, but rather came from the three that had co-operated to discover the nuclear "secret". On 15 November 1945 the President of the United States of America and the Prime Ministers of Great Britain and of Canada met in Washington and issued an "Agreed Declaration on Atomic Energy".² The Declaration announced the willingness of the three Governments to participate in an exchange of scientific literature for peaceful ends and to make available to

the world the basic scientific information essential to the development of atomic energy; the hope was expressed that other States would reciprocate and thereby create an atmosphere of confidence. Turning to the detailed information concerning the practical industrial application of atomic energy, the Declaration continued:

"6... We are not convinced that the spreading of the specialized information regarding the practical application of atomic energy, before it is possible to devise effective, reciprocal, and enforceable safeguards acceptable to all nations, would contribute to a constructive solution of the problem of the atomic bomb. On the contrary we think it might have the opposite effect. We are, however, prepared to share, on a reciprocal basis with others of the United Nations, detailed information concerning the practical industrial application of atomic energy just as soon as effective enforceable safeguards against its use for destructive purposes can be devised.

"7. In order to attain the most effective means of entirely eliminating the use of atomic energy for destructive purposes and promoting its widest use for industrial and humanitarian purposes, we are of the opinion that at the earliest practicable date a Commission should be set up under the United Nations Organization to prepare recommendations for submission to the Organization.

"The Commission should be instructed to proceed with the utmost dispatch and should be authorized to submit recommendations from time to time dealing with separate phases of its work.

"In particular the Commission should make specific proposals:

- (a) For extending between all nations the exchange of basic scientific information for peaceful ends,
- (b) For control of atomic energy to the extent necessary to ensure its use only for peaceful purposes,
- (c) For the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction,
- (d) For effective safeguards by way of inspection and other means to protect complying states against the hazards of violations and evasions.

"8. The work of the Commission should proceed by separate stages, the successful completion of each one of which will develop the necessary confidence of the world before the next stage is undertaken. Specifically it is considered that the Commission might well devote its attention first to the wide exchange of scientists and scientific information, and as a second stage to the development of full knowledge concerning natural resources of raw materials."

Thus the first impulse was to control atomic energy within the United Nations framework.

1.2. THE MOSCOW MEETING OF FOREIGN MINISTERS

A month after the 3-Nation Declaration, the Foreign Ministers of two of the parties to it met with their Soviet colleague in Moscow. They decided that the three Governments would recommend to the General Assembly of the United Nations the establishment of a Commission to consider the problems arising from the discovery of atomic energy and related matters. In particular they agreed on a resolution to be introduced at the first session of the Assembly, the text of which was included in the joint communiqué issued in Moscow on 27 December 1945.³ Its principal points were:

- (a) A [United Nations Atomic Energy] Commission should be established by the General Assembly.
- (b) The Commission should report to the Security Council, which might, in the appropriate cases, transmit these reports to the General Assembly or to other United Nations organs. On matters of "security", the Security Council would issue instructions directly to the Commission and on those matters the Commission would be accountable to the Council.
- (c) The Commission should be composed of representatives of all the States on the Security Council, plus Canada whenever that State was not a member thereof.
- (d) The Commission would draft its own rules of procedure, subject to approval by the Security Council.
- (e) The terms of reference of the Commission were reproduced almost verbatim from the second and third paragraphs of point 7 and the first sentence of point 8 of the 3-Nation Declaration (quoted above).

1.3. THE GENERAL ASSEMBLY RESOLUTION

At the first session of the General Assembly the three Governments represented at the December meeting, joined by the other two permanent members of the Security Council (China and France) and by Canada, introduced the resolution that had been drafted in Moscow. After brief consideration at the second and third meetings of the First Committee (Political and Security) the resolution was recommended without change to the Plenary, which approved it without any dissenting votes on 24 January 1946.⁴

Thus the United Nations Atomic Energy Commission (UNAEC) was established.

1.4. THE ACHESON-LILIENTHAL REPORT AND THE BARUCH PLAN

In order to prepare proposals for the United States to present to the new Commission, Secretary of State Byrnes appointed a five-member committee, chaired by Dean Acheson. At its first meeting this committee appointed a five-member board of consultants chaired by David E. Lilienthal. The two groups prepared a "Report on the International Control of Atomic Energy", which came to be known as the "Acheson-Lilienthal Report".⁵

This historic document, whose recommendations became the foundation of the American position in UNAEC, included a number of far-reaching conclusions. These may briefly be summarized as follows:

- (A) Uranium and, to some extent, thorium are the keys to the control of atomic energy, since on the one hand they are scarce and on the other they are essential to any atomic energy programme, whether peaceful or military.
- (B) Nuclear explosives are identical to the nuclear fuel required for non-military purposes, and thus the plants producing such fuel must be controlled as severely as military material itself. On the other hand, the production of the non-nuclear parts of nuclear bombs is not susceptible to prohibition or control.
- (C) Nuclear fuel might be denatured (by mixing in certain isotopes) to make it useless for military purposes but still applicable to peaceful ones. Facilities using only limited quantities of denatured material would require less intensive control than those using pure material.⁶
- (D) Thus, in order to establish a peaceful nuclear industry with assurance that no military programmes were being furthered, it would be necessary to subject to full, intensive, international control all nuclear material, all facilities producing such material and all reactors using more than minor quantities of denatured nuclear material. Only small reactors and certain marginal nuclear activities would require less intensive control.
- (E) The necessary intensity of control cannot be achieved solely through inspection or other forms of external supervision. To be effective, the controlling organizations must be as thoroughly informed about all operations as the operators themselves. Therefore an international authority could give assurance that no military diversion was taking place only if it had full ownership of and operating control over all items and activities requiring intensive control. Thus the control authority must itself carry out both research and operations in the nuclear energy field - indeed it should have a world-wide monopoly of all such activities, excepting solely those requiring only less intensive control.
- (F) To prevent the seizure by any State of a major part of the international stocks of nuclear materials, these stocks and the related facilities must be spread throughout the world.

The implications of the Report were truly radical: the United States should not only give up its atomic monopoly (which it effectively enjoyed in spite of the war-time collaboration of Great Britain and Canada), but an unprecedented international authority should be constituted to own, operate and control throughout the world (i.e., also within the United States) a major industry and potentially the dominant source of electric power. Nevertheless this study became, without any essential change in its grandly idealistic approach, the basis of the proposal presented by the United States to the United Nations through its representative on UNAEC, Mr. Bernard M. Baruch.

The Acheson-Lilienthal Report was prepared as a working paper for the officials who would have to form and present the American policy, and did

not itself contain a detailed plan for the structure and functioning of the proposed international authority. Mr. Baruch and his associates therefore reworked and expanded the Report into a set of concrete proposals and presented them to UNAEC and its committees in a series of speeches and memoranda; these came to be known as the "Baruch Plan".⁷ Its principal features were:

- (a) An International Atomic Development Authority (IADA) should be created, to which would be entrusted all phases of the development and use of atomic energy (starting with the nuclear raw materials) and including:
 - (i) managerial control or ownership of all potentially dangerous atomic energy activities;
 - (ii) power to control, inspect and license all other atomic activities;
 - (iii) the duty of fostering the beneficial uses of atomic energy;
 - (iv) research and development responsibilities which would keep IADA in the technical vanguard and thus enable it to comprehend and thereby to detect any misuse of atomic energy.

- (b) To assist in implementing this proposal, the United States offered (subject to the prior fulfilment of certain conditions: i.e. international agreement on and the effective establishment of an adequate system of control, including a system of "condign punishment" for any violators) to:
 - (i) stop the manufacture of atomic bombs;
 - (ii) dispose of existing bombs;
 - (iii) give IADA full information on the production of atomic energy.

- (c) The fundamental features of the Plan through which these proposals could be translated into effective action would have required IADA to:
 - (i) develop a thorough control system;
 - (ii) obtain, through surveys and by other means, complete and accurate information on the world supplies of uranium and thorium, which would then be brought under its domination;
 - (iii) exercise complete managerial control over any production of fissionable materials and to own and control all such material;
 - (iv) be vested with the exclusive right to conduct research on atomic explosives;
 - (v) distribute throughout the world the activities and stockpiles entrusted to it;
 - (vi) promote the peaceful uses of atomic energy;
 - (vii) have full freedom of access, through its representatives, to all intrinsically dangerous activities (as these might be defined from time to time) - though, due to its complete operating control over these, its inspection functions could be limited to detecting clandestine atomic operations and to checking on the less dangerous activities that might be conducted under its licence;
 - (viii) recruit its personnel on the basis of proven competence but also, so far as possible, internationally.

- (d) The Plan was to come into effect in successive stages, to be determined by other agreed means. The United States would disclose information on a step-by-step basis, as necessary and appropriate first for the formulation of the requisite legal instruments and later for the implementation of the control system.
- (e) No veto could be exercised by any State either in relation to the operations of IADA, including especially the exercise of its control functions, or in the process whereby sanctions could be imposed upon violators of these arrangements (e.g., on any State or person engaged in an unauthorized atomic energy programme or in diverting nuclear materials from their authorized use); this proposal was the most significant new element included in the Baruch Plan in addition to the recommendations of the Acheson-Lilienthal Report.

1.5. THE UNITED NATIONS ATOMIC ENERGY COMMISSION

The United Nations Atomic Energy Commission was first convened in June 1946. It rapidly proliferated into more than a dozen committees, working groups and other subsidiary bodies - some even meeting in several different guises such as "meetings", "informal discussions", and "informal conversations".⁸ This proliferation and these metamorphoses more often than not were designed only to shift delicate discussions from one forum to a slightly different one, in the vain hope that through such procedural maneuvering substantive issues might somehow be resolved.

The main lines of the conflict were quickly drawn. The United States presented the Baruch Plan, first in outline to the Commission itself and then in greater detail in Sub-Committee No.1. In general these proposals soon obtained the approval of the majority of UNAEC, and with the adoption of the Commission's first report⁹ they in effect became the majority plan.

The Soviet Union presented its proposals at the second meeting of the Commission.¹⁰ These foresaw first of all the conclusion of an international convention to "prohibit the production and employment of weapons based on the use of atomic energy for the purpose of mass destruction". This treaty would have: included a pledge against any use of atomic weapons, prohibited their production and storage, and required the destruction within three months of all existing stocks of such weapons; each party would also be obliged to pass legislation providing severe penalties for any violations of these undertakings. On the entry into force of the convention (upon ratification by half the signatory States, including all the permanent members of the Security Council) it would automatically become binding on all States of the world. Mr. Gromyko proposed that UNAEC give priority to the drafting of such a convention and only then turn to the organization of systems of control and the elaboration of sanctions. Simultaneously another branch of the Commission should elaborate recommendations concerning practical measures for promoting the exchange of information on all aspects of atomic energy.

It is unnecessary to retrace here the procedural curlicues by which the protagonists in this three-year marathon debate sought to maintain and advance their different positions, or even to record the few concessions made and

the limited agreements reached.¹¹ To the background of the IAEA it is merely necessary to recall the principal points of conflict - almost all of which became apparent in the first few meetings of UNAEC and persisted until its demise.

(a) Relationship between IADA and the Security Council, and the problem of the veto

As mentioned above, the American and later the majority position was that no control system could be effective if it was subject to a veto by one of the powers that might be violating it; consequently IADA must never be fully subject to the Security Council and should therefore be established by a separate treaty and not by mere UN resolutions. The Soviet position was that great-power unanimity was a fundamental and unchangeable feature of the United Nations system and that IADA, which would play a vital part in assuring world security, should be fully subject to the Council.¹² This position had already been signalled at the Moscow Foreign Ministers' meeting, where the Soviet representative successfully insisted on the unusual arrangement that UNAEC would be created by the General Assembly but would report and be subject to the Security Council.

(b) The priority of prohibition or control

The Soviet representative asserted that a decision must first be made on prohibiting nuclear weapons before attention need be paid to the system for controlling their production. The majority of UNAEC felt that prohibition without control would be empty and dangerous - and since the system of control would be more difficult to negotiate and implement than a mere prohibition, consideration of control must come first.

(c) The required intensity of control

The Baruch Plan and later the majority of UNAEC, accepting the logic of the Acheson-Lilienthal Report, agreed that effective control could only be exercised through an operating authority rather than through one performing merely external inspections. The Soviet Union never conceded the necessity for this massive international intervention into the domestic sphere and suggested that a system of reporting, with perhaps limited inspections, would be enough to support a system that must ultimately depend mainly on reciprocal good faith.

UNAEC presented three reports to the Security Council. In the First Report,¹³ adopted on 30 December 1946 by a vote of 10:0:2, the Commission largely endorsed the Baruch Plan - in particular with respect to the scientific and technical feasibility of adequate international safeguards on peaceful nuclear activities, if these were carried out by a single international authority responsible for both operations and control, to be applied to all stages of the production and use of nuclear fuels. The Second Report,¹⁴ adopted on 11 September 1947 by a vote of 10:1:1, dealt with two separate subjects: specific proposals on the operational and developmental functions to be entrusted to the proposed authority (including: research and development activities; location and mining of ores; processing and verification of source

material; stockpiling, production and distribution of nuclear fuels; design and construction of isotope separation plants and of nuclear reactors) and on its rights and limitations in relation to research, surveys and exploration; and an analysis of the differences between the majority and minority positions as these became clear during the Commission's consideration of amendments to the First Report that had been proposed by the Soviet Union in the Security Council or directly in the Commission). The Third Report,¹⁵ adopted on 17 May 1948 by a vote of 9:2:0, informed the Security Council that UNAEC had "reached an impasse" so "that no useful purpose could be served by carrying on negotiations at a Commission level" and recommended that the Council transmit the three reports to the General Assembly.

The Security Council accepted the recommendation of the Commission and transmitted its reports to the General Assembly¹⁶ - a decision that could be taken by a procedural vote. After heated debate at the third Assembly (including consideration in the First Committee and in a special sub-committee thereof) the Assembly on 4 November 1948 endorsed, by vote of 40:6:4, the plan that had been recommended by the majority of the UNAEC; the resolution also called for the Commission to resume its discussions and for special consultations among the six permanent members of the Commission.¹⁷

Though the Commission therefore lingered on, it accomplished no further work and prepared no substantial reports in the few meetings it and its Working Group held up to July 1949. Whether or not any progress could have been made in developing the plan for IADA, if either the majority or the minority had yielded on the contentious points at issue between them, became academic when the Soviet Union exploded its first atomic bomb in August 1949 and the United Kingdom followed suit in October 1952: these events, considered together with the stockpile of nuclear materials that the United States had built up in the intervening cold-war years, made it clear that never again would a complete system of atomic energy control be possible, since even if from a given date all future production and use of nuclear materials could be rigidly controlled there would be no way of discovering the extent of any hoards of previously produced nuclear materials that might have been hidden away by any of the nuclear powers.

Although the attention of the Commission might at this point have been shifted to some new plan to prevent the further proliferation of nuclear weapons, it was never again convened after the first Soviet explosion. UNAEC was given its long delayed burial on 11 January 1952 when the General Assembly finally dissolved it.¹⁸

Buried at the same time was its foetal offspring - IADA, the first and much too ambitiously conceived organization designed to control, and for that purpose to operate, all substantial nuclear energy programmes throughout the world. Left behind, besides the memory of the extensive acrimonious debates which prejudiced any new approach to the subject, was a legacy of deeply ingrained positions on certain problems (e.g., attitudes for and against strong safeguards, the potential operational role of an international atomic energy organization, and the question of subjecting such an organization to the Security Council and its veto), which later rose to haunt the founders of the IAEA as they tackled their task with renewed energy in the post-Stalin and post-Korean War thaw.

NOTES

- 1 Among many useful accounts of these negotiations, attention might be called to Bernhard G. Bechhoefer, *Postwar Negotiations for Arms Control*, The Brookings Institution, Washington (1961).
- 2 This instrument was considered to be an international agreement and was consequently registered by the United States with the United Nations (see 1 U.N.T.S. 123). At least the United States still lists it as a treaty in force (see *Treaties in Force on January 1, 1968*, US State Dep't Publ. 8355). Its text appears, *inter alia*, in *Multilateral Agreements, Legal Series No.1, IAEA, Vienna (1959) 1*.
- 3 Section VII of the Soviet-Anglo-American Communiqué of 27 December 1945, "The Establishment by the United Nations of a Commission for the Control of Atomic Energy", reproduced in *International Control of Atomic Energy: Growth of a Policy*, US State Dep't Publ. 2702 (1946) [hereinafter "Growth of a Policy"].
- 4 As the first substantive resolution passed by the Assembly, it was numbered Resolution I(I). For convenience, General Assembly Resolutions will hereinafter be identified as follows: UNGA/RES/1(I).
- 5 Report on the International Control of Atomic Energy, US State Dep't Publ. 2496 (March 1946).
- 6 This technical conclusion is probably one of the least sound parts of the Report.
- 7 Speech by Mr. B.M. Baruch at the 1st meeting of UNAEC (14 June 1946), and US Memoranda Nos. 1-3 submitted to Sub-Committee No.1 of UNAEC on 2, 5 and 12 July 1946. All these are reproduced in *Growth of a Policy*, supra note 3, Appendixes 13-16.
- 8 Lists of these organs and of their meetings and records can be found in *Index to Documents, 1 Jan. 1946 - 30 April 1951* (UN doc. AEC/C.1/81/Rev.1); in *Check List of UN Documents, Part 3: Atomic Energy Commission, 1946-1952* (UN doc. ST/LIB/SER.F/3); and in *The International Control of Atomic Energy: Policy at the Crossroads*, US State Dep't Publ. 3161 (June 1948), Appendix 1. A good account of the UNAEC appears in Chapter 1 of *The United Nations and Disarmament* (UN Publication Sales No. 67.I.9 (1967)).
- 9 UN doc. AEC/18/Rev.1 (31 Dec. 1946), reproduced in US State Dep't Publ. 2737 (1947).
- 10 Also reproduced in *Growth of a Policy*, supra note 3, Appendix 22.
- 11 A quasi-official summary can be found in *Yearbook of the United Nations 1946-47*, pp. 444-451; 1948-49, pp. 344-61; 1950, pp. 415-19.
- 12 In two years the Soviet position shifted enough to permit the concession that no veto would apply to the internal decisions of IADA; however, violations of its controls would still have to be referred to the Security Council - see records of 21st meeting of UNAEC Sub-Committee No.1 (19 June 1947), summarized in *Yearbook of the United Nations 1946-47*, p. 451. Compare the procedure applicable to the IAEA, as described in Sections 8.4.3 and 21.7.2.4.
- 13 Supra note 9.
- 14 UN doc. AEC/26 (11 Sept. 1947), reproduced in US State Dep't Publ. 2932 (1947).
- 15 UN doc. AEC/31/Rev.1 (17 May 1948), reproduced in US State Dep't Publ. 3179 (1948).
- 16 SC/RES/52 (1948) (22 June 1948).
- 17 UNGA/RES/191 (III) (4 Nov. 1948).
- 18 UNGA/RES/502(VI) (11 Jan. 1952), para. 2.

CHAPTER 2. FORMULATING THE STATUTE

The Statute of the International Atomic Energy Agency was formulated in just short of three years.¹ At the time this period appeared excessively long and considerable impatience was expressed. Nevertheless, if one studies the numerous separate stages of these negotiations and recalls the extensive and ultimately fruitless haggling less than a decade earlier on the proposed IADA, and if one also considers how much longer the negotiation of less important and basically non-controversial international instruments often takes, we can gain a new appreciation of the intensive work that was achieved at what must, in the light of diplomatic practice, be considered a fairly brisk pace.

The formulation of the Statute was accomplished in several successive stages, which for the most part can conveniently be separated chronologically. At each stage the forum of consideration changed, and these shifts resulted in a shuttle effect in which the evolving draft was passed back and forth from a small (though ever-increasing) group of States to organs in which practically the entire world community was represented. Thus the process of formulating the Statute was itself conditioned by two of the principal issues

TABLE 2A. REPRESENTATIVE ORGANS

CENTRAL (Size) ^a	GENERAL
<u>Formulation of the Statute</u>	
1954	UN General Assembly (9 th)
1955	Negotiating Group (8)
1955	UN General Assembly (10 th)
1956	Working Level Meeting (12)
1956	Co-ordination Committee (12)
<u>Interim</u>	
1956-57	Preparatory Commission (18)
<u>Agency</u>	
1957-63	Board of Governors (23)
1963-	Board of Governors (25)
	General Conference

^a The composition of these "Central" organs is given in Annex 3.1; it should be noted that the core group of States is largely invariant.

relating to the contents of that instrument: what should be the relative roles of the central and of the general representative organs of the Agency, and what should be the size and composition of the former. To anticipate the material in the present Chapter, as well as that in Part B below, this issue can be elucidated from Table 2A.

2.1. PRESIDENT EISENHOWER'S INITIATIVE

There is no dispute that the impulse to create the International Atomic Energy Agency came from the speech President Dwight D. Eisenhower addressed to the 8th regular session of the General Assembly of the United Nations on 8 December 1953.² He proposed:

"114. The governments principally involved, to the extent permitted by elementary prudence, should begin now and continue to make joint contributions from their stockpiles of normal uranium and fissionable materials to an international atomic energy agency. We would expect that such an agency would be set up under the aegis of the United Nations. . .

"116. Undoubtedly, initial and early contributions to this plan would be small in quantity. However, the proposal has the great virtue that it can be undertaken without the irritations and mutual suspicions incident to any attempt to set up a completely acceptable system of worldwide inspection and control.

"117. The atomic energy agency could be made responsible for the impounding, storage and protection of the contributed fissionable and other materials. The ingenuity of our scientists will provide special safe conditions under which such a bank of fissionable material can be made essentially immune to surprise seizure.

"118. The more important responsibility of this atomic energy agency would be to devise methods whereby this fissionable material would be allocated to serve the peaceful pursuits of mankind. Experts would be mobilized to apply atomic energy to the needs of agriculture, medicine and other peaceful activities. A special purpose would be to provide abundant electrical energy in the power-starved areas of the world.

"119. Thus the contributing Powers would be dedicating some of their strength to serve the needs rather than the fears of mankind."

The three-fold object of this proposal was thus:

- (a) "To begin to diminish the potential destructive power of the world's atomic stockpiles" — i. e., an arms-reduction (but not a disarmament) measure to be accomplished by building up under custody a neutralized "pool"³ of nuclear material in the proposed agency.
- (b) To use the impounded material for peaceful applications throughout the world — i. e., a technological and possibly an economic assistance measure, in which the agency would act principally as a "banker"³ of nuclear materials.
- (c) To encourage the people of the world by showing that the great powers were more concerned with human aspirations than with armament, and to break the existing disarmament deadlock by opening up "a new channel

for peaceful discussion and initiative" that would aid the world "to shake off the inertia imposed by fear and . . . to make positive progress towards peace" — i. e., a moral, psychological initiative.

Though the President's speech was received with immediate acclaim and great enthusiasm, the Assembly was not asked so late in the year to take any action thereon at its current session.

The American Government, however, did not let matters rest with the presentation of these proposals.⁴ In addition to the initiatives related in the Sections below, the administration immediately took the first steps to enable it later to redeem the presidential promises, by submitting to Congress extensive amendments to the extremely restrictive Atomic Energy Act of 1946⁵ which had barred almost all international co-operation and indeed even contacts in this field. The resulting Act, which was signed into law on 30 August 1954,⁶ authorized the Government to engage in significant international co-operation and to give substantial assistance, subject in each case to the conclusion of a co-operation agreement cleared with Congress. Thereupon working in almost assembly-line fashion, standardized bilateral agreements were negotiated and initialled (with 24 countries by July 1955 — and more followed later), and assistance promised and delivered under these agreements did much to arouse world-wide interest in atomic energy and thus helped sustain the momentum for the creation of the IAEA; less fortunately, however, this pattern and programme of bilateral co-operation (soon imitated, though to a more modest extent, by the other nuclearly developed countries), which was initially meant merely to fill the gap between the proposal for and the establishment of the Agency, later became perhaps its most serious competitor.

2.2. CORRESPONDENCE BETWEEN THE UNITED STATES AND THE SOVIET UNION

In his address, President Eisenhower had especially mentioned the Soviet Union as one of the powers "principally involved", with which the arrangements leading to the realization of his proposals would have to be discussed in "private conversation". Consequently on 11 January 1954 the Secretary of State handed a note to the Soviet Ambassador which initiated a two-year correspondence in which 28 communications relating to the Agency were exchanged. This exchange can conveniently be divided into two phases: 13 notes exchanged between 11 January and 23 September 1954 (beginning of the 9th Session of the General Assembly) constituted an attempt at bilateral negotiation;⁷ 15 notes, exchanged between 3 November 1954 and 27 January 1956, were in effect contrapuntal to the several subsequent stages of multilateral negotiation which the United States had in the meantime initiated and in which it was inviting the Soviet Union to join.⁸

2.2.1. First phase

The first phase of the exchange did not prove to be particularly fruitful. The principal difficulty harked back to one of the major obstacles of the UNAEC

negotiations on IADA: can any international agreement be made on any aspects of the control of atomic energy without a prior or at least simultaneous agreement prohibiting all nuclear weapons? The Soviet Union again insisted that this must be done, and already on 30 January 1954 transmitted a draft declaration "concerning unconditional renunciation of the use of atomic, hydrogen and other forms of weapons of mass destruction"; it further charged that since even peaceful nuclear activities could lead to the production of materials usable for bombs, the proposed stimulation of such activities throughout the world would actually lead to an intensification of the arms race.⁹ It was the later abandonment of this position which made Russian participation in the Agency possible.¹⁰

Nevertheless, even this correspondence made its contribution to the establishment of the Agency. In particular:

- (a) The introductory notes contained the first attempt to establish a list of that inner circle of States that initially would participate in the small group drafting the Statute and later would become the core of the Board of Governors of the Agency. The United Kingdom, France and Canada are mentioned as States having made progress in the atomic field; Canada, Belgium and Czechoslovakia are mentioned as possessing important sources of raw materials. The participation of the People's Republic of China is demanded by the Soviet Union and rejected by the United States — setting the stage for a chronic and still unresolved controversy.¹¹
- (b) In the eighth communication of the series on 19 March 1954, the United States presented its first outline of the agency whose creation President Eisenhower had proposed (hereafter: the US Sketch of the Statute). The principal points were:
 - (i) The agency was to be created by a treaty (i. e., not by a decision of a United Nations organ).
 - (ii) "The highest executive authority in the agency should be exercised by a board of governors, of limited membership, representing Governments". While its composition would take into account geographic distribution and the need to represent prospective beneficiaries, the principal contributors of nuclear materials would in any case serve on the board and might even be granted special voting privileges in certain matters.
 - (iii) The staff should include scientific and technical personnel and be headed by a "general manager" appointed and subject to the control and general supervision of the board.
 - (iv) The common activities of the agency were to be financed by the Member States in accordance with an agreed scale of contributions, possibly related to that of the United Nations. National projects assisted by the agency were to be financed by the States concerned.
 - (v) The agency would submit reports to the Security Council and to the General Assembly, and would co-operate with other United Nations bodies.
 - (vi) The facilities of the agency should include, inter alia, those for storing and safeguarding nuclear materials received by it.

- (vii) All Member States possessing stocks of source and special fissionable materials would be expected to make contributions therefrom. These would be stored by the agency. While the United States promised to donate some material, it was not specified whether all contributions would be expected to be made on that basis. (Already at this point the "pool" concept, the first and most publicized of the Eisenhower proposals, had been considerably watered down; however, as indicated immediately below, it was still desired that the agency act as a "banker" of nuclear materials.)
- (viii) The agency would lease out for approved uses and against an appropriate rental charge (but retaining full title) the nuclear material transferred to it. Some criteria for evaluating requests for materials were indicated.
- (ix) The agency would have the right to prescribe design and operating conditions relating to materials it leased out, in order to assure itself that the material was being used for the approved purpose and that adequate health and safety standards were being observed. It would also have the right to verify compliance, i. e., to impose safeguards.
- (x) Member States would be expected to make available relevant information to the agency and the agency would disseminate such information as well as data otherwise available to it.
- (xi) The agency would encourage the exchange of scientific and technical information among its Members and would serve as an intermediary among them to secure the performance of services. (Here is the start of the "broker" concept,¹² which however is not yet related to the agency's activities in connection with nuclear materials.)
- (c) The Soviet Union indicated that questions concerning security would have to be decided by the Security Council — which suggested at least the partial subjection of the agency to the Council, as the Russian representatives had earlier insisted on in connection with IADA.¹³

The first phase of this bilateral correspondence ended with an agreement for the publication of the communications, which according to the initial exchange had up to then been kept confidential.¹⁴

2.2.2. Second phase

The second phase of the correspondence is of less independent significance, for it served principally to explore the possibility of Soviet participation in the first Negotiating Group (not accomplished — see Section 2.4), to make arrangements for the meeting of the 6 Governments on safeguards (see Section 2.5), and finally to arrange for the participation of the Soviet Union, in the Working Level Meeting (see Section 2.7).

In this correspondence the Soviet Union, *inter alia*, reiterated its demand that the proposed agency be closely connected with the United Nations and particularly be subservient to the Security Council¹⁵ — a point which it was concurrently making during the debates of the 9th Session of the General Assembly. It also insisted on the right of all States (i. e., including the People's Republic of China) to participate in the agency, and that no State should have a privileged position therein.

Many of the later communications, particularly those immediately preceding or following the 6-Government meeting, were concerned with the problem of safeguards. The Soviet Union in principle accepted the exercise of controls by the agency -- subject to appropriate limitations.¹⁶

2.3. THE 9th SESSION OF THE GENERAL ASSEMBLY

At its 9th Session the General Assembly considered an agenda item entitled: "67 -- International co-operation in developing the peaceful uses of atomic energy: report of the United States of America". The United States was reporting as the custodian of an idea -- an idea which it had advanced itself but whose fruition the whole world was now impatiently awaiting. In part to allay this impatience by showing that the past ten months had not been wasted, the American representative communicated to the Assembly the texts of the notes exchanged in the just concluded first phase of correspondence with the Soviet Union.¹⁷

At the beginning of the consideration of this item in the First Committee, the United States was joined by six other States (Australia, Belgium, Canada, France, the Union of South Africa, and the United Kingdom) in presenting a draft resolution¹⁸ whose principal objects were:

- (i) To urge that the States negotiating the Statute of the proposed IAEA carefully consider the discussion in the General Assembly and keep the members of the United Nations informed of the progress achieved in establishing the Agency -- i. e., recognition of the fact that the work of drafting that instrument would have to be entrusted to a small group of interested States (i. e., the sponsors of the resolution), and an implied promise by them not to disregard the views of the rest of the world;
- (ii) To suggest that "once the Agency is established, it negotiate an appropriate form of agreement with the United Nations, similar to those of the specialized agencies";
- (iii) To convene, under the auspices of the United Nations, an international technical conference on the peaceful uses of atomic energy -- which was later realized as the First Geneva Conference;
- (iv) To establish an advisory committee to assist the UN Secretary-General in the organization of the conference -- a group which was later to become the United Nations Scientific Advisory Committee (UNSAC).

The debates, insofar as relevant to the proposed IAEA, concentrated more on procedural than on substantive matters. The following were the principal issues and results:

- (a) Responding to the impatience expressed at the slow evolution of the Agency, the joint resolution was amended by its sponsors¹⁹ to convey the sense of urgency felt by the Assembly.
- (b) Considerable concern was expressed at the prospect that the Statute would be negotiated by a small coterie of States (i. e., principally the seven sponsors of the draft resolution), without adequately taking into account the views of the majority of UN members. This criticism, which foreshadowed extensive debates in other fora, both on the relationship between the Working Level Meeting and the Conference on the Statute

and between the Board of Governors and the General Conference of the Agency, was met in part by calling on "the States participating in the creation of the Agency" to consider fully "the views of Members which have manifested their interest". In addition the advisory committee for the technical conference (which at that stage was not yet being assigned any direct responsibility in connection with the Agency) was constituted on a more representative basis (Brazil, Canada, Czechoslovakia, France, USSR, United Kingdom, United States) than the group of sponsors of the resolution.

- (c) The Soviet Union again stressed its view that the Agency should have a peculiarly close relationship with the United Nations and in particular with the Security Council, and should thus not become a mere specialized agency whose principal relationship to the United Nations would be through ECOSOC.²⁰ At the request of the First Committee the Secretariat rapidly prepared an extensive study of "constitutional questions relating to agencies within the framework of the United Nations" in which it discussed various forms and structures of certain agencies (e.g., subsidiary organs of the United Nations; specialized agencies; special bodies) the various ways in which the treaty establishing an independent organization can be formulated (e.g., drafted or approved by the General Assembly; drafted by an intergovernmental conference called by the General Assembly or by ECOSOC; drafted by an intergovernmental conference called by the sponsoring States), and the various ways by which such an organization might be brought into relationship with the United Nations (e.g., a relationship agreement negotiated with ECOSOC's Committee on Negotiations with intergovernmental agencies; an agreement negotiated with ECOSOC itself; an agreement negotiated with some other organ of the United Nations; a provision in the constitutional instrument supplemented by resolutions passed by an appropriate UN organ); the neutral conclusion was that, depending on political and practical considerations, almost any type of status and relationship established with any organ of the United Nations would be legally feasible and that innovation might be necessary.²¹ After consideration of this report and further debate in the Committee, the sponsoring Governments agreed to delete the proposed reference to a relationship agreement "similar to those of the specialized agencies"; however a Soviet proposal to recommend explicitly that "the Agency should be established as an agency responsible to the General Assembly and, in the cases provided for by the Charter of the United Nations, to the Security Council" was defeated.
- (d) When the Soviet Union and others expressed concern that the Agency was apparently intended to monopolize the channels through which States might co-operate with respect to peaceful nuclear projects — so that it could in effect control and even veto all not fully autonomous atomic activities — the United States declared that there was no intention of assigning to the future organization such an exclusive role.²² This reassurance, while important to many doubtful States, of course also drastically reduced the potential significance of the proposed Agency.
- (e) In connection with the proposed technical conference, the troublesome issue of "universality" (i.e., the participation of States such as

Communist China) was raised and defeated — though later it reappeared in the several fora formulating the IAEA Statute (the 10th General Assembly, the Working Level Meeting and the Conference on the Statute) and subsequently in the proceedings of the Agency itself.²³

The debates were extensive, but finally an acceptable consensus had been achieved which resulted in the unanimous adoption by the Assembly of the revised resolution.²⁴ This proved to be a favourable and eventually reliable augury for the still nascent Agency. The International Conference on the Peaceful Uses of Atomic Energy (the "First Geneva Conference"), which met only ten months later, was a resounding success, and simultaneously made the creation of the Agency seem more urgent to States temporarily dazzled by the prospect of instant prosperity through atomic energy while leading the nuclear powers to lower further the remaining barriers of suspicion by convincingly demonstrating how similarly nuclear science had been developed independently by all its advanced practitioners.

2.4. THE NEGOTIATING GROUP

Early in December 1954 the British Embassy in Washington presented to the American Government a draft statute for the proposed Agency.²⁵ The United States responded with a considerably revised draft of its own, which after ample discussions and redrafting was circulated (still lacking provisions as to the voting formula in the Board and as to finances) on 19 April 1955 to the representatives of the five other States that had co-sponsored the Resolution adopted by the 9th General Assembly, plus to that of Portugal (then not yet a UN member).²⁶ Thus commenced an ad hoc, informal series of consultations in Washington, which came to be known as the [8-Nation] Negotiating Group.²⁷ Starting with the British/American draft, the Group during the next three months evolved a proposed instrument, which in structure and in many points of detail closely approximated the final text of the IAEA Statute. There can be little doubt that the complete secrecy of the proceeding, which was later much resented by the General Assembly but was wisely emulated by the subsequent Working Level Meeting, contributed greatly to the swift conclusion of the task faced by the representatives of States with widely diverging interests that could probably not have been reconciled except through private diplomacy.

In this early text the size of the Board of Governors was still considerably smaller and its powers were considerably greater; the functions of the General Conference were more restricted; safeguards were stricter; and the financial provisions were more rudimentary. However, in relation to the receipt and distribution of nuclear materials the final pattern had essentially been attained: the original Eisenhower concept, that a principal function of the Agency would be the siphoning off from Member States of significant quantities of nuclear materials, which in weakened form had still been maintained in the first US Sketch of the Statute, was virtually abandoned; contributions of materials were to be entirely voluntary and related principally to the needs of the Agency and its Member States rather than to an effort to neutralize militarily significant nuclear materials. Moreover,

though both options continued to remain open, the Agency was to act more as a "broker" than as a "banker" of nuclear materials, i. e., it would not necessarily receive and hold material itself for possible leasing, but it might merely arrange for the States that had undertaken to supply material to deliver it directly to other States conducting nuclear energy projects approved by the Agency. Finally a number of ancillary functions were added to the Agency's proposed repertoire.

On 29 July 1955 this draft was communicated to the Soviet Union, which had previously been informed of it but had evidently shown no interest in participating in the work of the Group.²⁸ On 22 August²⁹ a slightly altered final version was transmitted to all 84 States that were then members of the United Nations or of any specialized agency, and comments were solicited from all.³⁰

2.5. MEETING OF 6 GOVERNMENTS

On the basis of further correspondence between the United States and the Soviet Union in its second phase,³¹ and after tentatively exploring the possibility of bilateral meetings, the two Governments jointly convened, during the closing days of the First Geneva Conference, a "Meeting of 6 Governments [on the proposed International Atomic Energy Agency]".³² From 22 to 27 August 1955 representatives of Canada, Czechoslovakia, France, the Soviet Union, the United Kingdom and the United States (respectively, Messrs. Lewis, Simane, Perrin, Skobeltzin, Cockroft and Rabi) participated in a series of five confidential meetings (the cost of which the Governments shared and reimbursed to the host of the Conference, the United Nations).³³

The agenda was limited to: "safeguarding peaceful uses of atomic energy". The discussions were intentionally kept on a purely technical level and reflected, though were not directly oriented toward, the safeguards provisions contained in the draft IAEA Statute that the Negotiating Group had just disseminated. Of an extensive list of topics proposed by the United States, most attention was paid to the possibility of controlling nuclear materials by the addition of isotopic tracers — a suggestion received with considerable (and evidently justified) skepticism by the Soviet representative. No definite conclusions were reached and recorded, and each delegate merely reported to his own Government.

From the point of view of the future work of the IAEA, no substantial progress was made, and none of the proposals discussed in these meetings were later incorporated into the Agency's safeguards system. But a positive purpose was served, as for the first time since the early days of UNAEC the United States and the Soviet Union engaged in serious discussion on safeguards in a multi-national forum, and they did so for once on a scientific rather than on a political level.

2.6. THE 10th SESSION OF THE GENERAL ASSEMBLY

At its 10th Session the General Assembly considered an agenda item entitled: "18—Peaceful Uses of Atomic Energy: (b) Progress in developing inter-

national co-operation for the peaceful uses of atomic energy: reports of Governments".

This consideration followed hard on the heels of the First Geneva Conference which had kindled great and widespread enthusiasm for atomic energy and correspondingly increased the impatience for the establishment of the Agency. In addition, the Negotiating Group's draft had been distributed to all States a few weeks earlier and the debates reflected the concern of many States with some of the concepts that had been developed by that small clique. However, it is significant that the draft Statute was not submitted to or formally debated by the Assembly.

By and large the issues raised in the 10th Assembly were substantially the same as those discussed a year earlier, though by now the debates and proposals had become more complex and many-sided as more States had become educated in the intricacies of nuclear politics and saw their interests more directly involved. The principal issues were:

- (a) The method by which the majority of States could impress their views on the small group that was negotiating the Statute — an issue that had now gained in sharpness due to the provisions of the Negotiating Group draft assigning almost all powers in the proposed organization to the Board of Governors and little to the General Conference. As a consequence of this pressure the members of the Group announced their intention of inviting Brazil, Czechoslovakia, India and the Soviet Union to join them in the further consideration of the draft Statute, and that later all these Governments would convene a general international conference to establish the final text.³⁴ In addition, the Assembly's resolution (the final draft of which was co-sponsored by 18 States, including all but two members of the Negotiating Group)³⁵ recommended that: "the Governments concerned take into account the views expressed on the Agency during the present session of the General Assembly, as well as the comments transmitted directly by Governments..."³⁶ However, proposals to the effect that the Negotiating Group be further expanded by including some underdeveloped countries without atomic materials or technology (i. e., States that would purely be recipient of Agency assistance) were discouraged and withdrawn.³⁷
- (b) The status of the Agency in relation to the United Nations was once again extensively debated, and the UN Secretary-General was charged with preparing, in consultation with UNSAC, a study on the question of that relationship.³⁸ A Soviet proposal to specify "that this agency will be established within the framework of the United Nations" was rejected in the First Committee.³⁹
- (c) Universality was again raised, implicitly in connection with the membership of IAEA but explicitly in connection with the conference to be convened to consider the final text of the Statute. The First Committee rejected a proposal that all States be invited to that Conference,⁴⁰ and the final resolution merely welcomed the intention announced by the sponsoring Governments to invite "all States Members of the United Nations or members of the specialized agencies".
- (d) Though the sponsoring Governments resisted the inclusion in the Assembly's resolution of substantive proposals relating to the Statute or

to the proposed activities of the Agency, one was accepted. This suggested that the Agency, when established, "consider the desirability of arranging for an international periodical devoted to the peaceful uses of atomic energy".⁴¹

Under sub-item (a) of the same agenda item, the Assembly also reviewed the results of the First Geneva Conference and recommended that a second be convened in two to three years. It also continued the Advisory Committee (UNSAC), which had originally been established merely to advise on the Conference, and for the first time assigned its functions in relation to the IAEA (see paragraph (b), above).⁴²

2.7. THE WORKING LEVEL MEETING

As announced at the 10th Session of the General Assembly, the original Negotiating Group was now augmented by the addition of four new members.⁴³ In expanding, it also changed its name and character. The so-called "Working Level Meeting [on the draft Statute of the International Atomic Energy Agency]"⁴⁴ was a more formally structured organ than its predecessor (among whose members the community of interests had no doubt been greater). Its work was accomplished in three phases: in the first it formulated its rules of procedure; in the second it revised the draft Statute; and in the third it prepared for the Conference on the Statute.⁴⁵

2.7.1. First phase: Agreement on procedure

The first phase started with a single preparatory meeting on 14 November 1955, of which no formal record was kept. Apparently the only business accomplished was the formulation of a draft of the rules of procedure to be followed. These were then adopted, with only a single change, by the "Meeting" (as the organ was called in its own rules of procedure; confusingly therefore each meeting was called a "session") at its first formal session on 27 February 1956. Their principal provisions were:⁴⁶

- (a) The chairmanship of the Meeting would rotate alphabetically from State to State.
- (b) The quorum was a majority of the Meeting. All decisions required a similar majority (i. e., 7 votes).
- (c) Committees and sub-committees might be established.
- (d) Sessions were to be private and their records confidential. These records were to consist principally of the texts of written proposals and other documents, together with the decisions taken thereon. No provision was made for recording debates, but delegates could request that the substance of particular statements be included in the record of the session (in practice, the verbatim texts of such statements were attached to the record).
- (e) The Secretariat was to be organized and largely provided by the Government of the United States, which acted as host of the Meeting.⁴⁷

2.7.2. Second phase: Revising the draft Statute

From its 2nd to its 18th sessions (28 February to 18 April 1956) the Working Level Meeting considered the draft text of the Statute that had been prepared by the Negotiating Group.⁴⁸ This review was conducted in the light of:

- (i) The views advanced in the 10th General Assembly — but since no systematic compilation had been made of these and since all States really interested had subsequently communicated their views in writing, at most lip service was paid to this recommendation contained in the Assembly's resolution;
- (ii) The written comments that had been submitted to the United States by 39 Governments — though these were published for the information of the Committee,⁴⁹ no synoptic document relating them to the various articles was prepared and thus these too were for the most part considered only as reflected in the amendments formally proposed by members of the Meeting;
- (iii) The proposals formally presented by members of the Working Level Meeting:⁵⁰ altogether 99 amendments (including revisions of and sub-amendments to other amendments) were submitted, of which some called for the revision of entire articles while others related only to points of drafting; in addition numerous oral amendments were considered and acted on at each reading.

The procedure was designed to give a maximum opportunity for reaching agreement or at least as great a consensus as possible on every point. To accomplish this, the sequential consideration of articles was frequently interrupted to postpone temporarily certain portions on which disagreement persisted. In all, three complete readings of the entire text were conducted: the first took place at the 2nd and 3rd sessions, the second and most important at the 4th to 12th, and the final one at the 13th to 18th.

Several committees were established:

- (A) A scientific sub-committee, consisting of one member (if possible a scientist) from each delegation wishing to be represented, prepared recommendations for the definitions included in Article XX of the Statute.⁵¹
- (B) A drafting committee, appointed at the end of the second reading, consisting of the representatives of the Soviet Union, the United Kingdom and the United States, prepared a text reflecting the changes made up to then.⁵² (Some drafting, however, was left to the Secretariat.)
- (C) Numerous ad hoc assignments were given to the representatives of one or more members to draft or to negotiate improved language for particular provisions in the light of previous proposals and debates.⁵³

The Working Level Meeting made no structural or conceptual alterations in the Negotiating Group draft, in particular in relation to the Agency's functions as a receiver, distributor or broker of nuclear materials. But it did thoroughly overhaul the earlier text and introduced a number of substantial changes,⁵⁴ of which the most important were:

- (a) The "protective" clauses now appearing in Articles III, C and D and IV, C were introduced.
- (b) The reports to be submitted to various United Nations organs were specified.⁵⁵
- (c) The powers of the General Conference were expanded slightly by authorizing it: to approve rules regulating certain Board activities; to approve general rules for the Staff Regulations; to participate in amending the Statute; and to propose matters for consideration by the Board.⁵⁶
- (d) The composition of the Board was changed, from a group of 16 of whom only 6 would be elected by the General Conference, to 23 of whom 10 would be elected. In addition geographic distribution was to be emphasized, with a corresponding relative de-emphasis on ability to supply source materials.⁵⁷
- (e) The powers of the Board were slightly reduced by making the exercise of some of them subject to rules approved by the General Conference. The explicit statement that the Board was to "determine the policies of the Agency" was deleted, but a proposal to assign this power to the Conference was defeated.⁵⁸
- (f) The powers of the Director General were not enhanced, but the originally proposed title of "General Manager" was changed.⁵⁹
- (g) The broad sweep of some of the safeguards provisions was clarified; it was specified that projects and other safeguarded arrangements would not automatically become subject to the full range of the control measures foreseen in the Statute, but that only such measures as were relevant and included in an agreement with the Agency would be applied in each case.⁶⁰
- (h) The financial provisions were thoroughly changed. In particular, the "2-budget system" and the distinctions relating thereto were introduced. Explicit provisions were added regarding voluntary contributions and for the incurring of loans.⁶¹

At its 18th session the Working Level Meeting unanimously approved the new draft Statute. This approval was given ad referendum, and it was also agreed that the Governments that had participated in the Meeting would not be precluded from speaking freely on the draft at the Conference on the Statute — though in the event this freedom was exercised with considerable restraint. In addition Australia, Czechoslovakia, India and the Soviet Union formally reserved their positions on certain parts of the text.⁶²

2.7.3. Third phase: Convening the Conference on the Statute

On concluding its work on the text of the Statute, the Working Level Meeting decided that a Conference on the Statute (promised at the 10th General Assembly) should be convened at UN Headquarters in the latter part of September 1956, though various offers had been received to host the Conference elsewhere. It then established a Committee of the Whole (sometimes called the Interim Committee or the Advisory Level Group) charged with proposing the formal arrangements for the Conference.⁶³ After several sessions of this group, the Working Level Meeting had to be reconvened for its 19th to 21st sessions to resolve certain points on which disagreement in the Committee had persisted.

The Provisional Rules of Procedure for the Conference were adopted without great controversy. As demonstrated in Section 2.8, these rules were designed so as to make it difficult for the Conference to alter the draft of the Statute proposed by the Meeting. Naturally anticipating some objections to these restrictive rules, the participants agreed that at the Conference they would support these proposed rules unanimously.⁶⁴

The proposed agenda for the Conference was also adopted.

The greatest difficulty involved the list of invitees. The Soviet, Czechoslovak and Indian representatives insisted that invitations should be addressed to North Korea and to North Viet-Nam, and to the People's Republic of China; on the latter point they received qualified support from the United Kingdom. However, the majority of the Meeting decided that the list of invitations should be restricted in the sense of the resolution of the 10th General Assembly, i. e., "all states Members of the United Nations or members of the specialized agencies". To resolve this point it was finally agreed that the invitations to the Conference be extended, on behalf of the Working Level Meeting, "by the Government of the United States of America to States members of the United Nations and⁶⁵ of the specialized agencies", but that the text of each invitation would include an elaborate paragraph recording the disagreement of the Meeting on this point.⁶⁶

It was also agreed to extend invitations to ten specialized agencies to be represented at the Conference.

Finally at the 21st session on 28 June 1956 the formal report of the Meeting was adopted, to which were attached a short historical account of the origin of the Meeting, a list of participants, the proposed text of the Statute together with the particular reservations of four Governments, the proposed agenda and provisional rules of procedure of the Conference on the Statute.⁶⁷

2.8. THE CONFERENCE ON THE STATUTE

The final stage⁶⁸ in the formulation of the Statute was the "Conference on the Statute of the International Atomic Energy Agency", which was convened at United Nations Headquarters in New York on 20 September 1956 and concluded its sessions on 26 October with the ceremony at which the new instrument was opened for signature. Though the work of the Conference was completed over a decade ago, several unique aspects of its organization and structure still deserve examination, partly as explaining certain features of the Statute and partly for their own sake as relating to an international legal event of major significance.

In view of its somewhat peculiar rules and procedures, it is important to emphasize that the Conference was not sponsored by the United Nations. This is so even though:

- (a) The Conference was convened in part in response to a General Assembly resolution;
- (b) The meetings took place at UN Headquarters;
- (c) The Secretary-General of the United Nations acted as Secretary General of the Conference; and
- (d) The Conference was serviced entirely by UN Secretariat.

2.8.1. Participation

As mentioned in Section 2.7.3, the invitations to the Conference were issued by the Government of the United States in the name of the twelve sponsoring Governments, i. e., those that had participated in the Working Level Meeting. It was addressed to the 87 States which at that time were members of the United Nations or of any of the specialized agencies. Of these 81 sent representatives to the Conference.⁶⁹

The selection formula used in extending the invitations had by 1956 become customary in the United Nations and it also appeared in the resolution relating to the Agency passed by the 10th General Assembly. It was of course designed to exclude the Governments of East Germany, North Korea, North Viet-Nam and Outer Mongolia, while including those of the Federal Republic of Germany, South Korea, South Viet-Nam and Switzerland, which, though not members of the United Nations, participated in one or more of the specialized agencies. No direct challenge to this formula was raised at the Conference in connection with participation, though as indicated below attempts were made to introduce the principle of universality into the Agency itself through changes in Articles IV.A and XXI.A of the Statute.

The invitations having been issued by the American Government, that addressed to China was of course sent to the Government of the Republic (i. e., Formosa). The participation of this Government was challenged twice during the Conference. At the opening plenary meeting, before the Rules of Procedure had been approved or the President elected, the Soviet representative raised a point of order; after a number of representatives had made statements on this issue, the Temporary President (the representative of the United States) closed the debate (evidently by pre-arrangement with the principal delegations concerned) without a vote or other form of decision.⁷⁰ Later, at the 14th plenary meeting, when the Secretary-General's report on credentials was being discussed, the issue was raised again by a Soviet request for a separate vote on the Chinese credentials; this motion having been defeated by a vote of 18 : 53 : 9, the question of Conference participation was finally disposed of.⁷¹

2.8.2. Role of the sponsoring Governments

The Conference was officially convened and sponsored by the twelve Governments that had participated in the Working Level Meeting. Though it had not been possible to achieve full agreement on all points in that forum, these Governments had unanimously agreed on a draft text of the Statute and had evidently all decided that no unnecessary obstacles should be placed in the way of the prompt creation of the Agency. Since the agreement that had been reached on the text rested on a number of delicate compromises (e. g., the formula defining the membership of the Board), it was necessary to make certain that these should not be upset in the larger forum; the risk that this might happen was considerable in view of the fact that the sponsoring Governments, though politically by no means homogeneous, represented from the point of view of the future Agency mostly and most of the potential suppliers

and these had formulated a Statute which plainly largely reflected their interests.

To preserve these important but delicate compromises, the sponsoring Governments agreed, in a spirit of cohesion remarkable in the light of their general political disagreements, to go to special lengths to prevent the adoption of any disturbing amendments. The measures they adopted for this purpose were manifold. In large part they rested on several procedural devices, commented on below, which were designed to inhibit the submission of amendments and to make their adoption difficult. The deliberately restricted schedule of the Conference contributed to this goal. When these devices were not sufficient and a particular point seemed threatened by an adequate majority, appeals (sometimes almost threats) were voiced publicly and evidently also privately, that the formula proposed by the sponsoring Governments must at all costs be maintained — appeals that were uniformly effective whenever supported by all these Governments.⁷² Finally the sponsoring Governments fully controlled the machinery of the Conference.

These Governments thus played several interrelated roles, before, during and after the Conference:

- (a) As participants in the Working Level Meeting they had prepared the draft Statute which the Conference was considering.
- (b) As the sponsoring Governments they had convened the Conference and prepared its Rules of Procedure; under the latter the same Governments constituted the Co-ordination Committee — which acted as a combined general committee and special drafting committee; the two elected officers of the Conference were also chosen from among the representatives of this group.
- (c) Finally these Governments automatically constituted two-thirds of the 18-nation Preparatory Commission established by Annex I to the Statute.

It should be noted that the role of these Governments in sponsoring the Conference did not extend to bearing its expenses. These were instead apportioned equally among all the participating Governments — a formula which caused some concern about the method of financing the Agency itself.⁷³

2.8.3. Organization and structure

The Conference was conducted in accordance with Rules of Procedure proposed by the Working Level Meeting and approved without change at the first meeting of the Conference.⁷⁴ They were supplemented by a "Report of the Co-ordination Committee on the Organization of the Conference and Schedule", and the arrangements proposed therein were also approved by the Conference itself.⁷⁵ Finally a number of important procedural rulings were made by the President in his function as Chairman of the Main Committee, all in the interest of accelerating the work.

In accordance with these Rules, arrangements and rulings, the Conference was organized with commendable simplicity. It had only three "organs":

the Plenary Meeting, a plenary Main Committee and the 12-member Co-ordination Committee. As a matter of fact, since the Plenary never met simultaneously with the Main Committee, since their officers and procedures (e.g., voting requirements) were the same, and since the flow of business was so arranged that no point considered by the Main Committee would be reconsidered in the Plenary, the distinction between these two organs was somewhat artificial.⁷⁶

Only two officers were elected by the Conference. The President was the representative of Brazil, and he also served as Chairman of the Main Committee and of the Co-ordination Committee; the Vice-President was the representative of Czechoslovakia, and he also served as Vice-Chairman of these two Committees. The Secretary-General of the United Nations served as Secretary-General of the Conference, and in that capacity also prepared the report on credentials — thus obviating the need for a credentials committee.⁷⁷

2.8.4. Conduct of business

The principal business of the Conference was the consideration of the draft Statute proposed by the Working Level Meeting, and the adoption of a final text. This proceeded in several distinct stages:

- (a) Initially 13 meetings of the Plenary were devoted to a general debate — in effect a series of statements relating to the text of the Statute as a whole or to particular features of the draft presented by the sponsoring Governments.⁷⁸
- (b) Formal proposals for amendments could only be submitted up to the end of the general debate — and actually almost all appear to have been submitted within a day or so of that date.⁷⁹ Thereafter only compromise revisions of previous amendments could be submitted, and even these were not published as regular conference documents, but were either merely read at a meeting of the Main Committee or were issued as informal Conference Room Papers. Some minor oral amendments were proposed from time to time during the course of the article-by-article debate, but insofar as any of these were not accepted unanimously or incorporated into a previously submitted formal amendment they were for the most part merely referred to the Co-ordination Committee.
- (c) The Main Committee started with an article-by-article first reading of the Statute, at which the formal amendments were explained by their sponsors and debated but were generally not acted on, except to the extent that some were accepted unanimously while many others were withdrawn. At this stage, articles to which no amendments had been proposed were considered unanimously accepted and were submitted directly to the Co-ordination Committee.
- (d) Soon after the first reading of a group of articles the second reading took place — even before the first reading of the entire text had been completed. At this reading generally no further debate was allowed, except on versions of amendments that had been revised since the first reading; explanations of votes were permitted only after all amend-

ments had been disposed of and the article adopted. Amendments had to be approved by a two-thirds vote — while the adoption of articles (whether amended or not) only required a majority vote.⁸⁰ These unusual procedural Rules were of course successfully designed to make it difficult to change the Working Level Meeting's text; formally they were justified by recalling that the views of all interested Governments had already been considered by the Working Level Meeting, by pointing to the importance and vulnerability of the compromises reached, and by stating bluntly that it was essential that the Statute be acceptable to the potential suppliers. Several amendments were indeed defeated merely because of the two-thirds rule (without even taking account of those that were withdrawn in anticipation of such a defeat); practically all amendments passed received almost unanimous approval. Each Article was, in the event, adopted by a practically unanimous vote — i. e., there appeared to have been no danger that one would be completely deleted.

- (e) After each article was adopted by the Main Committee it was referred directly to the Co-ordination Committee,⁸¹ together with any additional proposals (nominally drafting changes) that the Main Committee had either declined to act on because not submitted in due time or form, or which had been submitted to it merely with a view to such referral to the Co-ordination Committee;⁸² as to none of these proposals did the Main Committee add any recommendation except as might be deduced from the course of the debate.
- (f) The Co-ordination Committee considered the articles and the additional proposals under a rule which charged it with reviewing "the draft articles and the draft Statute as a whole with a view to eliminating inconsistencies in terminology".⁸³ Unfortunately no records were kept of those of its meetings that were devoted to this review. The Committee's final report consisted of two parts:
 - (i) A revised text of the entire Statute, incorporating the changes that the Committee had made either on the basis of the proposals referred to it by the Main Committee or on its own initiative; these changes were not supported by any commentary.⁸⁴
 - (ii) A short commentary was submitted on most of the proposals that the Committee had rejected.⁸⁵ A frequent ground given was that the change proposed was in effect substantive and thus exceeded the terms of reference of the Co-ordination Committee — even though the Main Committee had declined to take action on some of these proposals and had decided to refer them to the Co-ordination Committee precisely on the ground that no issue of substance was involved. In view of the agreed rules and procedures, and particularly because of time limitations, no re-referral to the Main Committee was possible.
- (g) The text of the Statute recommended by the Co-ordination Committee was adopted at the 15th Plenary Meeting, without debate, by unanimous standing vote.⁸⁶ At the 16th Plenary on 26 October, the Statute was opened for signature.⁸⁷

2.8.5. Schedule

No account of the Conference on the Statute would be complete if it did not convey an impression of the tremendous time pressure under which this complex instrument was considered. The principal reason for this pressure was the relatively late opening date of the Conference, which was set by the sponsoring Governments perhaps in part with the deliberate intention of discouraging excessive alteration of the text, since the meetings had to be planned to terminate before the immovable opening date of the General Assembly in whose hall the Conference was being held. In the event this squeeze-play, if such it was, almost backfired, for far more amendments were submitted than had been expected.⁸⁸

Dealing with the relative flood of amendments rapidly required heroic measures, and they were taken. During the second reading in the Main Committee, amendments were voted on which had just been circulated or had only once been read aloud, often with no explanation, immediately before the vote. Even more severe was the pressure on the Co-ordination Committee, which had to consider practically the entire text of the Statute and some two-score drafting proposals over a single weekend; it is charitable to suggest that this pressure, rather than mere pride of authorship, accounts for the rather cavalier rejection by the Committee of a number of very sensible proposals — some of which it should have accepted, while others should have been referred back to the Main Committee or reported separately to the Conference as involving matters of substance that one of the plenary organs must decide.⁸⁹

It is only by comparing the length of the Conference on the Statute with that of other diplomatic meetings having similar participation but lesser importance, that we can appreciate the work that was done in New York. Though the Statute is by no means a perfect instrument, as its authors well knew or felt, it was an achievement to have reached agreement (unanimous at that) on any meaningful text at all. The main credit must go to the unusual co-operation and sometimes strong-arm tactics of the sponsoring Governments; but praise must also be assigned to the other invitees which, in exaggerated and perhaps naive expectation of the benefits that would rapidly flow from the new organization, showed praiseworthy forbearance in the face of the sometimes frustrating insistence that nothing contained in the proposed text should be changed.

2.8.6. Principal issues

Almost one hundred amendments were formally submitted to the Conference.⁹⁰ Of these some 30 were withdrawn, 26 were rejected by votes in the Main Committee (6 for lack of a two-thirds majority), while some 35 were adopted unanimously or by a vote. The substance of the significant proposals and their disposition will in most cases be dealt with in the appropriate introductory portions of the Chapters that follow. In general, the principal issues considered by the Conference were similar to those raised a year earlier in the debates at the 10th General Assembly or later submitted in writing in relation to the Negotiating Group's draft. Though it was generally ac-

knowledged that the Working Level Meeting had greatly improved many of the points on which the earlier draft had been criticized, further changes in the same direction were demanded by many Governments. In particular the following proposals were made:

- (a) To shift the balance of power still further from the Board of Governors to the General Conference, by diminishing the functions of the former and enhancing those of the latter.
- (b) To alter the composition of the Board — in particular by decreasing the representation of the sponsoring Governments — but all such proposals were defeated by the closed-front of these Governments.
- (c) To increase the majorities required in the Board or the General Conference to reach certain decisions.
- (d) To increase the functions of the Agency and to specify some of them more clearly, in particular those designed to bring extra benefits to the less-developed States.
- (e) To put pressures on the more developed States to contribute nuclear materials and other assistance to the Agency — these efforts too were solidly and therefore successfully resisted by the sponsoring Governments.
- (f) To decrease the severity of the safeguards controls of the Agency.
- (g) To clarify or modify the financial provisions, to make certain that the burden of the cost of establishing the facilities of the Agency would not have to be borne entirely by the less-developed States making use of them.
- (h) To provide for universality in the initial membership.
- (i) To expand the provisions for the settlement of disputes and to clarify them, particularly with respect to the obligation to submit questions to the International Court of Justice.
- (j) To provide for closer or different ties with the United Nations, the specialized agencies and regional organizations; it is interesting to note that on these questions representatives of the Secretariats of the United Nations and of several of the specialized agencies (who were concerned lest the new Agency intrude on their competence) made written submissions and also intervened in the debates in both the Plenary Meeting and in the Main Committee.⁹¹
- (k) To ease the process of amending the Statute, in particular by eliminating the Board's veto and by providing for the semi-automatic initiation of a general review after four years of operation; this was felt to be particularly important in view of the admitted haste of the Conference, the many imperfect compromises that had been made, and the likelihood of rapid change in the nuclear energy field.

Due in large part to the various pressures described above and to the fundamental soundness of the basic draft, the Conference made no structural or other radical changes in the text prepared by the Working Level Meeting. The significant changes made were restricted to certain increases in the powers of the General Conference, some minor decreases in those of the Board, a simplification of the amendment procedure and the introduction of a provision for a general review of the Statute, some restrictions on the Agency's safeguards powers, and the elaboration of the provisions relating

to the Preparatory Commission. No changes were made in the composition of the Board, and the attempts to place various moral or quasi-legal pressures on the potential contributors were equally unsuccessful — on all of these the sponsoring Governments maintained a solid front.

2.8.7. Other tasks and accomplishments

The only other formal task of the Conference, once it had approved the text of the Statute, was to elect six members of the Preparatory Commission established by Annex I of the Statute. This was done at the 15th Plenary Meeting, using on an ad hoc basis the appropriate Rules of Procedure of the General Assembly since those for the Conference did not include the necessary provisions.⁹² As a matter of fact, since the membership of the Commission would have to remain unchanged from its establishment to its dissolution on the selection of the first Board of Governors, the names of the six "elected" members could have been equally well specified in the text of the Annex as were those of the twelve sponsoring Governments which were to make up the balance of the Commission.

Though not called on or formally authorized to do so, the Conference considered a number of recommendations addressed to the Preparatory Commission or to the future organs of the Agency:

- (a) The only recommendation formally adopted was one addressed to the Preparatory Commission, requesting it to be guided by the expressed preference of the Conference that the headquarters of the Agency be established in Vienna.⁹³
- (b) One other recommendation was quasi-formally approved, by the Main Committee, which at the suggestion of the Chairman and without debate endorsed the UN Secretary-General's study on the future relationship to be established between the Agency and the United Nations.⁹⁴
- (c) Certain recommendations were in effect contained in the final report of the Co-ordination Committee, which in declining to take action on certain "drafting" proposals, suggested that instead these matters could effectively be dealt with by the appropriate organs of the Agency.⁹⁵
- (d) Numerous other recommendations or interpretations were merely "put on record" by the participants in the Conference, often as a substitute for demanding that a decision be taken on some proposed amendment (particularly if the proposal seemed unlikely to be adopted).⁹⁶ The effect of these declarations was, however, largely negligible, because they were not endorsed formally by the Conference and practically because they were never assembled systematically for the information of the organs of the Agency.

NOTES

1 The process of developing the IAEA Statute is described in some detail by: Bechhoefer and Stein, *op.cit.*, Annex 5, No.3, see Appendix A, Item 1, pp.1457-1461; Bechhoefer, *op.cit.*, Annex 5, No.4 -- a short systematic account; Fischer, *op.cit.*, Annex 5, No.21, see Supplement to Chapter XI for an account of

- the Conference on the Statute; Gorove, *op. cit.* Annex 5, No. 24A; Division of International Affairs of the USAEC, "The International Atomic Energy Agency" in Robert McKinney's Review of the International Atomic Policies and Programs of the United States (Report to the Joint Committee on Atomic Energy, 86th Cong., 2d Sess (1960), Vol. 2, pp. 720-734); Departement van buitenlandse zaken (Netherlands), Internationale conferentie inzake het statuut van de internationale atoom organisatie, New York. 20 IX-26X 1956 (The Hague, Staatsdrukkerij, 1957) 167 pages; Rubinstein, *op. cit.* Annex 5, No. 53; Stoessinger, *op. cit.* Annex 5, No. 60, see Part I, "The Establishment of the International Atomic Energy Agency: A Case Study in International Legislation", pp. 119-159; Wadsworth, *op. cit.* Annex 5, No. 66 — a revealing personal recollection by one of the principal negotiators for the United States.
- 2 UNGA Off. Rec. (8th sess.), 470th Meeting, paras. 79-126. The preparation and background of the speech are recalled in Wadsworth, *op. cit.* Annex 5, No. 66, pp. 33-35.
 - 3 The terms "pool", "banker" (or "merchant") and "broker", as well as related concepts are discussed fully in Section 16, 2.1.
 - 4 The activities and statements within the US Government in relation to these matters from December 1953 to July 1955 are documented in Atoms for Peace Manual, Senate Doc. No. 55, 84th Cong., 1st Sess. (1955).
 - 5 Atomic Energy Act of 1946, P. L. 555, 79th Cong., 60 Stat. 755, 42 U.S.C. Secs. 1801-19 (1946).
 - 6 Atomic Energy Act of 1954, P. L. 703, 83d Cong., 68 Stat. 919, 42 U.S.C. Secs. 2011-281 (1954).
 - 7 The texts of these Notes are reproduced in UN doc. A/2738, reprinted in UNGA Off. Rec. (9th sess.), Annexes, Agenda Item No. 87, pp. 2-12 (1954).
 - 8 The texts of these Notes are reproduced in US State Dep't Press Release 527 (Oct. 6, 1956).
 - 9 Note 3, *supra* note 7.
 - 10 The American insistence on separating the promotion of the peaceful uses of atomic energy through the establishment of the Agency, from the question of disarmament, resulted in keeping the formulation of the IAEA Statute out of the 5-nation (Canada, France, USSR, UK, USA) Subcommittee of the [UN] Disarmament Commission, which was first convened in the spring of 1954, soon after President Eisenhower's speech, and was the first forum in which the Soviet Union attempted to initiate a discussion about the future Agency (UN doc. DC/SC.1/PV.3 (14 May 1954)).
 - 11 Sections 2.8.1, 6.1.1 and 6.2.1.
 - 12 Section 16.2.1.
 - 13 Note 12, *supra* note 7, para. 24.
 - 14 Note 1, *supra* note 7, para. b; Note 2, *id.*, para. 6; Note 12, *id.*, para. 26; Note 13, *id.*
 - 15 Note of 29 Nov. 1954, *supra* note 8; Note of 18 July 1955, *id.*, para. 2(5); Note of 1 October 1955, *id.*, para. 1.
 - 16 Note of 1 October 1955, *supra* note 8, para. 4; Note of 20 March 1956, *id.*; Note of 3 July 1956, *id.*; Note of 24 September 1956, *id.*
 - 17 *Supra* note 7.
 - 18 UN doc. A/C.1/L.105, reprinted in UNGA Off. Rec. (9th sess.), Annexes, Agenda Item No. 67, p. 20 (1954).
 - 19 A/C.1/L.105/Rev.1, *id.* pp. 20-21.
 - 20 A/C.1/L.106/Rev.1, *id.* p. 21.
 - 21 A/C.1/758, *id.* pp. 13-19.
 - 22 Statement of Ambassador Lodge, UNGA Off. Rec. (9th sess.), First Comm., 717th Meeting (15 November 1954), para. 30.
 - 23 Sections 2.8(c), 2.7.3, 2.8.1, 2.8.6(h) and 6.1.1.
 - 24 UNGA/RES/810(IX) (4 Dec. 1954).
 - 25 McKinney's Report, *op. cit.* *supra* note 1, p. 729.
 - 26 Portugal, as well as several other members of the Negotiating Group (e.g., Belgium and South Africa), were included in this select circle only because they were among the largest producers of uranium ore. Though their selection made sense from a pragmatic point of view, considering the expected role of the proposed Agency, it made the Group not only unrepresentative of the UN membership as a whole, but actually unpopular with much of that membership.
 - 27 Evidently no official records were kept of these negotiations; see Bechhoefer, *op. cit.* Annex 5, No. 4, p. 39; this is confirmed by my own inability to secure any relevant material from the Department of State, which organized the negotiations. An official account on this stage of the process of formulating the IAEA Statute was given by the US Representative for International Atomic Energy Agency Negotiations, Ambassador Morehead Patterson, Progress Report on International Atomic Energy Agency Negotiations, 34 State

- Dep't Bull. (No.862, 2 January 1956), pp.5-7. An unofficial account is given in Bechhoefer, *id.* pp.48-52, who incidentally recalls that some discussions among the eight States had started as early as May 1954.
- 28 Note of 27 July 1955, *supra* note 8, para.2.
- 29 The final day of the [First UN] International Conference on the Peaceful Uses of Atomic Energy that had met in Geneva (Section 12.2.4.1(a)). Distribution had been deliberately delayed, so as not to interfere with that technical meeting; Bechhoefer, *op.cit.* Annex 5, No.4, p.52.
- 30 This draft, which was distributed by the US State Department, had no document number, and the original evidently exists only in multigraphed form. However, it was later reproduced verbatim in WLM Doc.2 (see Section 34.1.4 for a description of the documentation of the Working Level Meeting) and in 33 State Dep't Bull. (No. 852, 24 October 1955), pp.666-72.
- 31 The plan for a joint examination of the technical questions relating to safeguards is the principal continuous theme running through the first eight Notes exchanged between 3 November 1954 and 19 August 1955, referred to *supra* in note 8.
- 32 This title is that appearing on the official documentation of the Meeting, prepared by the UN Secretariat servicing the Geneva Conference. For a description of that documentation, see Section 34.1.3.
- 33 PV/1/Rev.1.
- 34 See UNGA/RES/912(X), Part II, paras. 2 and 3 (3 December 1955).
- 35 UN doc. A/C.1/L.129/Rev.1 and Add.1-4, reproduced in UNGA Off. Rec. (10th sess.), Annexes, Agenda Item No.18, p.5 (1955).
- 36 UNGA/RES/912(X). Part II, para.4.
- 37 See Report of the First Committee, UN doc. A/3008, paras. 16 and 18, reproduced in the Records cited *supra* note 35.
- 38 UNGA/RES/912(X), part II, para.5.
- 39 UN docs. A/C.1/L.138, para.3 and A/3008, para.21; see also A/C.1/L.132/Rev.1, para.2 and A/3008, paras.10 (ii) and 12. All these are reproduced in the Records cited *supra* note 35.
- 40 *Ibid* A/C.1/L.138, para.2 and A/3008; para.21.
- 41 *Ibid* A/C.1/L.132/Rev.1, para.6 and A/3008, para.19. See UNGA/RES/912(X), part II, para.7.
- 42 UNGA/RES/912(X), part I, paras.4 and 7; part II, para.5.
- 43 For background on the negotiations leading to this augmentation, see Bechhoefer, *op.cit.* Annex 5, No.4, p.46.
- 44 Though it is sometimes referred to as the "Negotiating Group", both in its own documentation (e.g., WLM Doc.31, paras.1,3,7) and later in that of the Agency.
- 45 The documentation of the Working Level Meeting is described in Section 34.1.4.
- 46 WLM Doc.1 (Rev.1).
- 47 *Idem*, Rule 2. The reference to "Officers of the International Secretariat" in the "Final List of Participants" (WLM Doc.4 (Final)) is therefore misleading.
- 48 The United States delegation had, just before the first formal session, prepared a revised version of the Negotiating Group draft, in which it had taken account of certain of the comments that had in the meantime been received from Governments (WLM Doc.5 (Rev.1), para.9 (1)). However, the Meeting decided at its 2nd session to disregard this draft (the text of which consequently never became a WLM document and has not been preserved), as its members were more familiar with the earlier one and had received their instructions with respect to it (WLM Doc.6 (Rev.1), para.3); the official records thus contradict the recollection of Wadsworth, *op.cit.* Annex 5, No.66 p.39, on this point.
- 49 WLM Doc.3.
- 50 WLM Doc.2 (Add.1)-(Add.25): each of these documents sets forth all the amendments with respect to a particular Article of or Annex to the draft Statute.
- 51 WLM Doc.6 (Rev.1), para.4; WLM Doc.12 (Rev.1), para.4; WLM Doc.SC/1 (Rev.2) (not available); WLM Doc.18 (Rev.1), para.4.
- 52 WLM Doc.5 (Rev.1), para.8; WLM Doc.14 (Rev.1), para.2; WLM Doc.16 (Rev.1), para.7.
- 53 For example, WLM Doc.16 (Rev.1), para.21.
- 54 These changes were summarized by the American representative in WLM Doc.27 (Rev.1), Attachment 2.
- 55 IAEA draft Statute, WLM Doc.31, Annex III (or IAEA/CS/3), Articles III.B.4,5; XVI.B.1.
- 56 *Idem*, Articles III.D.8,9; III.E.3; VII.E; XIV.F; XVIII.B (1).
- 57 *Idem*, Article VI.A.
- 58 Compare IAEA draft Statute in WLM Doc.2, Article VII.H, with that in WLM Doc.31, Annex III (or IAEA/CS/3), Article VI.F.

- 59 Compare IAEA draft Statute in WLM Doc.2, Article VIII. A, with that in WLM Doc.31, Annex III (or IAEA/CS/3), Article VII. A; see also WLM Doc.2(Add.8), proposal by India.
- 60 IAEA draft Statute, WLM Doc.31, Annex III (or IAEA/CS/3), Articles XI. F.4(b) and XII. A.
- 61 *Idem*, Article XIV.
- 62 WLM Doc.26(Rev.2); para.5; WLM Doc.31, Annex IV.
- 63 WLM Doc.21(Rev.1), para.6; WLM Doc.24; WLM Doc.25; WLM Doc.26(Rev.2), para.7.C; WLM Doc.31, para.7.
- 64 WLM Doc.27(Rev.1), para.4.
- 65 The use of the word "and" in theory considerably altered the meaning of the UN-approved formula, since taken literally it might have meant only those States that were members both of the United Nations and of every specialized agency. In fact, both these formulae were interpreted to mean "member of the United Nations or of any specialized agency."
- 66 WLM Doc.30.
- 67 WLM Doc.31 and Annexes I-VI.
- 68 For a description of the behind-the-scene negotiations in anticipation of this final stage, see Wadsworth, *op.cit.* Annex 5, No.66, pp.46-48.
- 69 The final list of participants appears in IAEA/CS/INF/1/Rev.1; the States represented are also listed in INFCIRC/42.
- 70 IAEA/CS/OR.1, pp.16-57. For the negotiation and the results of this stage-managed debate, see Wadsworth, *op.cit.* Annex 5, No.6, pp.48-49.
- 71 IAEA/CS/OR.25, pp.2-53.
- 72 See Wadsworth, *op.cit.* Annex 5, No.66, pp.50-51. See, e.g., the justification for the withdrawal of a Danish amendment to Statute Article VI (IAEA/CS/OR.23, p.3).
- 73 Rule of Procedure 38 (IAEA/CS/2), debated before adoption IAEA/CS/OR.1, pp.62-65, 67-70; the actual expenses of the Conference amounted to US \$77 000 (IAEA/PC/OR.22, p.3) -- thus less than \$1000 was payable by each participating State. This Rule was used as a justification for two amendments which were incorporated into the Statute as the second sentence of Article XIV. D (see Philippine statement, IAEA/CS/OR.31, p.7), Section 25.3.1.1.1.
- 74 IAEA/CS/2, adopted IAEA/CS/OR.1, pp.57-91.
- 75 IAEA/CS/4, adopted IAEA/CS/OR.2, pp.2-17.
- 76 This is reflected in the numbering of the verbatim records, which includes all meetings consecutively without distinguishing between those of the Plenary and those of the Main Committee (Section 34.1.5.).
- 77 Rules of Procedure 4, 6 and 11 (IAEA/CS/2) and "Organization of the Conference and Schedule", p.2 (IAEA/CS/4).
- 78 Thereafter the Plenary met only one more time before the final days of the Conference: at a meeting during the middle of the Conference it debated and approved the Secretary-General's report on credentials.
- 79 Rule of Procedure 24 (IAEA/CS/2).
- 80 Rule of Procedure 28 (IAEA/CS/2); this Rule was extensively debated before adoption (IAEA/CS/OR.1, pp.67-91). This rather unusual procedure is commented on by Fischer, *op.cit.* Annex 5, No.20, pp.616-17.
- 81 IAEA/CS/8 and / Add.1-6.
- 82 IAEA/CS/COORD/2 and / Add.1-2.
- 83 Rule of Procedure 10 (IAEA/CS/2).
- 84 IAEA/CS/10, pp.5-26 and Annex I.
- 85 IAEA/CS/10, pp.1-4.
- 86 IAEA/CS/OR.39, p.2.
- 87 IAEA/CS/OR.40, pp.11-15.
- 88 Another time-related disaster that was narrowly averted was the breaking of the Hungarian and Suez crises just days after the Conference adjourned. Had these occurred a few days earlier, the prior work might have come to nought, not only because the Assembly's facilities were required for the Emergency Sessions but also because of the instant degeneration of the international atmosphere.
- 89 For example, IAEA/CS/10, paras.9-11 and 15-16. The substantive implications of some of the points so briefly dismissed by the Co-ordination Committee are discussed in Sections 21.2.2 and 21.9.1.
- 90 No exact count is possible, for many documents (a separate one being issued for each article and each separate set of sponsors) contained several amendments to the same article, some of which were substantively independent while others were merely consequential; in addition the same or practically the same amendment was often presented by different groups of sponsors in different papers; finally some amendments

were withdrawn or modified almost as soon as they were issued and before any consideration in the Main Committee, while others were withdrawn, altered or merged during the first or second reading. Wadsworth, *op. cit.* Annex 5, No. 66, pp.50-51, in what may be considered an official count, refers to 81 amendments; his summary of how many of these were adopted, rejected or withdrawn, however, differs substantially from the count I made from the official records themselves (which unfortunately are not always quite clear).

91 IAEA/CS/5 and 6. IAEA/CS/OR.13, pp.40-55; /OR.18, pp.31-40.

92 IAEA/CS/OR.39, pp.56-62.

93 IAEA/CS/11.

94 IAEA/CS/OR.33, p.41.

95 IAEA/CS/10, paras.3,4,5,9,13,14 and 16.

96 For example, IAEA/CS/OR.14, p.46; /OR.22, pp.16-17;/OR.23, p.4; /OR.36, p.18.

CHAPTER 3. THE PREPARATORY COMMISSION

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles VI. A.1, 2; XXI. E, G; Annex I
Preparatory Commission, Rules of Procedure (IAEA/PC/6)
Preparatory Commission, Financial Regulations (IAEA/PC/7)
Preparatory Commission, Staff Regulations (IAEA/PC/8)

3.1. ESTABLISHMENT AND LEGAL NATURE

The Preparatory Commission of the International Atomic Energy Agency was established by Annex I to the Statute of the Agency.¹ Unlike the rest of the Statute, this Annex entered into force on the first day that the Statute was opened for signature – i.e., on 26 October 1956, the last day on which the Conference on the Statute met.² It is not entirely clear whether, legally speaking, the Preparatory Commission was thus established by the Conference on the Statute itself (through its unanimous approval of the text of the Statute, including its Annex) or by the States that signed the Statute (through the act of signature). The first approach appears preferable, since according to the statutory wording the Annex came into force automatically "on the first day this Statute is open for signature" – irrespective of whether any States would actually sign on that day or later.³ It should also be noted that no requirement was stated that the 18 States constituting the Commission (the 12 named in paragraph A of the Annex itself and the 6 chosen by the Conference on the Statute⁴) should have signed the Statute before assuming their places on the Commission; in the event, all of them actually did sign during the final ceremony,⁵ which took place just before the Commission was first convened.

As indicated, the Commission came into existence on 26 October 1956, and actually met for the first time on that date. In accordance with paragraph A of the PC Annex, it remained in existence until the Statute came into force and "thereafter until the General Conference has convened and a Board of Governors has been selected in accordance with article VI". Thus the period of existence of the Commission was not predictable at its start – it could have been a matter of only some months, or a period of many years or even an indefinite lingering existence. In actual fact the Commission held its last meeting and finished its work on 26 September 1957, though the final statutory condition for its dissolution was not fulfilled until 3 October 1957.⁶ Though the Commission itself thus ceased to exist, some of the staff contracts it had concluded remained in force until after the adjournment of the first special session of the General Conference, i.e., until November 1957; moreover, as mentioned below, the books of the Commission were not closed

until 15 November 1957 and its financial affairs were not finally wound up until 31 May 1958.⁷

Politically, the 18-member Preparatory Commission represented a transition between the 12-member Working Level Meeting (and its successor, the Co-ordination Committee of the Conference on the Statute) and the 23-member Board of Governors of the Agency. All members of the Working Level Meeting automatically became members of the Commission (since the Meeting had thoughtfully included the names of all its members in its draft of Annex I to the Statute), and all but one member of the Commission became a member of the first Board.⁸

Legally speaking the Preparatory Commission had an international personality of its own, independent of that of the Agency itself. This is clear from a number of indicia: The Commission came into existence before the Agency itself did (on 29 July 1957), and continued this existence side by side with the latter for a period of just over two months. Its separate legal personality was recognized by the United States Government in the executive order in which it named the Preparatory Commission and the Agency separately as organizations entitled to status under the International Organizations Immunities Act.⁹ Similarly the Austrian Government, in concluding the agreement relating to the holding of the first session of the General Conference in Vienna, granted privileges and immunities separately to the Preparatory Commission and to the Agency and recognized that both the Commission and the Agency possessed juridical personality.¹⁰ Finally, the Agency itself, in its Provisional Staff Regulations,¹¹ provided that periods of service with the Preparatory Commission might, in the discretion of the Director General, be considered as if they were periods of service with the Agency – thereby recognizing the distinction between the two organizations. This separation is, however, confused by two factors: In the first place, the Commission was authorized to take certain actions in respect of organs of the Agency: i.e., to convene the first session of the General Conference and to designate certain members of the first Board. In the second place, the financial affairs of the Commission cannot be fully separated from those of the Agency itself: while the Commission had the right to borrow money it had no independent source of financing and consequently its assets and debts ultimately had to be liquidated by the Agency.

Some of the anomalies mentioned above can only be reconciled by recognizing that the Commission in effect had a triple nature:

- (a) The Commission was an international organization in its own right, with the principal attributes of legal personality and with both a political and an administrative organ;
- (b) At the same time, the Commission was the political organ referred to immediately above;
- (c) Finally, the Commission was an ad hoc surrogate organ of the Agency, established to carry out a circumscribed set of tasks (for the most part such as would later be performed by the Board).

It was in that final (and principal) sense that the Commission was required to go out of existence as soon as the first Board of Governors became operational. However, in the first sense the Commission could not really

disappear instantaneously, but had to be wound up by the Agency, which became its successor and receiver. And, in a final reversal of roles, the Agency's Board was required, during this phasing out process, to perform some of the functions of the Commission as a substitute for the political organ referred to under (b).¹²

Aside from its elaborate formal nexus with the Agency, a review of the organization and activities of the Commission is properly a part of any thorough study of the legal affairs of the Agency, because:

- (i) The Commission prepared the drafts of or at least laid the groundwork for many of the principal legal instruments of the Agency: its several rules of procedure, the Staff and Financial Regulations, and its Headquarters and Relationship Agreements;
- (ii) The instruments adopted by the Commission to conduct its own business (e.g., its Staff and Financial Regulations) became models for those of the Agency, and some of the incidental debates relating to the Commission foreshadowed major controversies concerning the Agency.

3.2. ORGANIZATION

Paragraph B of the PC Annex authorized the Preparatory Commission to make certain arrangements to meet its expenses and subparagraphs C.1 and 2 required it to make the necessary arrangements for the conduct of its business and for the appointment of staff.

3.2.1. Conduct of business

3.2.1.1. Rules of Procedure

Paragraph C.1 of the PC Annex authorized the Commission to adopt its own rules of procedure.

At its first meeting the Commission adopted temporary Rules of Procedure, consisting, with slight modifications, of those that had been used by the Conference on the Statute.¹³

The permanent Rules of Procedure were drafted by the Executive Secretary of the Commission, on the basis of "standard United Nations rules with certain simplifications, adjustments and omissions".¹⁴ They were presented to the Commission at its 7th Meeting, at which it was noted that in certain respects they varied from established precedents. Consequently a Drafting Committee (later called: Working Group), consisting of all representatives who desired to participate, was established to consider changes in the proposed text, as well as in those of the draft staff regulations and financial regulations which had been presented to the Commission at the same time.¹⁵ The new draft prepared by the Working Group¹⁶ was reviewed, amended and adopted at the 8th Meeting of the Commission.¹⁷ Its principal noteworthy provisions were the following:

- (a) The quorum of the Commission was a majority of its members. A two-thirds majority of those present and voting was required for "decisions

on the amount of the Commission's budget", for the reconsideration of proposals, and for other questions or categories of questions as to which the Commission made an appropriate decision; all other questions, including the suspension and amendment of the Rules of Procedure, and the selection of other categories of questions requiring a two-thirds vote, required only a majority of those present and voting. Actually, votes were always avoided in the Commission, which thus reached all its decisions by consensus.¹⁸

- (b) All meetings of the Commission were to be held in private unless the Commission determined otherwise.¹⁹ However, the Commission could invite representatives of other Governments²⁰ and of international organizations (formally interpreted to include all intergovernmental organizations).²¹

3.2.1.2. Structure and meetings

3.2.1.2.1. Officers

The first meeting of the Commission was convened by the President of the Conference on the Statute. Thereupon, pursuant to its temporary Rules of Procedure, a President and a Vice-President were elected,²² who continued to hold office throughout the existence of the Commission.

3.2.1.2.2. Plenary Meetings

The greater part of the work of the Commission was performed in 65 plenary Meetings, 52 of which (between 26 October 1956 and 20 August 1957) were held at United Nations Headquarters in New York, while the balance (between 9 and 26 September 1957) were held in Vienna.

The 42nd Meeting was unique in that it was conducted jointly with the UN Secretary-General's Advisory Committee on the Peaceful Uses of Atomic Energy (UNSAC), in order to discuss the draft of the relationship agreement between the Agency and the United Nations.²³

3.2.1.2.3. Committees

In accordance with its Rules of Procedure, the Commission established a number of committees, including in particular the following:

- (a) A Working Group of the Whole to study and make recommendations "with respect to the programme and activities of the ... Agency".²⁴
- (b) A Committee on Permanent Facilities, consisting of five Governments, to assist the Executive Secretary in preparing the "report on the needs and availability of facilities for the Agency, in particular in Vienna".²⁵
- (c) Ad hoc committees, such as the Drafting Committee established at the 7th Meeting to rework the proposed Rules of Procedure, Staff Regulations and Financial Regulations, and the Working Group established at the 37th Meeting to review the draft agenda for the General Conference.

3.2.2. Staff administration

3.2.2.1. The Executive Secretary

Under the authority granted to it by paragraph C.2 of the PC Annex, the Commission appointed Mr. Paul R. Jolles as Executive Secretary,²⁶ after having extensively debated and then approved the terms of his contract. Though this contract was originally co-extensive with the life of the Commission, it was later prolonged (as were most staff appointments) to a date 30 days after the closing of the First General Conference.²⁷

The functions of the Executive Secretary were largely defined in a Resolution adopted by the Commission on 13 December 1956.²⁸ More specific duties and powers were granted in the Rules of Procedure, in the Staff and the Financial Regulations, in the approved Budget Estimates and by numerous ad hoc decisions.

3.2.2.2. Staff Regulations and Rules

A first draft of the Staff Regulations, evidently based on those of the United Nations, was prepared by the Executive Secretary and presented to the Commission at its 7th Meeting.²⁹ This draft was reworked by the Drafting Committee³⁰ and then adopted after consideration at the 8th and 9th Meetings of the Commission.³¹ During this discussion, reservations were recorded to the effect that these Regulations should not be considered as constituting precedents for those of the Agency, nor should staff members of the Commission who later transferred to the Agency have the right to expect their terms of employment to remain the same.³²

The principal provisions of the Regulations were the following:

- (a) The Executive Secretary was authorized to appoint all members of the staff. Originally the Soviet representative had proposed (in the first move of a campaign which was eventually directed at the Agency's staff) that appointments to "responsible posts" or to "P-5 posts" be made only after consultations with the Commission; after several representatives had stated that such a requirement might be interpreted as expressing lack of confidence in the Executive Secretary, and the latter had promised to hold consultations, the Soviet proposal was withdrawn.³³
- (b) The Executive Secretary was instructed to "be guided by the classification and grading system of the United Nations Organization at the locality concerned". Similarly he was charged with paying "due regard to the salaries and allowances paid to the staff of the United Nations Organization", and consequently the schedules of salaries, post adjustments and dependency allowances were copied directly from those of the United Nations.³⁴
- (c) The terms of staff appointments were not to exceed the life of the Commission. However, the Commission later authorized the Executive Secretary to grant appointments for a period until 30 days after the adjournment of the first session of the General Conference – a termination date which would necessarily extend beyond the life of the Commission itself.³⁵

- (d) Because of the temporary nature of the Commission, it was not thought proper or possible to include its staff within the UN Joint Staff Pension Fund or to protect them under Annex D to the UN Staff Regulations (service-incurred injuries); instead, commercial insurance covering each staff member was taken out.³⁶
- (e) Any claims arising out of the termination of an appointment would be examined and settled by the Commission itself; no other provision for the settlement of any other types of staff disputes was made.

The Regulations authorized the Executive Secretary to promulgate Staff Rules. This he did on 20 March 1957, with retroactive effect as of 8 February 1957 (the date of entry into force of the Regulations).³⁷

3.2.2.3. Staff structure

In the Executive Secretary's original budget proposals, he provided for the appointment of up to 14 Professional Officers in 6 units, plus 2 special assistants to be assigned to him; all these were to be supported by 12 General Service staff members.³⁸ On 30 June 1957 the Commission actually employed, in addition to the Executive Secretary, 13 Professional and 13 General Service staff members, all but one of the latter having been seconded from the Secretariat of the United Nations.

After the Commission and its staff moved to Vienna late in the summer of 1957 its staff was practically doubled by the addition of linguists – who on the one hand had not been required in New York because of the availability of the UN language services and who on the other would also be needed in Vienna to service the General Conference and the Board. The Commission's staff was ultimately practically merged with the staff of the first regular and special sessions of the Conference,³⁹ for which over 500 temporary staff members were engaged.

3.2.3. Financial administration

3.2.3.1. Statutory provisions

Paragraph B of the PC Annex authorized the Preparatory Commission to meet its expenses by securing a loan from the United Nations and, if this was insufficient, by accepting advances from Governments. Aside from these temporary sources of financing no permanent ones were provided for – and thus the funds for repaying the loans and advances would have to come later from the Agency.

3.2.3.2. Financial Regulations and Rules

A draft of the Financial Regulations of the Commission was prepared by the Executive Secretary, based to a considerable extent on those of the United Nations, and was presented by him to the Commission at its 7th Meeting.⁴⁰ The Regulations were then referred to the Drafting Committee, which reported them out in amended form to the Commission at its 8th Meeting,⁴¹ at which they were further amended and adopted.⁴²

As authorized by the Regulations, the Executive Secretary on 6 March promulgated the Financial Rules of the Commission, with effect from 7 February 1957 (the date of the adoption of the Regulations).⁴³

3.2.3.3. Source of funds

As indicated above, the only source of funds for the Commission foreseen in the Statute were loans from the United Nations and advances from Governments. By Financial Regulation 5.01 the authority to request loans and accept advances was delegated to the Executive Secretary.

At its 2nd Meeting the Commission adopted a resolution to request the Secretary-General of the United Nations to authorize a loan of \$200 000 and that provisions for repayment of this amount be included in the administrative budget for the first year of operation of the Agency.⁴⁴ The Secretary-General acceded to this request pursuant to General Assembly Resolution 981(X), which authorized him to grant loans, from the UN Working Capital Fund, to "preparatory commissions of agencies to be established by inter-governmental agreement under the auspices of the United Nations to finance their work, pending the receipt by the agencies concerned of sufficient contributions under their own budgets". Later the Executive Secretary requested an additional \$300 000 and still later a further \$124 000, since the final budget estimates adopted by the Commission authorized expenditures of \$624 000.⁴⁵ These requests were granted, though for the final sum the Secretary-General first had to obtain the concurrence of ACABQ, since his own authority to make advances was limited by the Assembly Resolution to \$500 000 "in respect of any one agency".

Since the full amount required was thus obtained from the United Nations, the Commission did not solicit any advances from Governments.

Provision for repayment of the \$624 000 was included in a special part of the Administrative Budget for the first financial period of the Agency (1957 to 31 December 1958).⁴⁶ Since it was not expected that the assessed contributions for Member States would be paid soon enough to permit timely repayment of the loan during 1958, the General Conference authorized the use of the Agency's Working Capital Fund for this purpose; however, as that Fund itself first had to be raised, the Board of Governors was authorized to obtain special advances from Governments in an amount not exceeding \$2000 000.⁴⁷ In the event, a short-term loan for a sum equivalent to \$1000 000 was obtained for this purpose from the new host Government, that of Austria.

3.2.3.4. Budgets

In accordance with the Financial Regulations, budget estimates were prepared by the Executive Secretary and had to be approved by the Commission by a two-thirds vote. They consisted of appropriations voted for specific purposes by the Commission, and these appropriations authorized the Executive Secretary to incur obligations and make payments. With the approval of the Commission, or in an emergency of its President or Vice-President, the Executive Secretary could make transfers between appropriation sections.⁴⁸

The first budget, amounting to \$114 314 and originally covering the period from 26 October 1956 to 30 April 1957, was tentatively approved by the Commission on 8 February 1957 and formally adopted on 21 February.⁴⁹ The period of this budget was later stretched to extend to 31 May and later to 30 June. The second, consolidated budget was adopted on 12 June 1957, under which the expenses of the Commission from its beginning to 13 November 1957 were estimated at \$399 000, and those of the first session of the General Conference at \$225 000, for a total of \$624 000.⁵⁰

3.2.3.5. Winding up

The Preparatory Commission held its last meeting on 26 September 1957 and officially went out of existence on 3 October. However, the contracts of a number of its staff members extended to 30 days beyond the end of the first special session of the General Conference (which finally adjourned on 23 October 1957). By the middle of November, these contracts were all terminated, mostly by transferring the staff members to the Agency itself. Thus the books of the Commission could be closed on 15 November 1957 and on 26 November the Executive Secretary, in his last official act in that capacity, transferred the remaining assets and liabilities to the custody of the Agency. However, since at that time considerable unliquidated obligations were still outstanding the final accounts of the Commission were only closed by the Agency on 31 May 1958; at that time it took over cash in the amount of \$116 293.68 and in return assumed the obligation to repay, in addition to the \$624 000 owing to the United Nations, \$10 278.97 in other unliquidated obligations.⁵¹

3.2.3.6. Audit procedures

Financial Regulation 10.01 provided that, subject to the agreement of the UN Secretary-General, the financial transactions and accounts of the Commission would be audited by the internal audit service of the United Nations and also by the UN Board of External Auditors. The Secretary-General gave his consent, and the accounts of the Commission up to 31 August 1957 were audited by the internal audit service; later the Board of Auditors appointed the Auditor General of Norway to prepare a complete audit.

Pursuant to Financial Regulation 9.05, the report of the External Auditors was submitted to the Board of Governors of the Agency in January 1958, which approved them after receiving a supplementary report in June 1958.⁵²

3.2.4. Privileges and immunities

No provision of the Statute or of the PC Annex established what privileges and immunities would be enjoyed by the Preparatory Commission.

In the United States, where the Commission and its staff were initially located at UN Headquarters, Executive Order No.10727⁵³ named the Preparatory Commission (as well as the Agency itself) as an international organization within the meaning of the International Organizations Immunities Act.⁵⁴ Though that Order was only issued on 3 September 1957, after the Com-

mission had moved to Vienna and just a month before its dissolution, previously interim arrangements had been made with the American authorities.⁵⁵

On 24 July 1957 the Preparatory Commission concluded, by means of an exchange of letters between its Executive Secretary and the Permanent Representative of Austria to the United Nations, an agreement with the Government of Austria "concerning arrangements in Vienna for the Preparatory Commission and the First General Conference of the Agency".⁵⁶ This agreement provided for the grant of certain privileges and immunities, listed in Annex I thereof, to both "the Preparatory Commission, to delegations of its Member States and to its staff", and to the Agency itself.⁵⁷

Staff Regulation 1.10 authorized the Executive Secretary to waive the privileges and immunities of any member of the Commission's staff.⁵⁸ Only the Commission had the right to waive with respect to the Executive Secretary.

3.3. ACCOMPLISHMENTS

The purpose of the Preparatory Commission of course was not to organize itself, but to perform the tasks set forth in paragraphs C.3 and 4 of the PC Annex and to make certain studies and recommendations required by paragraphs C.5-7. To accomplish this work, the major part of the Commission's meetings were devoted to the preparation of arrangements and recommendations in connection with the initial sessions of the General Conference and of the Board of Governors of the Agency. As the Commission did not issue any comprehensive report on its accomplishments, these are not listed in any one place.⁵⁹ Since their substance impinges on various procedures and activities of the Agency, the actions and recommendations of the Commission are merely listed in this Section, while fuller discussions are left for later Chapters.

Credit should, however, already be given here for the Commission's accomplishment in laying the foundations of the Agency's work for many years, both through the "Initial Programme" which it recommended only for the first year but which was in fact followed much longer and through the several draft instruments listed below which still serve the Agency with only minimal modifications.

3.3.1. Actions

3.3.1.1. Convening the first regular session of the General Conference

Paragraph C.3 of the PC Annex charged the Commission with making "arrangements for the first session of the General Conference... to be held as soon as possible after the entry into force of [the] Statute". Though not obliged to do so by the resolution by which the Conference on the Statute expressed a preference for Vienna as the site of the permanent headquarters of the Agency,⁶⁰ the Commission decided that it would be most appropriate and convenient for the first session of the General Conference to take place in that city.⁶¹

Initially, before adequate information was available on the dates on which various Governments would ratify the Statute, the Commission tentatively

decided that the First General Conference should be convened in August 1957. Later on, as the picture as to the rate of ratification became clearer, the opening was postponed to October. In selecting this date, which was just over two months after the Statute entered into force, the Commission had in mind not only the obligation to convene the first session of the General Conference as soon as possible after the entry into force of the Statute, but also the desirability that on such date more than the minimum number of 18 ratifying States should be Members of the Agency.⁶² In this connection, the desirability of having at least 40-50 Members at the time of the Conference was mentioned, taking into account the requirement of establishing a Board of about 23 members and the desirability of assessing contributions on more than just a few States.

Aside from formally convening the First Conference, the Commission also took the requisite actions to permit it to be held, by engaging the necessary staff and by concluding, on 24 July 1957, a conference agreement with the Government of Austria.⁶³

3.3.1.2. Designations to the first Board of Governors

Pursuant to Article VI.A.1 and 2 of the Statute and paragraph C.4 of the PC Annex, the Commission had the special function of making the designations for membership on the first Board of Governors, corresponding to those that would later be made by each Board for the next succeeding one. It fulfilled this obligation on 31 July 1957,⁶⁴ at a meeting scheduled so as to permit the designations to be made: at least 60 days before the first regular session of the General Conference (since the Commission had been informed by its Legal Counsel that it was bound by the 60-day requirement stated in Article VI.B of the Statute)⁶⁵; after the entry into force of the Statute on 29 July (since Counsel had also indicated that it was not entirely clear whether designations might be made before such date),⁶⁶ A third problem, on which Counsel had also given only qualified advice,⁶⁷ was whether the Commission was permitted to designate to the Board any State whose Government had not yet deposited an instrument of ratification before such designation; in the event the Commission did not have to face this problem, since each of its 13 designees had previously ratified.

3.3.2. Recommendations

3.3.2.1. Concerning the General Conference

The Provisional Agenda for the First General Conference was prepared pursuant to paragraph C.3 of the PC Annex. Besides listing the items to be considered by the Conference, the Commission recommended that its meetings be divided into a regular and a special session.⁶⁸

Pursuant to the same authority, the Commission prepared draft provisional Rules of Procedure and draft Supplementary Rules for the First Conference.⁶⁹ In addition to the texts of these instruments, which were designed both to permit the conduct of business during the first regular and special sessions as well as to form the basis of the permanent Rules of the

Conference, the Commission also communicated to the Conference its consensus as to the interpretation of the provisional Rule relating to elections to the Board of Governors.⁷⁰

3.3.2.2. Concerning the Board of Governors

Though not required to do so by the PC Annex, the Commission also prepared the Provisional Agenda for the first meeting of the Board of Governors and provisional Rules of Procedure for the Board (which it submitted together with a covering note indicating that some members of the Commission felt that these Rules should be adopted by the Board by a two-thirds majority).⁷¹

3.3.2.3. Concerning the work of the Agency

The Report on "The Programme, Staff, Budget and Financing of the Agency during its first year" was prepared pursuant to paragraph C.5(a)-(d) of the PC Annex and constituted the principal accomplishment of the Commission.⁷² It was divided into chapters relating to the Initial Programme of the Agency, to the Staff Establishment, to The Budget, and to the Financing of the Agency; attached to it were draft resolutions concerning the appropriations for the initial financial period of the Agency, for the establishment of a Working Capital Fund and concerning voluntary contributions.

Pursuant to paragraph C.5(a) of the PC Annex, the Commission also submitted certain recommendations concerning the scale of assessed contributions, to assist the Conference in the task assigned to it by Article XIV.D of the Statute.⁷³

3.2.2.4. Concerning the Headquarters

Pursuant to paragraph C.5(e) of the PC Annex and responsive to the preference recorded by the Conference on the Statute, the Commission recommended that the Agency's permanent seat be established in Vienna.⁷⁴

As the result of extensive negotiations with the Austrian Government conducted pursuant to paragraph C.6 of the PC Annex, the Commission bequeathed to the Board an almost complete draft of the Headquarters Agreement.⁷⁵

3.2.2.5. Concerning the Staff

Pursuant to paragraph C.5(d) of the PC Annex, the Commission submitted draft Provisional Staff Regulations to the Conference and the Board.⁷⁶

In a resolution concerning "Social Insurance for Members of the Agency's Staff", the Commission recommended to the Board, inter alia, that the Agency should seek admission to the UN Joint Staff Pension Fund and that, until this could be arranged, certain provisional coverage be provided.⁷⁷

3.2.2.6. Concerning financial arrangements

Presumably in connection with its obligations under paragraph C.5(a)-(b) of the PC Annex, the Commission submitted to the Board draft Provisional

Financial Regulations, including "Principles to Govern the Audit Procedures of the ... Agency".⁷⁸

3.2.2.7. Concerning relationships with other organizations

Pursuant to paragraph C.7(a) of the PC Annex, the Commission had negotiated with the United Nations the draft of a Relationship Agreement to be concluded with that organization. Together with this draft the Commission communicated the text of an exchange of letters between the President of the Commission and the UN Secretary-General, concerning the formulation of the first Article of the Agreement.⁷⁹

Pursuant to paragraph C.7(b) of the PC Annex, the Commission submitted to the Conference and the Board "Recommendations... concerning the Guiding Principles for Relationship Agreements between the Agency and the Specialized Agencies".⁸⁰ Since it had previously communicated these recommendations to the specialized agencies, the Commission was able to inform the Board of their reactions as contained in correspondence exchanged with them and with the Secretary of ACC.

Pursuant to the same authority, the Commission also prepared a set of "Recommendations ... concerning Relations with Non-Governmental Organizations".⁸¹

NOTES

- 1 Referred to in this Chapter as the "PC Annex".
- 2 The first proposal leading to this arrangement was apparently made by New Zealand at the Conference on the Statute (IAEA/CS/OR.8, p.21). The suggestion was later repeated by South Africa (IAEA/CS/OR.35, p.81).
- 3 IAEA Statute, Article XXI.E, G. Actually 70 States signed the Statute on that first day and 10 further States did so within the allowed period of 90 days.
- 4 IAEA/CS/OR.39, p.62. See also the prior discussion in IAEA/CS/OR.35, pp.91-122 and/OR.37, pp.107-121.
- 5 IAEA/CS/OR.40, pp.11-15.
- 6 The Statute provided for the Commission to remain in existence until "a Board of Governors had been selected...". This did not make it clear whether it was merely necessary that 10 members of the Board be elected by the General Conference at its First Regular Session (to supplement those designated earlier by the Commission itself) (suggested in IAEA/PC/OR.37, p.4) or that their term of office should have started from the end of that Session (IAEA Statute, Article VI D). Since both these events took place on 3 October 1957 and since the Commission had actually ceased its work some days earlier, no actual problem arose out of this ambiguity.
- 7 The cessation of the Commission as a functioning organ before it went out of existence as an organization (see the penultimate paragraph of this Section) led to certain difficulties. Thus overexpenditures in certain sections of the approved budget could no longer be approved by the Commission or its President, and were thus merely reported by the Executive Secretary to the Chairman of the Board of Governors.
- 8 The one exception was Belgium, which, according to Statute Article VI.A.2, alternates with Portugal on the Board on an annual basis (Section 8.2.2.2).
- 9 Section 3.2.4.
- 10 Ibid. The Agency never registered this agreement, either with itself or with the United Nations. This implies that the Agency did not consider itself a party thereto, for otherwise an obligation to register would have derived from Article XXII.B of the Statute (Section 26.6.1.1.1).
- 11 INFCIRC/6/Rev.2, Article XIII.
- 12 Sections 3.2.3.5 and 3.2.3.6.
- 13 IAEA/PC/OR.1, p.1.

- 14 IAEA/PC/W.10(S).
- 15 IAEA/PC/OR.7, p.10.
- 16 IAEA/PC/W.10(S)/Rev.1 and /Corr.1.
- 17 IAEA/PC/OR.8, pp.3-7. The final text appears in IAEA/PC/6.
- 18 IAEA/PC/OR.65, p.16 (last line). A comment on this practice is recorded in UN doc. A/PV.715, para.48 (1957).
- 19 Rule 16. It did decide to hold open the ceremonial initial part of its 53rd Meeting, its first in Vienna (IAEA/PC/OR.53).
- 20 Rule 51. The representative from Austria was invited to certain meetings at which questions related to the First General Conference or to the permanent seat of the Agency were discussed. See also IAEA/PC/2.
- 21 Rule 52. The interpretation, given to permit the invitation of non-governmental organizations, is recorded in IAEA/PC/OR.8, p.7.
- 22 The President (Mr. Carlos A. Bernardes - later the second Chairman of the Board of Governors) was elected from the delegation, that of Brazil, which had provided the President of the Conference on the Statute; the Vice-President (Dr. Pavel Winkler - later the first Chairman of the Board of Governors), from Czechoslovakia, was the person who had held the corresponding office at the Conference (Annex 3.3).
- 23 IAEA/PC/OR.42-ST/SG/AC.1/SR.32. See Section 12.2.1.1.
- 24 IAEA/PC/3.
- 25 IAEA/PC/2. Composition recorded in IAEA/PC/OR.4.
- 26 Mr. Jolles later served, ex officio, as Secretary General of the first regular and special sessions of the General Conference. He was then designated Acting Director General to hold office until the first Director General assumed his post on 1 December 1957 (Section 4.3); at that time Mr. Jolles was appointed Deputy Director General for Administration, Liaison and Secretariat, a post which he held for just over three years.
- 27 The Commission originally felt that it could not legally employ anyone beyond the date on which its own existence would terminate. Later this legal consideration appears to have been outweighed by the practical desirability of providing staff continuity during the crucial period of the initial General Conference and Board of Governors meetings (IAEA/PC/OR.51, p.10). See also Section 3.2.2.2(c).
- 28 IAEA/PC/5.
- 29 IAEA/PC/W.11(S).
- 30 IAEA/PC/W.11(S)/Rev.1 and /Corr.1.
- 31 IAEA/PC/OR.8, pp. 7-13;/OR., pp.2-10. The final text appears in IAEA/PC/8.
- 32 IAEA/PC/OR.9, pp.3-4.
- 33 IAEA/PC/W.11(S)/Rev.1, Regulation 3.01; IAEA/PC/OR.8, pp.8-10. See also Section 24.1.4.1.
- 34 Since the scales of salaries and allowances were at that time under consideration by the General Assembly, the Executive Secretary was authorized to include in the Staff Regulations the amounts eventually adopted by the Assembly. A special reason for using those scales was that most of the Commission's staff had either been temporarily seconded from the United Nations Secretariat, or provided by the latter on a reimbursable loan basis (i.e., the UN kept paying the emoluments, but was reimbursed by the Commission).
- 35 IAEA/PC/8, Regulation 3.04; IAEA/PC/OR.15, pp.14-15; IAEA/PC/W.35(S), para.1. See also supra, note 27.
- 36 IAEA/PC/8, Regulation 6.02; IAEA/PC/W.15(S). Actually, since most members of the Commission's staff were seconded from or loaned by the United Nations, they could keep their existing UNJSPF coverage.
- 37 Preparatory Commission "Administrative Instruction No.2".
- 38 IAEA/PC/OR.7, p.11.
- 39 SEC/INS/9.
- 40 IAEA/PC/W.12(S).
- 41 IAEA/PC/W.12(S)/Rev.1.
- 42 IAEA/PC/OR.8, pp.13-14. The final text appears in IAEA/PC/7.
- 43 Preparatory Commission "Administrative Instruction No.1".
- 44 IAEA/PC/4.
- 45 IAEA/PC/W.25(S), Annex I.
- 46 GC.1(S)/RES/4, para.1, part A.
- 47 GC.1(S)/RES/7, paras.(a) and 3, Appendix 1, para.7, and Appendix II.
- 48 When the Executive Secretary found that he had to make certain budgetary transfers after the Commission (and its officers) had ceased to exist, he merely reported these to the Chairman of the Board of Governors (the former Vice-President of the Commission).

- 49 IAEA/PC/9.
- 50 IAEA/PC/13.
- 51 The Agency's Accounts for 1957-1958, GC(II)/81, Annex I, para. V. Also GC(II)/39, paras.98-99.
- 52 GC(II)/45, footnote 1.
- 53 22 Fed.Reg. 7099 (1957).
- 54 59 Stat. 669, largely codified in 22 U.S.C. Sec. 288-288f. See Section 28.4.1.
- 55 IAEA/PC/OR.12, pp.19-20.
- 56 IAEA/PC/14; GC.1/INF/3 - GOV/INF/2.
- 57 Idem., para.1.
- 58 When this Regulation was considered by the Commission the Soviet representative initially proposed its deletion (i.e., to require Commission action on any waiver); though this proposal was withdrawn, it foreshadowed a similar move by the Soviet Union in connection with the immunities of the staff of the Agency under the Headquarters Agreement (IAEA/PC/W.62; IAEA/PC/OR.56, p.3, Section 28.2.2(b)).
- 59 However, an all but complete list appears in GC.1/INF/1-GOV/INF/1 ("List of Main Documents Prepared by the Preparatory Commission").
- 60 IAEA/CS/11.
- 61 IAEA/PC/OR.8 and/OR.9.
- 62 Ibid.
- 63 Supra note 56.
- 64 GC.1/10.
- 65 IAEA/PC/W.29(S), paras.2-5.
- 66 Ibid, paras.6-8.
- 67 Ibid, paras.9-11.
- 68 GC.1/8. The reasons for this recommendation are discussed in Section 4.1.
- 69 GC.1/9 and/Corr.1 and /Add.1. See Section 7.3.1.
- 70 Announced orally by the Temporary President of the General Conference, GC.1/OR.2, para.3. The significance of this consensus is explained in Section 8.2.2.4.3.1.
- 71 Section 4.2.
- 72 GC.1/1-GOV/1. The long-term significance of this report is discussed in Section 15.3.1.1.
- 73 GC.1/11. See Section 25.3.
- 74 GC.1(S)/18, second preambular paragraph. Though the Commission had originally intended to address this recommendation to the General Conference in document GC.1/6 (see GC.1/INF/1) that document was never issued. See also Section 4.4.
- 75 Section 28.2.2.
- 76 GC.1/2-GOV/3. See Section 24.1.3.2.1.
- 77 IAEA/PC/15.
- 78 GC.1/INF/2-GOV/2. See Section 25.1.2.1.
- 79 GC.1/3-GOV/4 and /Add.1. See Section 12.2.1.1.
- 80 GC.1/4-GOV/5. See Section 12.3.2.1.2.
- 81 GC.1/5-GOV/6. See Section 12.6.2.1.

CHAPTER 4. STARTING UP THE AGENCY

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles V. A; VI. A, C, D; Annex I, paras. C. 3, 4, 5(e)
Provisional and Supplementary Provisional Rules of Procedure for the Meetings of the General Conference in 1957 (GC.1/9)
Agreement between the Austrian Government and the Preparatory Commission Concerning Arrangements for the Commission and the First General Conference (GC.1/INF/3)

The Statute entered into force on 29 July 1957, and thereby the Agency itself automatically came into existence on that date.¹

At its birth, however, the new Agency was still without regular organs of its own. The final steps required to place the Agency into formal operation were to designate or convene the members of the two statutory representative organs, which when once functioning could provide for their own continuity through a number of procedural devices: decisions to convene further sessions or the delegation of the power to do so to certain officers or to other statutory organs; the election of officers with at least sufficient continuity in office to arrange for and to conduct the meetings at which their successors would be elected.

The Preparatory Commission, a special organization which strictly speaking was not part of the Agency itself but still functioned as a temporary organ thereof, had been established in large part for the purpose of taking these final steps. The previous Chapter recites how it went about doing so; the present one records how the permanent organs of the Agency, and in particular the General Conference, were set into motion.

4.1. THE FIRST REGULAR AND SPECIAL SESSIONS OF THE GENERAL CONFERENCE

In accordance with the charge contained in paragraph C. 3 of Annex I to the Statute, the Preparatory Commission convened the first session of the General Conference and prepared for it a provisional agenda and draft rules of procedure. In the course of formulating these instruments it became aware of a procedural difficulty arising out of certain provisions of the Statute: the first session of the Conference would be required to deal with a number of questions, including especially the approval of the first budget, of the appointment of the first Director General, and of the relationship agreement with the United Nations, on all of which it could only act following a recommendation or prior decision of the Board of Governors;² however, according to Statute Articles VI. C and D, the members of the first Board would not take office (and thus constitute the first Board) until after "the end of the . . .

regular annual session of the General Conference" before which they were designated or at which they were elected.

Various solutions were explored³ to prevent the first session of the Conference from being almost entirely inactive for lack of a Board to initiate proposals for the larger organ to act on:

- (a) To allow the Conference at its first session to act directly on the reports of the Preparatory Commission, which in any case had been charged to make recommendations on the programme and budget for the first year of the Agency and to submit to the Conference the draft of a relationship agreement with the United Nations. However, aside from the fact that the Commission had clearly not been given authority to take action on certain vital items (e. g., the appointment of a Director General, and the receipt and resubmission of the budget to the General Conference if the latter should decide to "return" the initial estimates, with new recommendations, to the Board⁴), it was clear that this solution would do extensive violence to the statutory language as well as to the political equilibrium according to which the first Board would be an enlarged and thus somewhat altered version of the Preparatory Commission.
- (b) To read Statute Article VI. C and D as allowing the first Board, exceptionally, to take office as soon as its membership had been completed by the elections to be held in the Conference. This solution too was rejected as being out of accord with the text of the Statute and thus also raising potential problems concerning the termination of the terms of office of the Board's initial members.
- (c) To divide the first session of the Conference into a regular and a special part, the former to accomplish nothing substantive except to elect 10 members to the Board; on the adjournment of that regular session the first Board would automatically be constituted and thereupon the first special session of the Conference could immediately be convened to accomplish all the substantive work for which prior action by the Board was required. This solution was adopted,⁵ as being most closely in accord with the Statute; a Czechoslovak objection, that special sessions must (according to Statute Article V. A) be convened by the Director General (whose appointment, however, required the prior existence of and action by the Board, followed by General Conference approval)⁶, was disregarded on the ground that the Director General's function in this respect was merely ministerial and could thus be assigned by the Conference to another official.⁷

The agenda prepared by the Preparatory Commission (and later adopted by the Conference) was thus divided into two parts: a provisional agenda for the regular session and a recommended list of items for the special session.⁸ Aside from hearing ceremonial addresses, the Conference at its first regular session was merely asked to: adopt its agenda, adopt provisional rules of procedure, elect its President (but no other officers), appoint a Credentials Committee and receive its report, and elect 10 members of the Board. All other business appeared on the list for the special session.

To permit the first regular session to start its work as smoothly as possible and to mesh with the first special session with a minimum duplication of formal steps, the rules of procedure proposed by the Preparatory Commission were divided into two parts and their consideration took place in two stages.⁹ At the regular session the Conference was asked to approve, for use only until permanent rules were adopted, a set of "Provisional Rules of Procedure" (which were so formulated as to constitute a draft of the permanent rules) and also a set of "Supplementary Provisional Rules of Procedure for the Meetings of the General Conference in 1957". The Provisional Rules (but not the Supplementary ones) were later fully considered at the special session, first in the Administrative and Legal Committee and then in the Plenary; they were then adopted with slight amendments as the permanent Rules of Procedure of the Conference¹⁰ (thus superseding the Provisional Rules, except in so far as the application of certain provisions was suspended, for the duration of the special session, by the Supplementary Rules).¹¹

The Supplementary Rules made special provisions for the peculiarities of the combined first sessions:

- (i) Because of the division into a regular and a special part, it was provided that: credentials issued for the first regular session should also be considered valid for the first special session (thus preventing the possible unintentional disaccreditation of numerous delegates and incidentally obviating the need for a second Credentials Committee report);¹²
- (ii) To avoid burdening the regular session with any unnecessary procedures, only a President and no other officer was elected; and the Credentials Committee was the only sub-organ constituted;¹³
- (iii) To deal with the fact that there would be no Director General until the middle of the special session, the Executive Secretary of the Preparatory Commission was charged with acting as Secretary General of both sessions of the Conference and with convening the first special session;¹⁴
- (iv) To deal with certain non-repetitive situations for which provision need thus not be made in the regular rules, a special device was introduced for selecting from among the 10 members of the Board elected at the same time those that were to serve for only one year,¹⁵ and it was also provided that the President of the Preparatory Commission should act as Temporary President of the first regular session;¹⁶
- (v) To take account of the desirability of permitting all signatories of the Statute (many of which were expected to ratify in the near future - possibly during the Conference) to take part (of course without vote) in the Conference, and to permit attendance on a similar basis by representatives of the United Nations and the specialized agencies; even though no relationship agreements had yet been concluded, a special relaxed rule permitted such participation.¹⁷

Thus this special pattern of rules and meetings, as conceived and recommended by the Preparatory Commission, was adopted by the Conference¹⁸ and permitted the smooth conduct of its business with no legal¹⁹ and only a minimum of political complications. Its accomplishments are referred to in later Chapters under various subject headings.²⁰

4.2. THE INITIAL MEETINGS OF THE BOARD OF GOVERNORS

The members of the first Board (both those designated by the Preparatory Commission²¹ and those elected by the General Conference at its first regular session²²) took office on the termination of that first regular session. They were convened for the first time on the following day²³ by Mr. Carlos A. Bernardes, the President of the Preparatory Commission, who assumed the role of Acting Chairman. Mr. Jolles, now in his *ex officio* capacity as Secretary General of the General Conference, acted in a similar capacity in the Board.²⁴

In the case of the Board no statutory or other reasons required any special conduct of its initial meetings and consequently no unique devices, such as were developed for the General Conference, were elaborated. A provisional agenda had been prepared by the Preparatory Commission, and this was adopted, with a minor change, as the first item of business.

The Preparatory Commission had also proposed a draft of the Board's Rules of Procedure. Though this draft provided that the Rules (once adopted) could only be amended or suspended by a two-thirds majority of the Governors present and voting, the Commission had been unable to agree on whether it could logically be required that the Rules themselves be adopted by a qualified majority; the covering note to the draft therefore merely indicated that some members of the Commission thought that adoption should require a two-thirds vote. In the event, after a brief debate and the approval of minor amendments, the Board adopted its Provisional Rules without taking any vote.²⁵

Once the Rules of Procedure were in force the Board could proceed to the election of its first Chairman: Mr. Pavel Winkler of Czechoslovakia, who had served as Vice-President of the Preparatory Commission and previously as Vice-President of the Conference on the Statute.

One further initial procedural problem remained to be solved. The Preparatory Commission had been unable to agree on whether the Board's meetings should normally be private (as had been the Commission's) or public, and it consequently had not included any provision on this point in its draft of the Rules of Procedure. When the Provisional Rules were adopted at the first meeting of the Board, this matter was explicitly left open (so that the later adoption of a provision on this point should not be considered as an amendment requiring a two-thirds vote), and was only resolved (in favour of privacy) at the 5th meeting.²⁶ However, even before then, evidently by common consent and following a gentlemen's agreement reached in the Preparatory Commission, the meetings of the Board were closed.

4.3. THE ACTING DIRECTOR GENERAL

The Rules of Procedure of the General Conference under which, albeit on a provisional basis, it conducted its first regular and special sessions, assigned a number of functions to the Director General of the Agency. Since that office would not be filled until well along in the special session, the Supplementary Rules specified that the Executive Secretary of the Preparatory

Commission act as "Secretary General" of the Conference and in that capacity perform the functions and exercise the authority that would normally be assigned to the Director General of the Agency.²⁷

Even though the Board did not adopt any special rules for its initial meetings, Mr. Jolles, in his ex officio capacity as Secretary General of the Conference, de facto performed those duties in the Board which its Rules normally assigned to the Director General.

When it became evident that Mr. Sterling Cole, whom the Board had appointed and the General Conference was to approve as the first Director General, and who was immediately to take his oath of office, would not be able to assume his duties for approximately six weeks,²⁸ the question arose as to who should administer the affairs of the Agency in the meantime. This question was especially acute in respect of certain then current negotiations with the Austrian Government, and also with respect to the staff of the Preparatory Commission and the General Conference, some whom the Agency might wish to take on its regular staff but all of whose contracts would expire some time before Mr. Cole took office. Mr. Jolles' status as Secretary General of the Conference would terminate on the adjournment of the special session, and even his position as Executive Secretary of the already extinct Preparatory Commission would terminate before the end of November (his revised contract extending until 30 days after the end of the special session of the Conference).²⁹ After extensively and somewhat confusingly debating whether this gap could be filled by having Mr. Cole assume his office immediately and then appointing Mr. Jolles as Acting Director General, the Board (without consulting the General Conference) decided instead to:

"Authorize the Secretary General of the Conference to perform, so far as is necessary, the functions of the Director General until the Director General designate is in a position to take up his duties." ³⁰

Mr. Jolles thus became Acting Director General³¹ until 1 December 1957, the day on which Mr. Cole assumed the office and duties as the first Director General of the Agency.

4.4. CHOICE OF THE HEADQUARTERS CITY

Apparently the first time that the question of the location of the headquarters of the proposed Agency was raised was in the comments that the Austrian Government submitted to the United States with reference to the Negotiating Group draft of the Statute.³² However, this communication did not amount to an invitation and the Working Level Meeting, to which it was submitted, took no action to fix the headquarters location.

Early in the Conference on the Statute the Austrian Government invited the Agency to establish its headquarters in Vienna.³³ At that time the draft of the Statute contained only one passing reference to the headquarters of the Agency,³⁴ and gave no indication as to how its location should be chosen. However the Conference amended Annex I to the Statute to charge the Preparatory Commission to:

"Make studies, reports, and recommendations for the first session of the General Conference and for the first meeting of the Board of Governors on subjects of concern to the Agency requiring immediate attention, including. . . (e) the location of the permanent headquarters of the Agency".³⁵

Taking account of this provision, the Conference on the Statute at the end of its proceedings responded to the Austrian invitation by unanimously adopting a resolution in which it recorded its opinion "that the headquarters of the Agency should be established in Vienna" and requested the Preparatory Commission "to be guided by this preference in drawing up its recommendations to the General Conference".³⁶

At its second meeting the Preparatory Commission, noting the resolution of the Conference, requested its Executive Secretary to prepare a report "on the needs and availability of facilities for the Agency", appointed a Committee on Permanent Facilities chaired by the President and consisting of the representatives of five of its members to assist the Executive Secretary, and invited the Government of Austria to be represented in a consultative capacity on the Committee.³⁷ On the basis of the report of the Executive Secretary and the Committee, and taking into account the progress in negotiating the Headquarters Agreement, the Commission reported to the Board that it wished to endorse the opinion expressed by the Conference on the Statute that the headquarters of the Agency should be established in Vienna³⁸ - a decision that had been foreshadowed by the choice of Vienna for the site of the First General Conference.³⁹

At its fourth meeting on 9 October 1957 the Board considered the report of the Preparatory Commission and passed a resolution in which it recommended to the General Conference "that the permanent headquarters of the Agency be located in Vienna".⁴⁰ The General Conference considered and approved this recommendation on the same day, without adopting a formal resolution.⁴¹

NOTES

- 1 As expressed in Statute Article I.
- 2 See, respectively, Statute Articles V.E.5 and XIV.A, V.E.10 and VII.A, V.E.7 and XVI.A.
- 3 IAEA/PC/W.41(S) and /Rev.1; IAEA/PC/OR.37.
- 4 Statute Article V.E.5.
- 5 IAEA/PC/W.47(S), approved IAEA/PC/OR.40, p.4. Explained in GC.1/8, paras.1-3.
- 6 IAEA/PC/OR.37, p.4.
- 7 The complete lack of discretion of the Director General on whether to convene special sessions of the General Conference is expressed by the word "shall" in the first sentence of the Statute Article V.A, which was deliberately substituted by the Conference on the Statute for the "may" that had appeared in the Working Level Meeting draft (IAEA/CS/Art.V/Amend.7; IAEA/CS/OR.18, pp.42-43; IAEA/CS/OR.22, p.38).
- 8 GC.1/8.
- 9 GC.1/9 and /Corr.1 and /Add.1.
- 10 Section 7.3.1.
- 11 GC.1/9, Supplementary Rule R.
- 12 Idem, Supplementary Rule F.
- 13 Idem, Supplementary Rules I, L and M.
- 14 Idem, Supplementary Rule K.
- 15 Idem, Supplementary Rule P, which was designed to implement the final sentence of Statute Article VI.D.

- 16 *Idem*, Supplementary Rule H. Even if the Rules of Procedure had already been in force at the moment of convening the first regular session, neither of the two officers mentioned in these Rules (i.e., the delegate from whose delegation the President of the previous session had been elected or the Director General) existed at that time.
- 17 *Idem*, Supplementary Rule G(a).
- 18 GC(1)/DEC/2.
- 19 One moot legal question is whether the special session was convened at the request of the majority of the members of the Agency (as required by Statute Article V.A and as foreseen by Supplementary Rule B(GC.1/9), or by a decision of the Conference itself taken at the first regular session (see GC(1)/DEC/8).
- 20 The first regular session met 1-3 October 1957 and the first special session 7-23 October.
- 21 GC.1/10.
- 22 GC(1)/DEC/5 and 6.
- 23 4 October 1957.
- 24 Though there was no special procedural rule assigning him that function.
- 25 GC.1(S)/INF/7; GOV/INF/5. See Rules 86(e), 59 and 60 and Section 8.4.1.
- 26 *Idem*, Rule 21.
- 27 GC.1/9, Supplementary Rule K.
- 28 Sections 9.2.3, 9.2.4.
- 29 Section 3.2.2.1 and especially note 27 thereto.
- 30 Technically this decision, taken on 7 October 1957, was defective since Mr. Jolles' status as Secretary General of the General Conference was to cease with the adjournment of the first special session (Supplementary Rule K(GC.1/9)) and in any case could not last longer than the duration of his position as Executive Secretary of the Preparatory Commission (Section 3.2.2.1); it would have been better to name him directly.
- 31 Though the Board's decision refrained from calling him by that title (which had originally been proposed for the contingency that Mr. Cole would immediately assume office and then delegate his functions), as a practical matter the style: "Acting Director General" was used in Board and Secretariat documents (e.g., SEC/INS/19-28) after the first special session of the General Conference adjourned (and the title of Secretary General of the Conference thereby lapsed).
- 32 WLM Doc.3 (comment by Austria).
- 33 There appears to be no official record of the invitation, but it is recited by the Austrian representative in IAEA/CS/OR.4, p.41. Even earlier, the United States had announced that it favoured Vienna (IAEA/CS/OR.3, p.13).
- 34 In Article VI.G: the similar reference in Article V.A was added by the Conference.
- 35 Statute, Annex I, para.C.5(e).
- 36 IAEA/CS/11. It is not entirely clear why the Conference on the Statute considered that this recommendation should be addressed to the General Conference, rather than to the Board - as was also possible under the wording of the Annex to the Statute, and as was actually done by the Preparatory Commission.
- 37 IAEA/PC/2. The following five members were subsequently appointed by the President at the 4th Meeting of the Commission: Belgium, India, USSR, United Kingdom, United States of America.
- 38 This recommendation is referred to in the preamble of the Board's resolution reported to the General Conference (GC.1(S)/18). Originally, the Commission had evidently intended to address this recommendation also to the General Conference - see reference in GC.1/INF/1 to document GC.1/6 ("Recommendation by the Preparatory Commission concerning the Permanent Seat of the Agency"), which was never issued.
- 39 Though the Commission had recognized that a decision to recommend Vienna for the permanent seat did not require that the first General Conference also be held there (IAEA/PC/OR.8, 9).
- 40 GC.1(S)/18. The basis on which the Board referred this decision to the General Conference is discussed in Section 7.2.2(d); see also *supra* note 36.
- 41 GC(1)/DEC/11.

PART B.
STRUCTURE

CHAPTER 5. THE STATUTE

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles XVIII. A-C; XXI; XXII. A; XXIII
Amendment of Article VI. A. 3 of the Statute (INFCIRC/41)
General Conference Rules of Procedure (GC(VII)/INF/60) 21, 69 (b), 100 - 103.

5.1. FORM AND ENTRY INTO FORCE

5.1.1. The Statute as a treaty

The Statute of the International Atomic Energy Agency is a general international agreement or treaty.¹

The possibility of establishing an atomic energy organization within the United Nations system by means of a resolution of the General Assembly or the Security Council had been examined by UNAEC in connection with IADA², and it had again been mentioned as an abstract possibility in the study that the UN Secretary-General prepared during and for consideration at the 9th General Assembly.³ However, the reason for rejecting this solution in the case of IADA, i. e., the possible subjection of the activities and particularly the control functions of the organization to the Security Council veto, while not as significant in the case of the IAEA, was still sufficiently cogent to preclude the principal sponsors of the Agency from giving any serious consideration to that solution.⁴

5.1.2. Signature

The text of the Statute was adopted unanimously on 23 October 1956 by the Conference on the Statute, in which 81 of the 87 invited States participated. Article XXI. A provided that starting on 26 October 1956 the Statute would be open for a period of 90 days (i. e., until 24 January 1957) for signature by "all States Members of the United Nations or of any of the specialized agencies" which was in effect the same formula by which the 87 States invited to participate in the Conference had been chosen.⁵ Altogether 80 States signed within the specified period and thus became eligible to become, pursuant to Article IV. A, "initial members of the Agency" by depositing an instrument of ratification; included among these 80 were several States that had not participated in the Conference (though of course they had been among the invitees because of the substantive identity of the two invitation formulae)⁶

5.1.3. Authentic texts

The original copy of the Statute was, in accordance with Article XXIII, prepared and signed in Chinese, English, French, Russian and Spanish, the

five official languages of the Conference on the Statute.⁷ This copy was deposited in the archives of the United States Government, which was named as depositary by Article XXI.C.

Pursuant to Article XXIII, the US State Department first sent certified copies of the Statute to all "Governments concerned"⁸ on 28 December 1956, together with a list of signatures up to 7 December. On 10 January 1957, the Soviet Ambassador to the United States, who had headed his Government's delegation to the Conference on the Statute, wrote to the head of the American Conference delegation that a number of substantive errors had been discovered in the Russian text of the Statute (which had been prepared hurriedly by the UN Secretariat for the signature ceremony), as a result of which the signed Russian text was "no longer in conformity with the English text"; a list of 36 errors and proposed corrections was enclosed. On 26 February the Chinese Ambassador wrote the American State Department to request the correction of an error in Article V.E.9 of the Chinese text (an erroneous cross-reference to Article XVIII.B instead of to Article XVIII.C).

On 15 March the State Department sent copies of these communications to all the Governments concerned, stating that in its view the proposed corrections in the Chinese and Russian texts would "bring them into substantial conformity with the English text", and requesting Governments to inform it whether they approved of the proposed corrections, "tacit approval [to] be presumed in the absence of information to the contrary received by the Secretary of State by May 1, 1957". On 12 June the Secretary of State informed the Governments that "no information to the contrary having been received, tacit approval of the proposed corrections by the Governments signatory to the Statute is presumed and the Secretary of State transmits herewith two corrected certified copies of the Statute, in the five languages in which it was done, to replace the certified copies transmitted on the date of December 28, 1956".⁹

Thus in two of its five languages, the authentic texts of the Statute are not identical to the ones that were actually signed in New York.

5.1.4. Entry into force

Article XXI.E provided that the Statute (apart from Annex I, which according to Article XXI.G entered into force on 26 October 1956) should enter into force on the fulfilment of a dual condition:

- (a) Ratification by 18 signatory States;
- (b) Including at least three of the following five: Canada, France, USSR, United Kingdom, United States of America.

The first condition was fulfilled on 16 July 1957, on the deposit of the ratification of India; however, on that date the Soviet Union was the only one of the five named States that had ratified. The second condition was fulfilled on 29 July 1957 - by the end of that day 26 States, including all five of those especially named, had ratified. On that day the Statute thus entered into force for those 26 States.¹⁰

Subsequently the Statute has entered into force for additional States on the day on which they deposited their instruments of ratification (if they were signatories of the Statute) or acceptance (if their membership is based on approval by the General Conference upon the recommendation of the Board of Governors).¹¹

5.1.5. Reservations, observations and statements

In spite of the recommendation of the General Assembly relating to international treaties,¹² the Statute contains no provision concerning the permissibility (or not) of making reservations or defining the legal effect of any that might be made.

On affixing their signatures or depositing their instruments of ratification of the Statute, the representatives of a number of Governments formally recorded certain reservations or made other observations or statements. Insofar as these constituted objections to signatures affixed or ratifications deposited on behalf of other Governments they are discussed in Chapter 6. Aside from these, several related to certain parts of the Statute. These are recorded and commented on below, in the order of the statutory Articles to which they principally relate or refer:

5.1.5.1. Article III. B. 4. (perhaps also III. B. 1, XII. C and XVI. B)

(i) Reservation by Switzerland

The instrument of ratification of Switzerland contains the following reservation:

"In depositing its instrument of ratification of the Statute of the International Atomic Energy Agency, Switzerland makes the general reservation that its participation in the work of the International Atomic Energy Agency, particularly as regards relations between the Agency and the United Nations, may not exceed the limits imposed by its status as a permanently neutral State. In the context of this general reservation it makes a specific reservation with regard to the text of article III. B. 4 of the Statute and any analogous clause which might replace or supplement these provisions in the Statute or in another agreement."¹³

The depositary Government appears to have accepted the ratification and reservation without any objection, and notified both routinely to the Governments concerned. None of these indicated any objection.

It is not clear what the actual effect of this reservation might be - i. e., to postulate any situation in which it might be applied. While the Statute (in Articles III. B. 4, XII. C and XVI. B. 1), as well as consequently the Agency's Relationship Agreement with the United Nations,¹⁴ requires submission of reports to the Security Council in appropriate situations (if any State fails to comply with a safeguards agreement), such a report issued by the Board of Governors of the Agency would hardly compromise Switzerland's status as a "permanently neutral State"; neither the Statute, nor the UN Charter, nor the Relationship Agreement empowers the Security Council

to direct the Agency or its members (insofar as they are not UN members) to take any particular action, and any recommendation of the Security Council could only be complied with by the Agency if in accord with the Statute and approved by a competent Agency organ. It thus seems that the Swiss reservation merely represents a reflex reaction against any mention of the Security Council in any instrument to which that Government is a party.

5.1.5.2. Article XII (perhaps also II and III. A. 5)

(ii) Observation by India

The Indian Embassy in Washington stated in a Note dated 16 July 1957 (the date of the deposit of India's instrument of ratification):

"1. If safeguards are applied by the Agency only to those States which cannot further their atomic development without the receipt of aid from the Agency or other Member States, the operations of the Agency will have the effect of dividing Member States into two categories, the smaller and less powerful States being subject to safeguards, while the Great Powers are above them. This will increase rather than decrease international tension.

"2. As long as uranium and other materials needed for the development of atomic energy are sold by Member States to certain Member States under bilateral agreements without the application of any safeguards, the sale of such materials to other States with the application of Agency safeguards will result in discrimination." ¹⁵

This "observation", which is not couched in the form of a reservation, does not appear to be intended to be one, nor does it appear to have any other legal effect. Nevertheless the depositary Government registered it with the United Nations. The statement would seem to relate to all the safeguards provisions of the Statute, the most important of which is Article XII, but which also include Articles II and III. A. 5 and to a subsidiary extent XI. F. 4, XIV. B. 1(b) and XIV. C.

5.1.5.3. Article XVII

(iii) Note added to the Venezuelan signature

On 25 October 1956, the delegate of Venezuela addressed a letter to the President of the Conference on the Statute,¹⁶ which included the following:

"The Delegation of Venezuela signs this Statute ad referendum on the understanding:

"(1) With regard to article XVII thereof, the signing or ratification of this instrument by Venezuela does not signify acceptance by the latter of the jurisdiction of the International Court of Justice without Venezuela's express consent in each case." ¹⁷

The text of this letter was not communicated to the Conference.

On the following day, the representatives of Venezuela added the following note to their signatures of the Statute:

"Ad referendum and subject to the conditions set forth in the communication addressed to the President of the Conference on 25 October 1956."¹⁸

The instrument of ratification which was deposited on behalf of Venezuela on 19 August 1957 did not contain any reference to this letter or to the note. Perhaps this omission is due to the intervening statement by the Union of South Africa, quoted under (iv) below. In any case, the depositary Government raised no question about the Venezuelan instrument of ratification, as it had done some weeks earlier in connection with the Argentine instrument (see (v) below) which contained a reservation with respect to the same Article.

The evident purpose of this reservation is to avoid the possible automatic subjection of Venezuela to the jurisdiction of the International Court of Justice pursuant to Article XVII. A of the Statute.¹⁹ The question is whether Venezuela's failure to repeat the reservation in its instrument of ratification voids the effect of mentioning it in the signature.²⁰

(iv) Statement by the Union of South Africa

The Ambassador of the Union of South Africa stated in a Note dated 6 June 1957 (the date of the deposit of South Africa's instrument of ratification):

"While the Government of the Union of South Africa is satisfied with Article XVII as it stands and has ratified the Statute unreservedly, it will have to consider very carefully whether it would be in a position to agree to any ratifications which are made subject to reservations on this Article."²¹

The only legal effect this statement appears to have is to prevent the depositary Government from assuming tacit approval by South Africa of any reservation to Article XVII. As such, it may explain the depositary's action with respect to the Argentine reservation (see (v) below - which should be contrasted with its treatment of the Swiss reservation referred to under (i) above). In addition, its psychological effect may account for the failure of Venezuela to repeat in its instrument of ratification the reservation it had made in signing the Statute (see (iii) above).

(v) Reservation by Argentina

Immediately after the Conference on the Statute had unanimously adopted the Statute the representative of Argentina reserved his Government's right to refuse to place under the procedure outlined in Article XVII "any dispute involving the sovereignty of the Argentine nation".²²

On 26 June 1957 the Chargé d'Affaires ad interim of the Argentine Embassy in Washington offered to deposit an instrument of ratification containing the following reservation:

"So far as concerns Article XVII, the Argentine Government reserves the right not to submit to the procedure indicated in that article any dispute concerning sovereignty over its territory." ²³

The State Department evidently refused to accept this instrument - the only case in which it has done so, at least by reason of a reservation.

On 13 August, the Argentine Ambassador attempted to clarify in a letter the meaning of the reservation. After explaining that this was merely a routine caveat always used by Argentina, he indicated:

"... I wish to make it perfectly clear that the reservation does not in any way imply opposition to the clause [Article XVII] itself, but rather that it has been submitted for the sole purpose of clearly establishing the interpretation which, in the opinion of the Argentine Government, should be applied to said article.

"In view of the foregoing, I wish to point out that the Argentine Government understands that the reservation does not restrict the Statute nor any of its clauses and therefore would only be invoked in the rare instance that the Statute might be used to the detriment of its own objectives to impair the irrefutable rights of Argentine territorial sovereignty." ²⁴

On 20 August the State Department communicated the text of the reservation and of the above letter to all Governments concerned, asking them to notify their acceptances of the reservation. All but nine of the Governments that had ratified the Statute before being notified of the reservation replied by the time the first regular session of the General Conference convened, and none expressed any objection. The Argentine representative was permitted to participate fully in the Conference, ²⁵ and at its third meeting, at which all the nine above-mentioned Governments were represented, the Conference unanimously approved ²⁶ the report of its Credentials Committee which stated, *inter alia*, that satisfactory credentials had been submitted by Argentina ²⁷ and on the same day it unanimously elected Argentina to the Board of Governors. ²⁸ The depositary Government thereupon concluded, ²⁹ and subsequently informed all Governments concerned, that Argentina had become a member on that day (3 October 1957). The difference in the depositary's treatment of the Swiss and the Argentine reservations, of which the former might appear to be the more serious, can probably be explained by the South African "statement" mentioned under (iv) above, since the Argentine reservation related to precisely the Article to which the statement referred.

The purpose of the Argentine reservation is explained in the Ambassador's letter. Legally it evidently rests on the same supposition as to the effect of Article XVII. A as underlies the Venezuelan letter. ³⁰

5.1.5.4. Article XVIII

(vi) Statement of interpretation and understanding by the United States of America

The instrument of ratification of the United States of America quotes the "statement of interpretation and understanding" subject to which the Senate, on 18 June 1957, gave its advice and consent to the ratification of the Statute, namely that:

"(1) any amendment to the Statute shall be submitted to the Senate for its advice and consent, as in the case of the Statute itself, and (2) the United States will not remain a member of the Agency in the event of an amendment to the Statute being adopted to which the Senate by a formal vote shall refuse its advice and consent."³¹

In the same circular note in which the Acting Secretary of State of the United States, as representative of the depositary authority, informed all Governments concerned of this statement, he also indicated that:

"The Government of the United States of America considers that the above statement of interpretation and understanding pertains solely to United States constitutional procedures and is of a purely domestic character."³²

As appears from the report of the Senate committee - the reason for the statement was not any concern about the efficacy of Article XVIII.D of the Statute (which permits any member "unwilling to accept an amendment to this Statute [to] withdraw from the Agency by notice in writing to that effect given to the depositary Government"), but a distrust of some future President who, even if the Senate should formally refuse its consent to an amendment which nevertheless enters into force by the action of other Member States, might decline to make use of this withdrawal provision.³³ As indicated by the Acting Secretary of State, and especially because of this official communication to all Governments concerned, the Senate's "statement" can have no automatic international effect - i. e., the effect of withdrawing the United States from the Agency without any action on the part of the President; at most it requires him to take the necessary action.³⁴

(vii) Note added to the Venezuelan signature

The same Venezuelan letter of 25 October 1956 (partially quoted in (iii) above) also contained the following paragraph:

"(2) That no amendment to this instrument, as referred to in article XVIII, paragraph C, can be considered by Venezuela to be in force unless the latter's constitutional provisions concerning the ratification and deposit of public treaties have previously been complied with."³⁵

The note attached to the Venezuelan signatures of the Statute (quoted in (iii) above) therefore referred equally to this statement. The Venezuelan instrument of ratification, however, did not contain any reference to this reservation either.

Even assuming that the reservation attached to the Venezuelan signature was not voided by the failure to repeat it in the instrument of ratification, the question is how any effect could practically be given to it. With

the relatively minor exception of Article XIV. D (supported by Articles XVIII. E and XIX. A) concerning assessed contributions and to a lesser extent Articles VIII. A, XV. A and XV. B and perhaps XII. C ("direct curtailment or suspension of assistance being provided... by a member"), almost all provisions of the Statute are institutional in character (i. e., they prescribe how the Agency is to conduct its affairs) and do not put any obligation on Member States except as accepted by them in separate agreements with the Agency.³⁶ With respect to an institutional provision, such as the size and composition of the Board or the powers of the General Conference, one cannot see how an amendment can be implemented if it is in force for some States but not for others. Of course, possibly, the reservation might have been intended as a safeguard against some amendment which would place some direct obligation on Members - though it would seem that the unconditional withdrawal provision in Article XVIII. D would afford sufficient protection.

5.2. STRUCTURE

The Agency's Statute, unlike the Charter of the United Nations or the constitutional instruments of most international organizations, does not group its Articles into chapters or other units which would help to illuminate its structure. Given also a somewhat random organization, it is at first glance quite difficult to find the proper relationships among the several provisions. Without attempting in this Section to expound any statutory provisions (an exercise left for later Chapters) the following outline and minor re-grouping is presented in the hope that it will prove to be a helpful introduction. In addition, since many portions of the Statute are rather badly or incompletely drafted, it is often difficult to interpret passages by mere verbal analysis³⁷ and thus assistance must be sought in considerations of purpose and structure.

5.2.1. Preamble

Article I, which substantively only christens the Agency, in effect constitutes a preamble.

5.2.2. Purpose and activities

Article II, entitled "Objectives", indicates the two interrelated purposes for which the Agency was established: to further the peaceful uses of atomic energy throughout the world, and to do so in such a manner that the Agency's assistance is not misused for any military purpose. Article III, entitled "Functions", enlarges on these purposes by stating in greater detail in subparagraphs A. 1-7 the principal activities the Agency is authorized to undertake; sub-paragraphs B. 1-3 and paragraphs C and D contain some guidelines and limitations relating to these activities.

The methods by which these activities are to be carried out, are set forth in Articles VIII-XII, dealing respectively with "Exchange of Informa-

tion", "Supplying of Materials" (i. e., the receipt of nuclear and other materials), the furnishing to the Agency of "Services, Equipment and Facilities", "Agency Projects" and "Agency Safeguards". Finally the "Definitions" in Article XX, which relate solely to certain terms used in Articles IX, XI and XII, might be included under this heading.

5.2.3. Membership

Article IV. A and B specifies how a State can become a Member of the Agency. Article XVIII. D and E establishes the method and some consequences of withdrawal. Article IV. C recites the principle of the "sovereign equality of all... members" and obliges them to "fulfill in good faith" their statutory obligations. Article XIX. B provides for the suspension of the privileges and rights of Members that have persistently violated the provisions of the Statute.

5.2.4. Organs

Articles V-VII deal with the three statutory organs of the Agency, respectively the "General Conference", the "Board of Governors" and the "Staff" (i. e., the Director General).³⁸ Annex I³⁹ establishes the Preparatory Commission, which, though strictly speaking not an organ of the Agency, nevertheless was designed to act as one before the permanent organs were constituted.⁴⁰

5.2.5. Financial

The principal financial provisions are contained in Article XIV. Article XIX. A provides for the suspension of the voting rights of a Member that fails to pay the contributions assessed on it pursuant to Article XIV. D.

Article XIII, entitled "Reimbursement of Members", deals with the payments that might have to be made by the Agency for items received by it pursuant to Articles IX. A, IX. B and X.

5.2.6. Relationships with other organizations

Article XVI. A authorizes the Agency to enter into relationships with the United Nations and with certain other organizations. Article XVI. B, as well as III. B. 4 and 5, specify the content of some of the provisions of the Relationship Agreement with the United Nations.

5.2.7. Legal matters

Article XV deals with "Privileges and Immunities". Article XVII with the "Settlement of Disputes". Article XXII. B requires the Agency to establish its own treaty registration system, and also to register certain agreements with the United Nations.

5.2.8. Amendment and final clauses

Article XVIII, A and C specifies the method of amending the Statute. Article XVIII, B defines the procedure for initiating a general review of the Statute.

Articles XVIII, C (ii) (second sentence), XVIII, D (final clause), XXI, XXII, A and XXIII contain the "final clauses" relating to the signature, entry into force and authentic texts of the Statute and of amendments thereto, and to the duties of the depositary Government.

5.3. AMENDMENTS

5.3.1. Statutory provisions

The draft of the Statute prepared by the Negotiating Group allowed any Member or the Board of Governors to propose amendments to the Statute, and provided that:

"[XIX, B] Amendments shall come into force for all Members when approved by the Board of Governors and accepted by two-thirds of all the Members in accordance with their respective constitutional processes."

The draft prepared by the Working Level Meeting no longer included the explicit right of the Board to initiate amendments, and increased the powers of the General Conference by providing:

"[XVIII, B] Amendments shall come into force for all members when

- (i) approved by the Board of Governors,
- (ii) approved by the General Conference by a two-thirds majority of those present and voting, and
- (iii) accepted by two-thirds of all the members in accordance with their respective constitutional processes . . ."

The Conference on the Statute, in practically the only instance in which it directly reduced the powers of the Board, adopted the following text:

"C. Amendments shall come into force for all members when:

- "(i) Approved by the General Conference by a two-thirds majority of those present and voting after consideration of observations submitted by the Board of Governors on each proposed amendment, and
- "(ii) Accepted by two-thirds of all the members in accordance with their respective constitutional processes. Acceptance by a member shall be effected by the deposit of an instrument of acceptance with the depositary Government referred to in paragraph C of article XXI."

The principal argument⁴¹ for this change was that, while the Board should be dominant in carrying out the functions of the Agency, the amendment of the Statute is not such a "function", but properly is the responsibility of the most representative organ. The position of the principal members, whose status the special composition and powers of the Board were meant to protect, would still be sufficiently guarded by the two-thirds majority requirement (the same as was required to approve amendments at the Conference on the Statute)⁴² and by the right to withdraw should an unacceptable amendment be adopted.⁴³ The Conference, however, rejected a proposal that the decision to approve an amendment should require a three-quarters vote of the General Conference and a similar approving vote in the Board.⁴⁴

5.3.2. Amendments proposed

Within 10 years of the entry into force of the Statute, the procedure for amending it was formally initiated three times, once with success. Though the substantive implications of the proposed changes are discussed in the appropriate Chapters below, the procedural and formal aspects are recorded and analysed here.

5.3.2.1. Article VI. A. 3⁴⁵

During the general debate at the 4th General Conference in 1960, four Members, later joined by three others, proposed a resolution⁴⁶ which, in the form adopted by the Conference, recommended that the Board of Governors should prepare and submit to the next regular session of the Conference a draft amendment of the Statute designed to increase the representation of the area "Africa and the Middle East" on the Board.⁴⁷ The Board, after soliciting comments from all Member States,⁴⁸ prepared an amendment of Article VI. A. 3, which it submitted to the 5th General Conference and whose text it also arranged to notify to all Members.⁴⁹ The Conference approved the proposed text without any change and urged Member States to accept it as soon as possible.⁵⁰ Within 16 months the necessary acceptances were received and the amendment entered into force on 31 January 1963.⁵¹

5.3.2.2. Article XIV. B⁵²

On 21 May 1962 the United Kingdom formally proposed an amendment to Article XIV, the effect of which would have been to abolish the "two-budget system", in order to reduce the Agency's reliance on voluntary contributions to finance certain of its activities. This amendment was thereupon formally notified to all Member States and also to the Board.⁵³ In the short time available, the Board was unable to do more than to debate the amendment and then transmit its text and the record of its discussion, without any recommendation, to the 6th General Conference.⁵⁴ After consideration in the Administrative and Legal Committee,⁵⁵ the Conference passed a neutral resolution requesting the Board to study the question of financing the Agency's activities and to report thereon to the next regular session of the Conference.⁵⁶

Thereupon the Director General solicited comments from all Member States. These were considered by the Administrative and Budgetary Committee of the Board and subsequently by the Board itself, which adopted a package proposal consisting of a draft amendment to Article XIV, B together with certain related changes in the Financial Regulations. The proposed statutory amendment was formally notified to all Members and to the General Conference (and thus in effect replaced, with the agreement of the United Kingdom, the text it had proposed a year earlier).⁵⁷ However, after informally surveying the membership and gauging both the strength and the depth of the opposition, the Western sponsors of the amendment concluded that even if it were approved by the Conference by a bare two-thirds majority, it would be unlikely to receive the necessary number of acceptances (that of two-thirds of all the Members); they therefore proposed, and the Conference on the report of its Administrative and Legal Committee accepted, a resolution deciding to take no action on the Board's proposal but requesting the latter to study the matter further and to report again to the next regular session.⁵⁸

The Board thereupon once more considered the matter, but concluded and reported to the 8th Conference that it was unable to make any further recommendations.⁵⁹

5.3.2.3. Article VI. A. 2 ⁶⁰

A few days after announcing in the Board on 16 June 1965 a proposal to amend Article VI. A. 2, so as to eliminate the requirement that the "producers of source materials" be selected from among the four States now named in the Statute, the representative of the Democratic Republic of the Congo formally proposed the text of an amendment and requested its consideration at the next (ninth) regular session of the General Conference. This text was notified to the Member States and to the General Conference⁶¹ and the Conference document was then also transmitted to the Board. The Board considered the proposed amendment just before the 9th Conference was convened and decided to inform the latter that the question required careful study which the Board proposed to undertake during the next year, and that meanwhile it would be premature for it to submit observations of substance.⁶² As a consequence the Conference, on the recommendation of its General Committee, decided not to place this item on its agenda.⁶³

The ninth Board conducted the promised study, but concluded and reported to the Conference that the matter should be held in abeyance indefinitely.⁶⁴ This item was consequently not placed on the provisional agenda for the 10th General Conference.

5.3.2.4. Article VI

As recounted at the end of Section 8.2.1.2.2, the Agency during 1968 initiated a review of Statute Article VI, with a view to reforming the composition of the Board. However, by the end of 1969 no formal proposal of an amendment had yet been presented.

5.3.3. Practice

On the basis of the statutory provisions and of the Rules of Procedure of the General Conference⁶⁵ (the Provisional Rules of Procedure of the Board not containing any directly relevant provisions), the following practices have developed in dealing with amendments proposed to the Agency's Statute:

5.3.3.1. Initiating the amending procedure

As foreseen by Article XVIII, A of the Statute and by Procedural Rule 100 of the General Conference, the formal amending procedure should be initiated by a Member State through the proposal of a text which is then communicated to all Members. However, already in amending Article VI. A. 3, the first initiative was taken in the General Conference, and the actual amendment which was submitted to Member States was not proposed directly by any State but was a compromise text formulated by the Board.⁶⁶ Similarly, the revised text of the amendment to Article XIV. B was developed in the Board and then communicated to Member States and the General Conference.⁶⁷

It would also seem that the General Conference could itself formulate the text of an amendment - which of course it could not then approve directly but which it would first have to notify to Member States and also to the Board so as to allow the latter to submit any observations on it.⁶⁸ As there was no objection to the General Conference initiating the procedure for amending Article VI. A. 3, it could equally well have proposed in its initial resolution the actual text of an amendment to be submitted to Member States and to be commented on by the Board.

5.3.3.2. Communication of proposed amendments

The Statute requires that the Director General communicate proposed amendments to all Member States at least 90 days in advance of their consideration by the General Conference.⁶⁹ Procedural Rules 21 and 101 of the Conference establish the slightly more severe requirement that the communication be made 90 days in advance of the session at which it is to be considered. The 90-day requirement in effect also applies to any suggested change in the proposed amendment, since if the General Conference makes any "substantive change" in the amendment, it cannot act on the revised text until 90 days after the latter has been sent to all Members.⁷⁰

The certified copies sent out by the Director General have in the past sometimes consisted of a separate paper with a certification (by the Director of the Legal Division), and sometimes merely of a certified copy of the document by which, *inter alia*, the text of the amendment is submitted to the General Conference.⁷¹ Neither the Statute nor the Rules of Procedure of the General Conference indicate in what language(s) the text of a proposed amendment must be notified to the membership. Though in the case of the proposed amendment to Article VI. A. 2 the text was sent to each State in all five official languages, in two other cases the text was sent to each State only in the working language in which it usually receives documents; finally in the case of the Board's proposed amendment to Article XIV. B, only the English text was sent to each State within the required time limit, while texts in the other three working languages were distributed later.⁷²

5.3.3.3. Observations by the Board

When the Conference on the Statute eliminated the provision that amendments to the Statute need be approved by the Board, it substituted the requirement that the General Conference may only approve an amendment after it has considered "observations submitted by the Board of Governors" thereon.⁷³ This requirement is restated in Procedural Rule 102 of the General Conference, and in Rule 103 is extended so as to oblige the Conference to consider the observation of the Board before taking final action on any amendment whose text the Conference has substantively changed after the last opportunity that the Board had had to submit observations.

Since the requirement that the General Conference consider the observations of the Board was deliberately substituted for the requirement that the Board approve all amendments, it appears clear that the Board does not retain the power to block an amendment either by negative observations or by a refusal to submit any observations at all.⁷⁴ This conclusion is fortified by a comparison of the language of Article XVIII. C(i) with that of other portions of the Statute (e. g., Article IV. B) which allow the Conference to act only upon a (positive) recommendation of the Board.

The Provisional Rules of Procedure of the Board⁷⁵ contain no provisions relating to its consideration of statutory amendments. When the Rules were being drafted by the Preparatory Commission it was proposed that the Board should only adopt observations on amendments to the Statute by a two-thirds vote;⁷⁶ this proposal however was not pressed, and in the absence of any other provision or an ad hoc decision the usual simple majority rule applies.

The Director General has interpreted Article XVIII. C(i) of the Statute and Procedural Rule 15(g) of the Board, which requires him to place on the provisional agenda of the Board "items required by the Statute", as obliging him to transmit to the Board, for any observations it may desire to make, all amendments formally communicated to Member States, even if no request for such a submission is made by the sponsor. Thus the Congolese amendment to Article VI. A. 2 was submitted to the Board without the specific request of the Congolese or any other representative.

5.3.3.4. Consideration by the General Conference

The consideration of proposed statutory amendments by the General Conference is governed principally by Procedural Rules 21, 69(b) and 101-103. These prohibit placement on the agenda or consideration of an amendment unless the required statutory notice had been sent to Member States, and prohibits a decision until the (i. e., any) observations submitted by the Board on the actual text in question have been considered. However, the action of the Conference in connection with the initial proposal looking toward the increased representation of Africa and the Middle East on the Board,⁷⁷ indicates that the Conference may take certain decisions relating to amendments without observing these special procedural limitations that are evidently meant to apply only to the final approval of an amendment.

Consideration of an amendment can take place initially in the Plenary (as in the case of the amendment to Article VI. A. 3)⁷⁸ or in one of the Main

Committees (the proposed amendment to Article XIV. B was considered first in the Administrative and Legal Committee at both the sixth and seventh regular sessions).⁷⁹

Article XVIII. C(i) requires that the General Conference approve amendments "by a two-thirds majority of those present and voting". Procedural Rule 69 (b) requires such a majority for "A decision on a proposal for amendment of the Statute" – but presumably this is intended to include only a decision to approve the amendment, and does not relate to decisions on ancillary procedural or even substantive matters. However, Rule 69 (d) requires a two-thirds majority also for "A decision on amendments to [such] proposals... and on parts of such proposals put to the vote separately" – which means at least that any change in a proposed amendment would have to be adopted by a two-thirds majority.⁸⁰

5.3.3.5. Communication of approved amendments

Except for specifying, in Article XVIII. C (ii), that Member States shall effect their acceptance of an amendment by depositing an instrument of ratification with the depositary Government of the Statute, the Statute does not indicate whether any organ of the Agency has any further function in the amending procedure after the General Conference has approved an amendment.

After the Conference approval of the amendment to Article VI. A. 3, the depositary Government advised the Director General to transmit directly to each Member State two certified copies of the text of the amendment in all five official languages.⁸¹ The Secretariat accepted this suggestion.⁸²

Certified texts of the amendment were also sent to all those Non-member States that were eligible to ratify or accept the Statute – on the theory that they should be put on notice that the Statute was in the process of being changed, and also to enable them to deposit, simultaneously with their instrument relating to the Statute itself, an instrument of acceptance of the amendment.⁸³

5.3.3.6. Depositary practice

Although Article XVIII. C (ii) of the Statute requires the United States Government to act as depositary for amendments to the Statute,⁸⁴ neither that Article nor the final clauses in Article XXI define that Government's duties in connection with amendments. In relation to the amendment to Article VI. A. 3 the United States applied, *mutatis mutandis*, the notification requirement of Article XXI. F and the requirement of registration with the United Nations contained in Article XXII. A. In these notifications (but not in the UN registration statements)⁸⁵ it also included the various statements and objections that certain Governments made with respect to the acceptance of the amendment by the Government of China and to the German declaration on the applicability of the amendment to West Berlin.⁸⁶

5.3.3.7. Entry into force

By analogy from Statute Article XXI. F, the depositary Government also had to determine the date on which the statutory requirement of acceptance by

two-thirds of the Member States had been fulfilled. In making this calculation, the depositary took account not of the number of States that were Members of the Agency on the date the amendment was approved (76 - requiring 51 acceptances) but of the actual number of Members at any given time during the period of incubation, so that it only certified the entry into force of the amendment on the deposit of the 54th acceptance on 31 January 1963, at a time when the Agency had, according to the depositary's calculations, 81 Members.⁸⁷ This is consistent with the depositary's practice in allowing States (e. g., Saudi Arabia) that were not Members at the time the amendment was approved by the Conference, to deposit instruments of acceptance of the amendment as soon as they became Members.

On the entry into force of an amendment it comes into effect simultaneously for all Members.⁸⁸ Two subsidiary legal consequences of this conclusion are:

- (a) The deposit of additional instruments of acceptance has no legal effect. Nevertheless the depositary Government has continued to accept such instruments and, after enquiry as to the practice of the UN Secretariat and the preference of the Agency, it has continued to register such instruments with the United Nations.⁸⁹
- (b) States which have become Members of the Agency after the amendment entered into force automatically became parties to the amended Statute⁹⁰ (even though they may have become "initial" members on the basis of their earlier signature of the unamended instrument, or even if they had applied for and been approved for membership before the Statute was amended). Therefore, presumably the depositary would not accept an instrument of acceptance of an amendment from a State that became a Member after that amendment had already entered into force.

5.3.3.8. Effective date of amendments

The amendment of Statute Article VI. A. 3, requiring, inter alia, the General Conference to elect 12 instead of merely 10 members of the Board, came into force on 31 January 1963, some months after the sixth regular session of the General Conference and many months before the convening of the seventh. Neither the text of the amendment itself, nor of the resolution by which the Conference had approved it,⁹¹ contained any provision for implementing it before the next regular session held after it entered into force. In fact no such implementation would have been possible without further statutory amendment since, even if a special session of the General Conference had been convened to hold by-elections, Article VI. B specifically requires Board elections to "take place at regular annual sessions of the General Conference".⁹² In any event, no challenge was ever raised concerning the composition of the sixth Board during the balance of its term.

5.3.3.9. Form

Every statutory amendment so far considered was formulated as a change of the existing text of the Statute, rather than as a provision to be added separately.⁹³

5.4. GENERAL REVIEW

5.4.1. Statutory provision

The drafts of the Statute prepared by the Negotiating Group and by the Working Level Meeting did not contain any provision concerning a "general review" of the Statute. However, at the Conference on the Statute three separate amendments were introduced to provide for such a procedure.⁹⁴ The pressure to make this addition was great and ultimately successful: the principal argument was that the Statute was being adopted hastily and several of its provisions were not pleasing to all participants, who however, did not wish to upset the delicate accords painfully reached at the Working Level Meeting; in addition the atomic energy field was developing rapidly and it was suggested that therefore some statutory provisions might soon be out of date. The argument of the opponents (i. e., the sponsoring Governments), that the new Agency required stability, was brushed aside.⁹⁵

Article XVIII. B of the Statute thus provides:

"At the fifth annual session of the General Conference following the coming into force of this Statute, the question of a general review of the provisions of this Statute shall be placed on the agenda of that session. On approval by a majority of the members present and voting, the review will take place at the following General Conference. Thereafter, proposals on the question of a general review of this Statute may be submitted for decision by the General Conference under the same procedure."

This provision in effect requires that the question as to whether a general review of the Statute is to be held must be placed on the agenda of the General Conference for the first time, automatically, at the fifth regular session, and that thereafter it may be placed on the agenda of any session - presumably at the request of any Member or by prior decision of the Conference. The question as to whether such a review is to take place is to be decided by a majority vote of the Conference, whether the question was placed on the agenda automatically at the fifth session or at the request of a Member at a later session. Presumably the Conference's general authority, under Statute Article V. C, to decide that certain categories of questions require a two-thirds vote,⁹⁶ does not apply here in view of the express statutory statement of the majority required.

Nothing in the text or history of Article XVIII. B suggests that the "review" procedure can be used to change the Statute in any way other than through the amendment process set forth in Articles XVIII. A and C. Thus, if a general review is held at a session of the General Conference and certain changes are found desirable, appropriate amendments would have to be formulated, notified to the Member States, observations invited from the Board, then approved by a two-thirds vote at a later session of the Conference and accepted by two-thirds of the Member States.

5.4.2. Practice

As required by the Statute, the "question of a general review of the provisions of the Statute" was placed on the agenda of the 5th regular session of the General Conference. Although the Director General had suggested that this item be allocated to the Administrative and Legal Committee, the Conference accepted a different recommendation from its General Committee and decided that it be discussed first in Plenary.⁹⁷

After considering various proposals to the effect that this item should be postponed to the sixth or eighth regular session,⁹⁸ the Conference decided:

"To take for the time being no action with regard to a general review of the provisions of the Statute."⁹⁹

Since the fifth regular session no proposal looking toward a general review of the Statute has been proposed for the agenda of any session of the Conference.

NOTES

- 1 276 U. N. T. S. 4. Also reproduced in *Multilateral Agreements*, Legal Series No. 1, IAEA, Vienna (1959) 49, and in AM.1/2 (incorporating the amendment to Article VI. A. 3). For other treaty collections in which the IAEA Statute, in various authentic or translated versions, is reproduced see *Index to Multilateral Treaties* (Harvard Law School Library, 1965), No. 2876.
- 2 See Part III (Recommendations), paras. 2 and 3(a) of first report of UNAEC to the Security Council, UN doc. AEC/18/Rev.1 (31 Dec. 1946), reproduced in *US State Dep't Publ.* 2737 (1947).
- 3 See paras. 2 and 3 of "Summary of internal Secretariat studies of constitutional questions relating to agencies within the framework of the United Nations". UN/doc. A/C.1/758, reproduced in *UNGA Off. Rec.* (9th Sess.), Annexes, Agenda Item No. 67, pp. 13-19 (1954). For the background of this document, see Section 12.1.1.
- 4 Though the European Atomic Energy Community (EURATOM) was established by a treaty (298 U. N. T. S. 167), both the European Nuclear Energy Agency (ENEA) and the Inter-American Nuclear Energy Commission (IANEC) were established by resolutions of their parent organizations, respectively by a Decision of the Council of the Organisation for European Economic Co-operation (now the Organisation for Economic Co-operation and Development) taken on 20 December 1957 and by a Resolution of the Council of the Organization of American States approved on 22 April 1959. The United Nations itself followed the resolution route in establishing the United Nations Industrial Development Organization (UNIDO), by UNGA/RES/2152 (XXI).
- 5 Sections 2.7.3 and 2.8.1.
- 6 For lists of the States in these several categories, see INFCIRC/42/Rev.5, Part I, Table 1.
- 7 For a discussion of the authentic languages of the Statute, see Section 33.1.2.
- 8 The phrase: "Governments concerned with the Statute [of the IAEA]" is used in all the US State Department circulars distributed in fulfilling its functions as depositary of the Statute. Presumably it means, on any given date, the States referred to in Statute Article XXI.F. It is not clear whether the State Department assimilates, for this purpose, the States approved for membership that have not yet formally accepted the Statute, to those signatory States that have not yet ratified it (see Sections 6.1.2. and 6.1.3).
- 9 It should be noted that the procedure of the US Government conforms precisely to Article 79 (2)-(4) of the Vienna Convention on the Law of Treaties (A/CONF.39/27); see also para.(7) of ILC's Commentary to the draft Articles (Report of the ILC, UNGA Off. Rec. (21st Sess.) Supplement No.9 (A/6309/Rev.1)).
- 10 INFCIRC/42/Rev.5, Part I, Table 1.

- 11 Ibid., Tables 1 and 2. See Sections 6.1.2 and 6.1.3.
- 12 UNGA/RES/598 (VI), para. 1. At the Conference on the Statute, Mexico referred to this recommendation in connection with the likelihood that reservations would be made to Statute Article XVII (IAEA/CS/OR. 34, pp. 22-25).
- 13 276 U.N.T.S. 122; INFCIRC/42/Rev. 5, Part I, para. 12.
- 14 281 U.N.T.S. 369; INFCIRC/11, Part I, Article III, 1(b) and III. 2.
- 15 276 U.N.T.S. 122; INFCIRC/42/Rev. 5, Part I, para. 10.
- 16 This letter was not reproduced as a Conference document. Its text appears in 36 State Dep't Bull. 625 (No. 929, 15 April 1957).
- 17 276 U.N.T.S. 121; INFCIRC/42/Rev. 5, Part I, para. 14(b).
- 18 276 U.N.T.S. 121; INFCIRC/42/Rev. 5, Part I, para. 14(a). This note does not appear in the records of the Conference.
- 19 The question whether there is such automatic jurisdiction is discussed in Section 27.1.1.2.
- 20 That would be the effect of Article 23(2) of the Vienna Convention on the Law of Treaties (see also paras. (3) and (4) of the ILC's Commentary to the draft Convention, *op.cit.* supra note 9).
- 21 276 U.N.T.S. 122; INFCIRC/42/Rev. 5, Part I, para. 11.
- 22 IAEA/CS/OR.39, p.2.
- 23 293 U.N.T.S. 360; INFCIRC/42/Rev. 5, Part I, para. 5(a).
- 24 INFCIRC/42/Rev. 5, Part I, para. 5(b).
- 25 In various Secretariat-originated lists of members (e.g., Conference Journal No. 4 of 2 October 1957) Argentina was listed as having deposited its ratification – even though the depositary Government had not yet accepted it.
- 26 GC.1/RES/1.
- 27 GC.1/14. Indeed, Argentina was a member of the Credentials Committee, and the defect in its ratification was not discussed either by the Committee or at any time in the General Conference.
- 28 GC (I)/DEC/5.
- 29 Evidently without considering objections that might be filed by non-ratifying signatories – though apparently none of these did actually object. See INFCIRC/42/Rev. 5, Part I, para. 5(c).
- 30 The specific-reference by Argentina to disputes relating to territorial sovereignty obviously indicates the continuing concern of that Government that somehow the British Government might by indirection succeed in introducing litigation about Antarctica in the ICJ, since only a few years earlier it had failed to do so directly (Antarctica (UK v. Argentina), Order of 16 March 1956, ICJ Reports 1956, p.12). It is of course difficult to see how any dispute concerning the Agency's Statute could be used for such a purpose.
- 31 276 U.N.T.S. 124; INFCIRC/42/Rev. 5, Part I, para. 11(a).
- 32 INFCIRC/42/Rev. 5, Part I, para. 11(b).
- 33 Senate Committee on Foreign Relations, Recommendation by the Senate for United States Ratification of the Statute of the International Atomic Energy Agency (S. Exec. Rep. 3, 85th Cong., 1st Sess. (1957), Part 12: "The Committee Understanding and the Problem of United States Withdrawal"), reproduced in American Foreign Policy: Current Documents 1957, US State Dep't Publ. 7107 (Feb. 1961), Item 464, pp. 1386-1388.
- 34 The deposit of the American reservation and the statement of the Acting Secretary of State preceded the decision in *Power Authority of New York v. Federal Power Commission*, 247 F.2d 538 (D.C. Cir. 1957), vacated as moot, 355 U.S. 64 (1957), to the effect that a Senate "reservation" intended to have purely domestic effect was void as constituting an attempt at unilateral legislation by one House of Congress. See also Restatement of the Foreign Relations Law of the United States, Sections 136-138.
- 35 Supra note 17.
- 36 Section 13.1.
- 37 For example: is there any reason why the reports to "other organizations" mentioned in Article VI.J are not included in Article V.E.6; is there any difference between "withdraw [ing]... materials and equipment" as provided in Article XII.A.7 or "call[ing] for [their] return" as in Article XII.C (see Section 21.7.2.4(v) and (5)).
- 38 Section 9.1.
- 39 The Statute only has one Annex, so the number is superfluous. It constitutes a hangover from the Negotiating Group draft, which listed the composition of the first Board of Governors in Annex II. Though the Working Level Meeting eliminated that provision (by assigning to the Preparatory Commission the power to designate the non-elective members of the first Board), it maintained the designation of Annex I –

- and when the numeral was (properly) omitted in Conference on the Statute document IAEA/CS/3, it was promptly restored (IAEA/CS/3/Corr. 2, paras. 1-3) for unknown reasons.
- 40 Section 3. 1.
- 41 For the debate on this Article, see IAEA/CS/OR. 34, pp.28-66;/OR. 35, pp.2-61; /OR. 36, pp. 32-33; /OR. 37, pp. 2-15.
- 42 IAEA/CS/2, Rule 28.
- 43 Statute Article XVIII. D. See Section 6.3. 1.
- 44 Proposals to that effect had been contained in reservations made by Czechoslovakia and the Soviet Union to the report of the Working Level Meeting (WLM Doc. 31, Annex IV, paras. 2 (g) and 4 (f)). See IAEA/CS/Art. XVIII/Amend. 3 (USSR); IAEA/CS/OR. 37, p. 12.
- 45 For the substantive issues see Section 8. 2. 1. 2. 2 (first paragraph).
- 46 GC (IV)/149 and /Rev. 1. and 2.
- 47 GC (IV)/RES/85.
- 48 Reproduced in GOV/686 and /Add. 1-7 (declassified - see GC(V)/151/Add. 1, para. 1).
- 49 GC (V)/151. This document was transmitted to Member Governments on 28 June 1961 by a circular letter (L/119) of the Director General.
- 50 GC (V)/RES/92.
- 51 INFCIRC/41; INFCIRC/42/Rev. 5, Part II.
- 52 For the substantive issues see Section 25. 1. 1. 1. 2.
- 53 GOV/816. The proposal was also transmitted to Member Governments on 29 May 1962 by a circular letter (L/119) of the Director General. The text appears in GC (VI)/205, Annex I.
- 54 GC (VI)/205, to which GOV/OR. 300/Add. 1, and GOV/OR. 301 were attached.
- 55 GC (VI)/221.
- 56 GC (VI)/RES/123.
- 57 GC (VII)/236 and /Add. 1. The draft amendment itself was transmitted to Member Governments on 26 June 1963 by a circular letter (L/119-1) of the Director General.
- 58 GC (VII)/COM. 2/33; GC (VII)/257; GC (VII)/RES/143.
- 59 GC (VIII)/270, para. 6.
- 60 For the substantive issues see Sections 8. 2. 1. 2. 2 (second paragraph) and 8. 2. 2. 2. 5.
- 61 GC (IX)/305. The draft amendment itself was transmitted to Member Governments on 23 June 1965 by a circular letter of the Director General.
- 62 GC (IX)/309.
- 63 GC (IX)/311; GC (IX)/DEC/5.
- 64 GC (X)/330, para. 17.
- 65 GC (VI)/INF/60, Rules 21, 69 (b), 100-103.
- 66 Section 5. 3. 2. 1.
- 67 Section 5. 3. 2. 2.
- 68 This is the procedure already foreseen by Procedural Rule 103 (GC (VII)/INF/60) for the contingency that the Conference substantially changes an amendment proposed to it.
- 69 Statute Article XVIII. A.
- 70 GC (VII)/INF/60, Rule 103.
- 71 See supra notes 49, 53, 57 and 61 for the citations of these communications.
- 72 No objection was raised to this procedure. However, as in the event the General Conference was not asked to take a decision on this amendment, there was no occasion to raise any procedural objection to its consideration.
- 73 Statute Article XVIII. C (i). The suggestion in INFCIRC/35, para. 4, that the Board also approved the amendment to Article VI. A. 3, is badly phrased.
- 74 This point was raised by the representatives of Uruguay (IAEA/CS/OR. 35, p. 51) and Pakistan (*ibid.*, pp. 57-60).
- 75 GOV/INF/60.
- 76 IAEA/PC/W. 67, para. 13 (c); IAEA/PC/OR. 60, pp. 20-22; /OR. 63, pp. 19-20.
- 77 Section 5. 3. 2. 1.
- 78 GC (IV)/OR. 46, paras. 38-43; GC (V)/OR. 55, paras. 51-83; /OR. 58, paras. 1-70.
- 79 GC (VI)/COM. 2/OR. 27, paras. 59-105; /OR. 28, paras. 1-80; /OR. 29, paras. 1-30; GC (VII)/COM. 2/OR. 33, paras. 23-47.
- 80 During the final consideration by the General Conference of the resolution approving the amendment to Article VI. A. 3, the question was raised - but not answered - as to whether the approval of a preambular

- paragraph, put to the vote separately and considered to be politically important by both its proponents and opponents, would also require a two-thirds majority under Procedural Rule 69(d) (GC(V)/OR.58, paras. 52 and 58).
- 81 Letter dated 13 October 1961 by Mr. J. O. Trevithick of the US Mission to the IAEA, to Mr. R. Gorgé of the Legal Division of the Agency.
- 82 Circular letter (L/119) dispatched by the Director General on 30 October 1961.
- 83 Circular letter (L/119) dispatched by the Director General on 22 November 1961. While several of the States that became Members during the interval between the approval of the amendment to Article VI. A. 3 by the General Conference and its entry into force failed to make use of this opportunity, Saudi Arabia on 13 December 1962 accepted the Statute and then immediately the amendment (INFCIRC/42/Rev. 5, Part I, Table 1 and Part II, Table 3).
- 84 Consequently the US State Department refused a note by which Liberia informed the Director General of its acceptance of the amendment to Article VI. A. 3, which the latter had forwarded to the depositary.
- 85 471 U. N. T. S. 334.
- 86 INFCIRC/42/Rev. 5, Part II, paras. 2 and 3.
- 87 The Agency's records actually showed only 80 members from the time that Uruguay had accepted the Statute on 22 January 1963; however, as discussed in Section 6.2.3.1, the American Government at that time tentatively considered Syria to be a Member of the Agency. Had it not counted Syria, then it should have concluded that the amendment entered into force on 31 December 1962, the date on which Ethiopia deposited the 53rd instrument of acceptance of the amendment, since on that date the Agency had 79 members (excluding Syria). INFCIRC/42/Rev. 5, Part I, Table 1 and Part II, Table 3.
- 88 It should be noted that Venezuela had accepted the amendment to Article VI. A. 3 before it came into force. Thus the contingency foreseen by its "reservation" (Section 5.1.5.4 (vii)) did not arise.
- 89 The UN Secretariat indicated that, while this practice was not required or even strictly in accord with the relevant regulations on registration, it was followed by organizations such as WHO and ILO in connection with their constitutional instruments.
- 90 INFCIRC/42/Rev. 5, Part I, para. 4(b). This point is also clearly indicated in the circulars by which the US State Department announces ratifications or acceptances of the Statute.
- 91 GC(V)/RES/92.
- 92 It should be noted that, as described in Section 8.4.10(a)(ii), a partial implementation of the amendment had been achieved by the Board from the time it was approved by the Fifth General Conference and until the enlarged Board finally took office after the Seventh Conference, by invitations to the representatives of two States from the area "Africa and the Middle East" to take part in the work of the Board "to the extent that the Statute permits" (i.e., without a vote).
- 93 Consequently, when the Agency reprinted the original text of the Statute (IAEA/CS/13) after the amendment to Article VI. A. 3, it merely altered that text rather than adding on the text of the amendment (as is done when the US Constitution is amended). The Agency's practice thus conforms to that later followed by the United Nations.
- 94 IAEA/CS/Art. XVIII/Amend. 2 and 4/Rev. 1; IAEA/CS/New Art. /1 (also referred to as "Proposed New Article XVIII").
- 95 See IAEA/CS/Art. XVIII/Amend. 4/Rev. 1 and the debate which took place simultaneously with the consideration of Article XVIII, *supra* note 41.
- 96 Section 7.3.6.
- 97 GC(V)/152, Annotation 17; GC(V)/170, para. 3; GC(V)/DEC/5.
- 98 GC(V)/188; GC(V)/182. The latter suggestion was objected to on the ground that it seemed to limit the apparently absolute right granted by the last sentence of Article XVIII. B to propose this item at any session following the fifth (GC(V)/OR. 60, paras. 32-33, 44, 54, 69, 72).
- 99 GC(V)/RES/102.

CHAPTER 6. MEMBERSHIP

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles IV; V. E. 2, 3; XVIII. D. E; XIX. B; XXI. A-F
General Conference Rules of Procedure (GC(VII)/INF/60) 95-99

6.1. ACQUISITION

6.1.1. Principle of universality

Though certain States (principally the Soviet Union) had made strenuous attempts at all stages of the formulation of the Statute to introduce the principle of "universal" (or rather "unrestricted") membership, all proposals to this effect were defeated¹ and Article IV (and XXI. A) of the Statute was formulated so as to preclude States outside the UN family from crashing the Agency through their own, unrestrained volition.² Though States were given an initial opportunity to become members by signature and ratification without any admission procedure, this possibility was only open to the relatively safe and sound States that had already been admitted to at least one UN family organization. All States not so admitted (i. e., the 7 States that could have signed the Statute but did not; the States not permitted to sign as not within the specified group; and States that came into existence later) must pass the scrutiny of both the Board and the General Conference – though in neither do they face the threat of a veto or the need to obtain more than a simple majority.

Though the States that become members by signature and ratification (Section 6.1.2) are described by the Statute as "initial members", while those that become members upon approval and deposit of an instrument of acceptance (Section 6.1.3) are called "other members", neither the Statute nor the practice of the Agency differentiates in any way between these two categories³ and indeed any discrimination would be contrary to the injunction in Article IV. C that "The Agency is based on the sovereign equality of all its members ...".

6.1.2. Initial members

Article IV. A.⁴ of the Statute provides that the "initial members" of the Agency shall be:

- (i) those members of the United Nations or of any specialized agency,
- (ii) that sign the Statute within the 90-day period it was open for signature (26 October 1956 - 24 January 1957), and
- (iii) that subsequently deposit an instrument of ratification.

Eighty-seven States fulfilled the first qualification during the indicated period – the same States that had been invited to participate in the Conference on the Statute. Eighty-one did attend the Conference, but of these three (Finland, Jordan and Saudi Arabia) did not sign while two (Laos and Luxembourg) that did not attend signed later – for a total of 80 signatories. Of these 80, all but Laos had ratified the Statute by 30 June 1968 – and thus became "initial" members though their membership may only have been perfected years after that of many "other" members.⁵

6.1.3. Other members

Article IV. B of the State provides that the "other members" of the Agency shall be those States whose membership has been recommended by the Board of Governors, then approved by the General Conference and who thereupon deposit an instrument of acceptance of the Statute. The Board in recommending and the General Conference in approving a State for membership must "determine that the State is able and willing to carry out the obligations of membership in the Agency, giving due consideration to its ability and willingness to act in accordance with the purposes and principles of the Charter of the United Nations".⁶ However, it is explicitly provided that membership in the United Nations or in any of the specialized agencies shall not be a requirement.

Applications for membership are generally addressed, by letter or cable, to the Director General. There is no uniformity about their text, though in most cases candidate States assert their ability and willingness to carry out the obligations of membership in the Agency and in some cases they refer in similar terms to the purposes and principles of the UN Charter.⁷

The Director General promptly submits to the Board any applications he receives⁸ – for consideration at the next series of meetings, unless an application is received during a session of the General Conference, in which case the Board is promptly convened to make a recommendation. The Provisional Rules of Procedure of the Board⁹ contain no special provisions regarding applications for membership. Consequently pursuant to Statute Article VI. E and Procedural Rules 36 and 37, recommendations of the Board are made by simple majority of the members present and voting. If the Board acts favourably (and up to now it has never done otherwise, or even postponed a decision), its recommendation is submitted to the next (or the current) session of the General Conference, for consideration in accordance with part XVI of the Rules of Procedure ("Admission of New Members", Rules 95-99).¹⁰

The statutory requirement that the approval by the General Conference be "upon the recommendation of the Board of Governors" is expressed in identically the same terms in which Article 4 (2) of the UN Charter expresses the analogous function of the Security Council, and thus presumably the decision of the International Court of Justice on the "Competence of the General Assembly for the Admission of a State to the United Nations"¹¹ would also apply – i. e., the Conference can only approve membership on receiving a favourable recommendation; this presumption appears to be

accepted by Conference Procedural Rule 96, which provides only that the Conference can refer a negative recommendation back to the Board – though it does not explicitly say that it may not disregard it and it does not deal with the contingency of the Board failing to make any recommendation at all. The Conference traditionally considers any applications that are submitted before the beginning of a session, at the first or second meeting, immediately after the officers have been elected and the General Committee constituted; recommendations received during a session are considered at the first subsequent Plenary. Applications for membership are never referred to a committee. A State as to which the Board has made a positive recommendation may participate in the discussion, of course without a vote.¹² Since Procedural Rule 69 does not require a two-thirds majority for decisions on this subject, therefore pursuant to Statute Article V. C. and Procedural Rule 70 approval by only a simple majority of the Members present and voting is required.

Up to now the Conference has always decided unanimously and favourably.¹³ Procedural Rule 98 of the Conference requires the Director General to inform the State concerned of the Conference's decision. Unlike in the United Nations, approval of membership does not automatically constitute the State a member, since first an instrument of acceptance must be deposited with the depositary Government. Sometimes, in order to speed the procedure whereby a newly approved State can join in the work of the Conference, arrangements have been made to inform the State's Embassy in Washington of the action of the Conference and for the US State Department to inform the Agency promptly of the deposit of the required instrument; more frequently, States have waited months and sometimes years to take this final step towards membership.¹⁴

6.1.4. Formalities

Instruments of ratification or acceptance must, pursuant to Article XXI. C of the Statute, be deposited with the depositary Government, that of the United States of America. When States have occasionally forgotten this provision and have attempted to deposit such instruments with the Director General, he has refused to accept them (even for transmission to the depositary).¹⁵ On deposit, membership is effective immediately¹⁶ (except for the States that had ratified the Statute before its entry into force).

As mentioned in Section 5.1.5, only two States have up to now attached formal reservations to an instrument of ratification and none have attached any to an instrument of acceptance. In the case of Switzerland the ratification was deposited on 5 April 1957, before the Statute had entered into force, and the depositary Government apparently accepted the reservation without any formal consultations with the other signatory States. In the case of the ratification by Argentina, which that Government first attempted to deposit on 26 June 1957, also before the entry into force of the Statute, the depositary Government refused to permit formal deposit until it had satisfied itself that all the Governments that had ratified the Statute accepted the reservation, either by direct statement or by implication.¹⁷

6. 2. SPECIAL MEMBERSHIP QUESTIONS

6. 2. 1. China

Which Government should represent China in connection with the IAEA was first discussed at the earliest possible stage, in the exchange of correspondence between the United States and the Soviet Union following immediately after President Eisenhower's General Assembly speech.¹⁸ The issue was raised again in the 9th and 10th sessions of the General Assembly, at the Working Level Meeting, and finally also at the Conference on the Statute¹⁹. In each of these fora, the issue was raised in a dual fashion:

- (a) Which Chinese Government(s) should participate in formulating the Statute;
- (b) Which Chinese Government(s) should participate in the Agency.

Though the real Soviet thrust was, in each case, directed towards substituting the representatives of the People's Republic for those of the Republic (Nationalist), when it became evident that this could not succeed it was proposed that participation be made universal (which would also have benefitted East Germany, North Korea and North Viet-Nam). These latter proposals were turned aside by the 10th General Assembly, the Working Level Meeting and the Conference on the Statute, all three considering separately the invitations to be issued to the Conference and the last two also the potential "initial" membership of the Agency as defined in Statute Article IV. A.

After the Statute was signed, inter alia, on behalf of the Government of the Republic of China, the United Kingdom formally reserved its position with respect to that signature²⁰. After China had deposited its instrument of ratification on 10 September 1957, the Governments of India, the USSR, Byelorussia and the Ukraine objected to both the signature and the ratification.²¹ Subsequently, after China on 30 July 1962 deposited its instrument of acceptance of the amendment to Article VI. A. 3 of the Statute, the Governments of Cuba, the USSR, Byelorussia, Ukraine, Albania and Bulgaria objected to that deposit; the Nationalist Government formally responded to most of these objections, and after a further round of protests the United States also issued a statement in support of the otherwise undefended Chinese.²²

In the Credentials Committee appointed by the General Conference at its first regular session, the Soviet representative pointed out that his Government did not recognize as valid the signature which the Republic of China had affixed to the Statute; he "consequently" proposed that the credentials of that Government's delegation to the Conference should not be accepted and he added that his Government would only recognize as valid credentials issued by the People's Republic²³ - a position whose logical difficulty is discussed below. The United States countered by moving that the Committee recommend to the Conference not to consider that year any proposal to change the representation of China, and this motion was accepted by the Committee and then the Conference;²⁴ an important argument was that the Agency should in this matter merely follow the lead of the UN General Assembly.²⁵

With minor variations, this pattern of consideration has been repeated in each annual Conference, in a formalized exercise whose futile details are recited in Section 7. 3. 5. 4.²⁶

While superficially the situation with regard to China appears to be similar in the Agency to that in the United Nations and most of the specialized agencies, actually there is a marked legal difference. China is undoubtedly a member of the United Nations. The only question is which Government should represent it, or, alternatively, if the existence of two Chinas is accepted, then which China is the one now in the United Nations (and is that State properly represented). The general line of the majority in each IAEA Credentials Committee and in each General Conference has been that the Agency will follow any decision taken on the subject by the General Assembly, the senior political organ of the United Nations family.²⁷ While this approach causes no difficulties as long as the Assembly takes no action, should any change be introduced by that organ, certain legal problems will arise for the Agency in imitating such a lead, since the legal status of China in the Agency is conditioned by the fact that the signature and ratification of the IAEA Statute on behalf of that State occurred long after the Chinese Government that had signed and accepted the UN Charter had been displaced on the mainland of Asia by that of the People's Republic.

Should the United Nations decide that China (i. e. the State mentioned in Articles 23 (1) and 110 (3) of the Charter) is from a certain date on to be represented by the Government of the People's Republic — whether or not it at the same time takes steps to admit Formosa as a separate State — the question is whether the Agency could logically and legally take identically the same action. Inviting the Government of the People's Republic to send representatives to the Agency would require that Government to accept the 1956 signature and the 1957 ratification of the Statute which had been accomplished on behalf of China by the Nationalist Government nearly a decade after the change in the Government of mainland China — transactions which the supporters of the claims of the People's Republic had all along declared to be illegal. Apparently the only solution to this difficulty would be to admit "China" as a member in accordance with Article IV. B of the Statute. With respect to Formosa, if the United Nations should take no action to admit it as a separate State (thus in effect excluding it), then the analogous effect would be achieved in the Agency by declaring the seat up to now occupied by China as vacant, on the dubious ground that its signature and ratification had been defective (necessarily ab initio); this would leave Formosa with no standing except the right to apply for membership. Should the United Nations admit Formosa to a new membership, then the procedurally simplest, though politically probably difficult, device for the Agency would be to have China's existing membership (which, unlike in the United Nations, carried no special privileges)²⁸ continue in Formosa, and to admit the mainland as a new State; the alternative is to vacate the existing "initial" membership and to admit both Chinas simultaneously as new "other members".

In connection with the previous considerations it should be noted that China's assessed contribution to the Regular (administrative) Budget of the Agency has always approximated 4%, an amount out of line if the resources of that State are considered to consist only of those of Formosa;²⁹ this of

course is attributable to the fact that the Agency's scale of contributions is, pursuant to Statute Article XIV. D, based on that of the United Nations. On the other hand, the Agency's assistance to China, as well as the safeguards exercised by the Agency in China, have of course only extended to Formosa, since both assistance and safeguards require a request and agreement by the Government³⁰ – and obviously the Nationalist Government has never made a request for assistance to be rendered to the mainland.

6. 2. 2. West Berlin

Almost a year after the Federal Republic of Germany became an initial member of the Agency (without any objection from any signatory of the Statute),³¹ the German Government declared on 10 June 1958, in a note addressed to the depositary Government, that "the Statute of the International Atomic Energy Agency also applies to Berlin (West)",³² The depositary circulated this note to all Governments concerned with the Statute. Subsequently the Soviet Union informed the depositary Government that it could not accept this declaration "both because of the present international status of Berlin and the fact that West Berlin is not part of the FRG and therefore the latter is not competent to extend the scope of international agreements to West Berlin". The American Government answered in a long note reciting the development of the legal status of Berlin and concluded that "the application of this Statute in Berlin is entirely compatible with the present international status of Berlin". In this conclusion it was supported by the British Government. Subsequently the Governments of Poland, Hungary, Byelorussia, the Ukraine, Bulgaria, Albania, Romania and Czechoslovakia objected in various terms to the German declaration.³³ In effect, neither the German declaration nor the objections to it have as yet had any practical consequences in the Agency, since no Agency activities have taken place in or been directly associated with Berlin.

Again, almost a year after the German Government had deposited its instrument of acceptance of the amendment to Article VI. A. 3 of the Statute, it declared on 26 March 1964 in a note to the depositary Government that "the Amendment to the Statute of the International Atomic Energy Agency approved on October 4, 1961, has the same application with respect to Berlin as the Statute itself".³⁴ This statement resulted in an even longer trail of objections and arguments than the one that had related to the Statute itself.³⁵ It is, however, not clear what possible legal effect this statement could have, even if it had been made before the amendment entered into force; Germany's acceptance was in any case counted as one of the number required to make up the two-thirds of the total membership provided for in Statute Article XVIII. C(ii), and this count would neither have been reduced if no declaration had been made with respect to Berlin nor could it be increased as a result of that instrument. The nature of the amendment (enlargement of the Board) was such as to preclude the possibility of it not applying to Berlin, even if the territorially selective application of statutory amendments were permissible. Therefore the only possible legal effect is to prevent the withdrawal of Berlin from the Agency on the ground of its unwillingness to accept the amendment (as allowed by Statute Article XVIII. D), assuming that such a step would be open to it.

6.2.3. State succession

6.2.3.1. Egypt and Syria; the United Arab Republic and the Syrian Arab Republic

Both Egypt and Syria signed the Statute on 26 October 1956 and thus became eligible to become initial members by ratification. On 4 September 1957 Egypt deposited an instrument of ratification.

On 6 March 1958 the Governor from Egypt on the Board informed the Director General that "... as a result of the plebiscite which was held on 21 February 1958, both in Egypt and Syria, the Egyptian and Syrian peoples have chosen to be united in one state: the 'United Arab Republic'. Consequently the United Arab Republic becomes the official member of the International Atomic Energy Agency"³⁶ The Director General transmitted copies of this communication to all Members on 31 March 1958. On 4 November 1959 the UAR Embassy in Washington stated, in a reply to an enquiry from the US Department of State, that the Statute also applied to the Syrian Region of the UAR from 6 March 1958, the date on which the Agency had officially been informed of the union. Though this exchange was not communicated to the Agency, the contribution assessed on the UAR with respect to the Regular Budget was raised to a percentage corresponding to the former contributions of Egypt and Syria on the UN scale.³⁷

The "Syrian Arab Republic" split away from the United Arab Republic on 30 September 1961. Though this occurred during the fifth regular session of the General Conference, that body was not asked to, nor did it, take any note of this event (e.g., by altering the scale of contributions³⁸). On 13 October, the UN General Assembly, without objection, restored the SAR to the status of an original member of the United Nations,³⁹ and on 11 November the US State Department asked the Syrian Embassy in Washington whether the SAR considered itself as a member of the IAEA after regaining its independence. On 24 July 1962 the Syrian Ambassador in Bern addressed a letter to the Chairman of the IAEA Board, informally enquiring about the status of Syria's membership in the Agency and eliciting an informal answer by the Secretariat.⁴⁰ On 18 October the Syrian Ambassador addressed a formal letter to the Director General, in which he recited the previous exchange of communications between the UAR, the SAR and the depositary Government, and now asserted that consequent on the actions taken by the UAR during the period of the union (the letters of 6 March 1958 and 4 November 1959), and on SAR Decree-Law No. 25 of 13 June 1962 (declaring the State legally bound by all engagements entered into by the UAR in its name during the period of the union), the Egyptian ratification of the Statute had validly been extended to Syria and thus the Syrian Arab Republic remained a Member of the Agency even after regaining its independence. The depositary Government was informed of this communication and thereupon concluded that it would consider the SAR to be a Member State unless it should withdraw its claim. However, no steps were taken to inform the Members of the Agency of the status of Syria and on 18 February 1963 the Agency was informally informed that the State was withdrawing its claim to derivative membership. On 6 June 1963 an instrument of ratification was deposited for the Syrian

Arab Republic, and the membership of that State in the Agency has been listed from that date.⁴¹

Whatever legal conclusions may be drawn from the aborted Syrian attempt to gain semi-derivative membership in the Agency from its period of union in the United Arab Republic, the subsequent unchallenged acceptance of its instrument of ratification indicates that its status as a potential initial member of the Agency was unaffected by the interlude during which its national identity was merged with that of Egypt.

6.2.3.2. Federation of Mali; Senegal and Mali

On 25 July 1960 an application for membership was received from the Federation of Mali. It was communicated to the Board on 8 August.

On 20 August 1960 the Republic of Senegal withdrew from the Mali Federation and proclaimed its independence. By letters and cables of 10 and 14 September the President of Senegal informed the Agency of this withdrawal and submitted a separate application for membership which was transmitted to the Board on 21 September.

On 28 September the Director General cabled the President of the Republic of Mali to ask whether his Government wished to reaffirm the application that had previously been submitted in the name of the Federation. On 29 September the Republic of Mali submitted a new application which was communicated to the Board on 30 September. Both the Senegalese and the Malian applications were approved by the Board on 30 September⁴² and by the General Conference on 1 October.⁴³ No action was ever taken on the Federation's application, since neither of its former members attempted to rely on it.

6.2.3.3. Congo (Léopoldville)

On 4 September 1961 the Director General received a cable from the Foreign Minister of the (now Democratic Republic of the) Congo (Léopoldville) in which he recalled that the Statute was signed "by Belgium for the Congo on 20 October 1956 and was approved for the Congo by the law of 22 April 1958⁴⁴ which is still in force"; he concluded that in similar situations other international organizations had merely required his Government to submit an instrument declaring the continuance of Congolese membership and inquired whether this would be enough for the Agency. The Director General responded immediately by asking that the Congo submit a regular application for membership which would have to be presented to the Board of Governors and the General Conference before an instrument of ratification (sic) could be deposited. On 7 September the Congolese Government cabled an application for membership along the lines suggested by the Director General, which was thereupon promptly recommended by the Board and approved by the General Conference on 26 September.⁴⁵

Thus the Congo was not permitted to inherit any status (either as a Member or even as signatory) from its mother country. No other former colony made any formal attempt to do so.

6. 2. 4. Other changes in name or identity

From time to time States have informed the Agency of certain changes in their governmental structure and have sometimes requested the Agency to make a corresponding change in the name by which they are referred to in Agency documents. This occurred when Czechoslovakia adopted a new constitution and name as the Czechoslovak Socialist Republic.⁴⁶ Similarly the Union of South Africa became the Republic of South Africa pursuant to the "Republic of South Africa Constitution Act" on 25 April 1961.⁴⁷ Congo (Léopoldville) became the Democratic Republic of the Congo.⁴⁸ The Director General has found no difficulty in complying with these requests, which occasionally he has communicated to all members of the Board or of the Agency for information.

However, in the case of the Vatican a change in name was recorded which did not reflect any constitutional change but merely the desire of the Government concerned. The invitation to attend the Conference on the Statute had been addressed to the Government of the Vatican City (under which name that State was then participating in several specialized agencies), and the Statute had been signed for it under that designation.⁴⁹ Though the instrument of ratification was deposited in the name of the Holy See, the depositary Government in its circular note to Governments referred to the deposit by the "Vatican City".⁵⁰ That designation was consequently used by the Agency until 7 January 1960. On that date the Director General informed all Members of a notification by the representative of the Vatican Government of the latter's desire to be called "the Holy See". The Director General indicated that "in the light of this request from the Member State concerned" he would henceforth use the desired designation.⁵¹ This decision was actually taken after consultations with the Missions in Vienna had established that there were not likely to be any serious objections to this change, and after the Secretariat had concluded that it would be inappropriate for it to draw any conclusions of its own from the nature of the constitutional relationship between the Vatican City and the Holy See foreseen in its Constitution and in the Lateran Treaty with Italy.⁵²

6. 3. LOSS

6. 3. 1. Statutory provisions

Article XVIII, D of the Statute provides that any State may withdraw from the Agency by notice in writing given to the depositary Government "At any time after five years from the date when this Statute shall take effect in accordance with paragraph E of Article XXI or whenever a member is unwilling to accept an amendment to this Statute". Thus two possibilities for withdrawal are given.

It should be noted that the five-year provision is slightly ambiguous (because of the two separate provisions contained in the two sentences of Article XXI, E) and might thus be interpreted to mean either that a Member might withdraw at any time five years after the Statute entered into force,

or only after the Statute had been in effect with respect to that Member for five years. At the Conference on the Statute, the deletion of the word "initially" from before the words "take effect" was suggested by Israel, not in order to support the second interpretation, but apparently because the first one was considered self-evident.⁵³ If this is accepted, then as of 29 July 1962 any Member may withdraw from the Agency without having to state any reason; however, even under the more restrictive interpretation 91 of the Agency's Members could withdraw without further ado as of 30 June 1970.

Article XVIII. E specifies that even by withdrawing from membership, a State cannot denounce its contractual obligations to the Agency with respect to projects — e. g. , it cannot escape any safeguards controls it agreed to on receiving assistance from the Agency.⁵⁴ Though withdrawal is otherwise immediately effective, any assessed contributions due for the year of withdrawal (and presumably any past due ones from previous years) must be paid.

Article XIX. B permits the General Conference, acting by a two-thirds majority and upon the recommendation of the Board (which presumably means that a positive recommendation is required as for the approval of membership applications), to suspend the privileges and rights of a Member that has "persistently violated" the Statute or agreements concluded pursuant thereto.⁵⁵ There is no provision for expelling a Member — though continued suspension of privileges and rights would presumably induce a State to withdraw since its obligations (e. g. , the payment of assessed contributions) would be continuing.

6.3.2. Practice

On 22 May 1967⁵⁶ the Permanent Representative of Honduras (which had been one of the first States to ratify the Statute — on 9 July 1957) to the Agency wrote the Ambassador of the United States to Austria that:

"... Honduras has decided to withdraw from the International Atomic Energy Agency".

On 21 July the Alternate to the US Governor wrote the Chairman of the Board of Governors that:

"... the United States Government has accepted the notification of the withdrawal of the Government of Honduras from the International Atomic Energy Agency. This withdrawal is effective June 19, 1967, the date of receipt of the Honduran withdrawal note ... by the Department of State in Washington".⁵⁷

Pursuant to the request of the depositary Government expressed in the same note, these letters were communicated by the Chairman to the members of the Board on 9 August 1967, in accordance with Statute Article XVIII. D; meanwhile the United States complied with the other part of this requirement by addressing a circular letter to all Members of the Agency on 21 July. No special communication was made to the General Conference. The Agency has treated the Honduran membership as lapsed as of 19 June 1967.⁵⁸

No other Member of the Agency has withdrawn or even indicated a desire to do so. No action has been taken to suspend the privileges and rights of any Member.⁵⁹

As recited in Section 5.1.5.4(vi), the United States attached a "statement" to its ratification of the Statute, in which it recalled that the Senate's advice and consent had been conditioned on the "interpretation and understanding" that the United States would withdraw from the Agency if an amendment to the Statute were adopted which the Senate had refused. As the legal effect of this statement was discussed in Chapter 5, it is mentioned here only as the sole example of a State giving advance notice of a possible reliance on Article XVIII, D.

NOTES

- 1 The first, indirect effort was to invite "all . . . States" to the First Geneva Conference (Section 12.2.4.1(a)) (UN docs. A/C.1/L.106/Rev.1, para. 2 and A/2805, paras. 6, 8(ii), 12 - both reprinted in UNGA Off. Rec. (9th sess.), Annexes, Agenda Item No. 67, pp. 21-23(1954)). Then, with direct reference to the Agency, universality was proposed in the notes that the Soviet Union addressed to the United States on 18 July 1955 (para. 2(1)) and 1 October 1955 (para. 2) (both of which are reproduced in US State Dep't Press Release 527 (Oct. 6, 1956), pp. 11, 22). The matter was then raised at the 10th General Assembly, in connection with the invitations to be issued to the Conference on the Statute (Section 2.6(c); UN docs. A/C.1/L.136, para. 2 and A/3008, paras. 17, 21 - both reprinted in UNGA Off. Rec. (10th sess.), Annexes, Agenda Item No. 18, pp. 8, 12-13(1955)). At the Working Level Meeting the question of universality was raised both directly, in connection with Article IV of the draft Statute - where the 9 : 2 : 1 vote in favour of the restrictive formula provoked two reservations to the draft (WLM Doc. 31, Annex IV, paras. 2(b) (Czechoslovakia) and 4(b) (USSR)), and with the invitations to the Conference on the Statute (Section 2.7.3; WLM Doc. 30 and WLM Doc. 31, para. 6). At the Conference on the Statute this issue again had a dual aspect: participation in the Conference itself was debated twice, each time focused principally on the representation of China (Section 2.8.1; IAEA/CS/OR.1, pp. 16-57; /OR. 25, pp. 2-53), and in connection with draft Articles IV. A (IAEA/CS/Art. IV/Amend. 1 and 3; IAEA/CS/OR. 17, pp. 26-61; /OR. 18, pp. 2-19; /OR. 22, pp. 32-36) and XXI. A (IAEA/CS/Art. XXI/Amend. 1; /OR. 35, p. 81). This issue is discussed at some length by Stoessinger, op. cit. Annex 5, No. 60, pp. 125-28.
- 2 Even after the principle of universality was excluded from the Statute, proposals tending in that direction have been raised (up to now always unsuccessfully) in many contexts: Credentials debates in the General Conference (e.g., GC(XII)/OR. 125, para. 36); Participation of Non-members in the General Conference, which was discussed during the formulation of its Rules of Procedure (Provisional Rules: GC.1/OR. 2, para. 7; GC.1/15; GC.1/OR. 2, para. 46; Permanent Rules: GC.1(S)/COM. 2/4/Add. 1; GC.1(S)/COM. 2/OR. 4, para. 57; GC.1(S)/27; GC.1(S)/OR. 13, para. 4) in connection with several independent proposals to that effect (GC.1(S)/COM. 2/8, para. 1; GC.1(S)/COM. 2/OR. 5, para. 38; GC.1(S)/28; GC.1(S)/OR. 12, para. 37; and GC(II)/OR. 15, paras. 1-14) and even in the formulation of the provisions of the Headquarters Agreement relating to the transit rights of the representatives of Non-member States (IAEA/PC/OR. 58, pp. 11-15); The "right" of States to make voluntary contributions to the Agency (Sections 13.3.3, 25.5.1.2(a) and (A); INFCIRC/13, Part I, para. 1(b)); in connection with the Vienna Convention on Civil Liability for Nuclear Damage, the question was raised in the Board of Governors when deciding on the States to invite to the Diplomatic Conference to formulate the Convention (Section 23.1.4), in the Conference itself in relation to the right of participation (ibid.), and finally in the Conference in deciding on the States to which the Convention should be open for accession (Art. XXIV.1 of the Convention - see Official Records of the Conference (Legal Series No. 2, IAEA, Vienna (1964)), 22nd Meeting of the Committee of the Whole, paras. 58-77; 7th Meeting of the Plenary, paras. 85-89).
- 3 Moreover, as appears from the procedure followed in accepting the Argentine reservation to the Statute (Section 5.1.5.3(v)), the depositary Government has not, since the entry into force of the Statute, inquired as to objections that a non-ratifying signatory might have to a reservation offered by another State - thus before ratification a signatory is in the same position as a State approved for membership before it deposits its acceptance.

- 4 Also IAEA Statute Article XXI. A and B.
- 5 For lists of the States in the above-mentioned categories, see INFCIRC/42/Rev.5, Part I, Table 1.
- 6 For some reason (evidently a fumble by the Secretariat in 1960 in preparing the papers with respect to the Agency's second candidate for admission, Ghana – and faithfully copied for many years), the Board's unvarying, standard recommendation to the General Conference until the 11th regular session only referred to the favourable determination regarding the candidate's attitude towards the UN Charter (to which it may not yet have been a party) and failed to pass any explicit judgement on the candidate's promises regarding the Agency (see, e. g., the recommendation relating to Sierra Leone, GC(X)/345, para. 2). This oversight has been corrected in respect of later applications (e. g., that of Malaysia, GC(XI)/365, para. 2).
- 7 The texts of the applications are communicated to the Board, and are later reproduced in the relevant General Conference document (e. g., GC(XI)/365, para. 1).
- 8 However, if he considers the application defective in some way, he may first endeavor to have the State perfect it. Thus Malaysia's application, which was contained in a note verbale dated 3 May 1967, was not submitted to the Board until the receipt of a cable dated 19 September 1967 in which the Government accepted "responsibility and obligations imposed on it by Statute" (GC(XI)/365, para. 1). Presumably, however, a State could insist on submission to the Board of any application it makes.
- 9 GOV/INF/60 and /Mod. 2.
- 10 GC (VII)/INF/60.
- 11 Advisory Opinion, ICJ Reports 1950, p.4.
- 12 Procedural Rule 95 (GC(VII)/INF/60).
- 13 Board recommendations and General Conference approvals are tabulated in INFCIRC/42/Rev.5, Part I, Table 2.
- 14 If formal acceptance cannot be arranged in time to allow participation in the current session of the General Conference, then a delay until the beginning of the next calendar (and Agency fiscal) year is understandable, for otherwise the State will be required to pay assessed contributions in full for the current fiscal year (see Section 25.3.3.1.1).
- 15 The US State Department would probably not accept such a mediated deposit; at least it has refused to accept in this way the Liberian acceptance of the amendment to Article VI. A.3 of the Statute, of which the United States is also the depositary (Section 5.3.3.6, footnote 84). A fortiori, a mere cable informing the Director General that a State's legislature has approved the Statute is not sufficient for membership (GC(IV)/COM.2/OR.18, para. 1).
- 16 Statute Article XXI. E (final sentence). As to membership acquired on the basis of General Conference approval, this is quite unnecessarily reaffirmed by Conference Procedural Rule 99.
- 17 INFCIRC/42/Rev.5, Part I, para. 5(c).
- 18 Section 2.2.1(a). See Soviet aide-mémoire of 13 February 1954, para. 1; American letter of 16 February 1954; Soviet memorandum of 10 March 1954 – all reproduced in UN doc. A/2738 (Nos. 4, 5, 7), reprinted in UNGA Off. Rec. (9th sess.), Annexes, Agenda Item No. 67, p. 4.
- 19 See supra note 1. The question of "universality" has always largely referred to the participation of the People's Republic of China.
- 20 276 U. N. T. S. 124; INFCIRC/42/Rev.5, Part I, para. 6(a).
- 21 INFCIRC/42/Rev.5, Part I, para. 7. The depositary did not register with the United Nations any of this correspondence.
- 22 INFCIRC/42/Rev.5, Part II, para. 2. The depositary did not register with the United Nations any of this correspondence.
- 23 GC.1/14, para. 3. See also GC.1/OR.3, paras. 9-10.
- 24 GC.1/14, para. 4; GC.1/RES/1.
- 25 GC.1/OR.3, para. 33.
- 26 Aside from the context of credentials, this question has sometimes been raised during the general debate – at least once violently enough to require suspension of the meeting (see GC (XIII)/OR.130, para. 87, together with C/XIII/7).
- 27 This position is in line with UNGA/RES/396(V) (1950).
- 28 The People's Republic of China might, however, claim the Board seat now occupied by Japan on the basis of the annual determination of the "member most advanced in the technology of atomic energy including the production of source materials" in the area of the "Far East" (Statute Article VI. A.1; Section 8.2.2.1.2.2), or possibly even one of the 5 (presumably the Canadian) "most advanced [in the world] seats (Section 8.2.2.1.2.1).

- 29 For example, the scale for 1968 (GC(XI)/RES/229, para. 1) – China: 3.82%. See Section 25.3.3.2.2.
30 Section 13.1.
- 31 Although the Government of the German Democratic Republic addressed a letter of greetings to the Conference on the Statute (IAEA/CS/INF/3), and has since several times hinted its desire to become a member of the Agency (e.g., GC(X)/INF/91; GC(XIII)/INF/116), it has never applied. Its allies have from time to time expressed regret at its absence (e.g., USSR: GC(XI)/375 para. 3; GC(XII)/OR. 125, para. 37; GC(XIII)/OR. 133, paras. 52-54 – answered by the USA, id. para. 55) and have violently contested the Western assertion that the Federal Republic of Germany has the sole right to represent the German people in international affairs (e.g., GC(XII)/INF/107 and GC(XIII)/INF/108; GC(XIII)/INF/117 and /118).
- 32 312 U.N.T.S. 427; INFCIRC/42/Rev.5, Part I, para. 8(a). See also C.D. Lush, "The Relationship between Berlin and the Federal Republic of Germany", Int. & Comp. L.Q. Vol. 14, pp. 742 et seq., at p. 777 (July 1965).
- 33 INFCIRC/42/Rev.5, Part I, para. 8(b)-(k). Some of these were registered by the depositary and appear in 312 U.N.T.S. 427 and 356 U.N.T.S. 378, 380.
- 34 522 U.N.T.S. 342; INFCIRC/42/Rev.5, Part II, para. 3(a).
- 35 Ibid., para. 3(b)-(o). The depositary did not register any of this correspondence.
- 36 INFCIRC/42/Rev.5, Part I, para. 1(e)(i).
- 37 GC(II)/52, para. 6(a). See Section 25.3.3.2.3.
- 38 Thus the United Arab Republic was not relieved of its contribution in respect of its former Syrian region until the scale for 1963 went into effect (GC(VI)/201, para. 3(b)). See Section 25.3.3.2.3.
- 39 UN docs. A/PV.1035, paras. 1-7 and A/PV.1036, paras. 48-49.
- 40 Letter by Mr. R. Gorgé, Acting Deputy Director General for Administration, Liaison and Secretariat, dated 1 August 1962.
- 41 471 U.N.T.S. 333; INFCIRC/42/Rev.5, Part I, para. 1(e)(ii). It is, however, interesting to note the one public though subtle result of the ambiguous attitude of the depositary Government towards Syrian membership before it received the instrument of ratification in June 1963: In determining that the amendment to Article VI. A.3 of the Statute had entered into force on 31 January 1963 on the deposit of the 54th instrument of acceptance on behalf of Spain, instead of on 31 December 1962 upon the deposit of the 53rd instrument by Ethiopia, the US State Department must have counted the SAR as a member, since otherwise the two-thirds requirement would have been fulfilled on the deposit of the 53rd acceptance (when the Agency had 79 members – not counting Syria) – Section 5.3.3.7 and note 87 thereto.
- 42 GC(IV)/146 and 147.
- 43 GC(IV)/RES/83 and 84.
- 44 It is not clear what law the Foreign Minister meant, though Belgium's own ratification was approved by a law of 22 April 1958 (Moniteur belge, 20 September 1958); that law, however, did not extend to the Belgian Congo. The Statute was published in the Bulletin Officiel du Congo Belge, 1958, p.2121, but the legal purpose and effect of that publication is unclear.
- 45 GC(V)/166; GC(V)/RES/88.
- 46 INFCIRC/42/Rev.5, Part I, para. 1(b).
- 47 Ibid., para.1(d).
- 48 Ibid., para. 1(a).
- 49 IAEA/CS/INF/1/Rev.1 and IAEA/CS/OR.40, pp.14-15; 276 U.N.T.S.120.
- 50 Circular of 20 September 1957.
- 51 INFCIRC/42/Rev.5, Part I, para. 1(c).
- 52 Peaslee, Constitutions of Nations, Vol. III, pp.668-74, 677-99 (2nd ed. 1956).
- 53 Though the word "initially" was actually deleted at the Conference, it is not clear on whose authority this was done. The Israeli proposal (IAEA/CS/OR.35, pp.23-25) was referred to the Co-ordination Committee (IAEA/CS/COORD/2/Add.1, para.23), but the Committee evidently rejected the suggestion (though without any comment) since the word still appeared in the draft Statute it reported to the Conference (IAEA/CS/10), which the latter then approved. However, the word is missing from the signed, authentic text of the Statute (reproduced in IAEA/CS/13). In support of the first (more liberal) interpretation it should be noted that the first sentence of Statute Article IX.F. indicates that when the statutory drafters wished to refer to entry into force with respect to a particular Member, they knew how to do so clearly.
- 54 Sections 21.5.4.14 and 21.6.2.3.3.5.
- 55 Sections 13.1.13.
- 56 This formal communication with the depositary Government was preceded and followed by others made directly to the Agency (on 20 April 1967 by the Permanent Representative and on 12 June 1967 by the

- Foreign Minister) explaining that the withdrawal had been decided on regretfully and only for economic reasons. (N. B. Honduras had last paid any part of its assessed contribution in 1961 – GC(XI)/366, Annex B.)
- 57 INFCIRC/42/Rev.4, Part I, para.9.
- 58 See, e. g., GC(XI)/366, Annex B, footnote a. Arrangements are being made for the liquidation of Honduras' outstanding obligations for assessed contributions for the years 1961-67.
- 59 While no suspension action has been taken under Statute Article XIX. B, a number of States have from time to time automatically lost their franchise in the Agency pursuant to Article XIX. A due to continued non-payment of their assessed contributions (Section 25.3.5.3).

CHAPTER 7. THE GENERAL CONFERENCE

PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Article V, but also IV.B; VI. A.3; VII. A,E; XIV. A,D, F-H; XVI.A; XVII.A; XVIII.B, C(i); XIX

General Conference Rules of Procedure (GC(VII/INF/60))

7.1. DEVELOPMENT

Unlike the General Assembly, which is the central and in practice the dominant organ of the United Nations, the General Conference of the IAEA was created almost as an afterthought. The initial United States Sketch of the Statute contained no provision at all for such an organ, though probably it was not intended that no such organ need be established at all.

The General Conference therefore first made its appearance in the Negotiating Committee draft. However, it was to have only most limited powers and functions. In addition to the right to consider the annual report of the Board of Governors and to make recommendations to that organ, the Conference was assigned only a few narrowly circumscribed functions, each of which (with the exception of the right to elect six out of sixteen – 38% of the – members of the Board) consisted in effect only of the approval of recommendations or proposals by the Board as to:

- (a) The admission of new Members;
- (b) The suspension of the privileges and rights of membership;
- (c) The annual budget;
- (d) The reports to be submitted to the United Nations;
- (e) Relationship agreements to be concluded with other organizations.

These considerable limitations on the functions of the one generally representative organ of the Agency were the object of much of the criticism that was directed at this draft at the 10th General Assembly and in the written comments that were later submitted to the United States. Similarly many of the amendments proposed in the Working Level Meeting were addressed to this point. That organ proposed in its draft that the General Conference be strengthened by giving it authority:

- (i) To approve rules and limitations on the borrowing power of the Board;
- (ii) To approve, co-equally with the Board, amendments to the Statute;
- (iii) To propose matters for consideration by the Board and to request reports on any matter relating to the functions of the Agency;
- (iv) To elect 10 out of 23 (44% of the) members of the Board;
- (v) To approve general rules relating to the Staff Regulations of the Agency.

These additions of course did not greatly strengthen the Conference and left the powers of the Board almost unimpaired. This is not surprising since all the countries represented at the Working Level Meeting had assured themselves of at least a semi-permanent place on the Board and consequently were interested in maintaining the relative strength of that organ.

As a consequence, the relatively puny nature of the General Conference was again one of the main subjects of criticism in the next general forum, the Conference on the Statute. This subject was extensively raised in the general debate and a number of amendments, both to Article V and also to other provisions, were designed to strengthen the General Conference.¹ The sponsoring Governments evidently felt that on this issue they could not hold their otherwise rather rigid line, for they yielded on a number of points. Thus the General Conference was granted the following additional powers:

- (A) To approve the appointment of the Director General;
- (B) To approve rules regarding the acceptance of voluntary contributions;
- (C) To approve the manner in which the General Fund might be used;
- (D) To discuss any matter within the scope of the Statute, and to make recommendations directly to the membership;
- (E) To undertake general reviews of the Statute;
- (F) To approve amendments to the Statute without the concurrence of the Board.

7.2. FUNCTIONS AND POWERS

The General Conference, as finally constituted by the Statute and developed by a decade of practice, still has only rather circumscribed functions and powers. These may be classified as follows:

7.2.1. Statutory

The Statute assigns the Conference only relatively few specific powers that it can exercise independently (i. e., without having to follow a recommendation) of the Board:

- (a) Election of some members of the Board (Articles V. E. 1 and VI. A. 3);
- (b) Consideration of the Board's annual report (Articles V. E. 4 and VI. J);
- (c) Approval of amendments to the Statute (Articles V. E. 9 and XVIII. C(i));
- (d) Request of advisory opinions from the International Court of Justice (Article XVII. B);
- (e) Fixing the scale of assessed contributions (Article XIV. D);
- (f) Restoration of a member's right to vote in spite of non-payment of assessed contributions (Article XIX. A);
- (g) Carrying out general reviews of the Statute (Article XVIII. B);
- (h) Organization of the Conference itself; decision that a particular session of the Conference shall meet away from Headquarters (Article V. C); adoption of Rules of Procedure and determining what decisions, in ad-

dition to those specified in the Statute, are to be taken by a two-thirds vote (Article V. C).

Most of the specific powers of the Conference are to be exercised upon recommendation by the Board:

- (i) Approval of States for membership (Articles IV. B and V. E. 2);
- (ii) Suspension of a State from the privileges and rights of membership (Articles V. E. 3 and XIX. B);
- (iii) Approval of the budget (Articles V. E. 5 and XIV. A);
- (iv) Approval of the reports to be submitted to the United Nations (Articles V. E. 6 and VI. J);²
- (v) Approval of relationship agreements with international organizations (Article V. E. 7 and XVI. A);
- (vi) Approval of the appointment of the Director General (Articles V. E. 10 and VII. A);
- (vii) Approval of general rules relating to the Staff Regulations (Article VII. E);
- (viii) Approval of rules and limitations on the borrowing power of the Board (Articles V. E. 8 and XIV. G);³
- (ix) Approval of rules regarding the acceptance of voluntary contributions (Articles V. E. 8 and XIV. G);³
- (x) Approval of the manner in which the General Fund may be used (Articles V. E. 8 and XIV. F).³

In addition to these specific functions and powers, the Statute also assigns certain general ones to the Conference:

- (A) To discuss any question or matter within the scope of the Statute or relating to the powers and functions of any of the statutory organs (Article V. D);
- (B) To make recommendations to the membership (but apparently not to individual members) and to the Board (Article V. D);
- (C) To propose matters for consideration by the Board (Article V. F. 2);
- (D) To request the Board to submit reports (Article V. F. 2);
- (E) To take decisions on any matter specifically referred to the Conference by the Board for this purpose (Article V. F. 1).

Though this list may appear long, its very length supports the thesis that the powers of the General Conference are severely limited; only the absence of any substantial plenary grants to the Conference makes this almost indecently detailed listing necessary. An examination of the above-mentioned powers confirms this estimate. The only non-specific powers that the Conference may exercise independently of the Board are to discuss, to recommend or to request reports. The powers of the Conference to take actual decisions are generally restricted to: questions of its internal organization; the approval of specific proposals submitted to it by the Board (the Conference can at most recommend changes); decisions on questions specifically referred to it by the Board. In only very limited matters (e.g., election of members of the Board; approval of amendments to the Statute)

can it make any independent disposition, and most of these powers are circumscribed by numerous statutory restrictions.

In practice, when the Conference takes action it only rarely indicates what the relevant statutory basis is. In many cases of course the specific source of its authority is obvious: e.g., in elections to the Board or the approval of the budget. However, when exercising its general powers under Articles V.D and V.F.2, it is often impossible to determine whether the Conference is making a recommendation to the Board, or is proposing a matter for its consideration, or is exercising its right to request a report. Actually of course this rarely makes any difference for the Board will generally comply with any request to make a study or a report, and in any case it can never be obliged to take any action under either of these Articles (though perhaps it is required to respond to requests for reports).

In spite of a certain formal vagueness in this area, it should be recognized that the Conference's principal direct influence on the course of the activities of the Agency is exerted precisely through the resolutions that it adopts under its general authority, rather than in exercising its specific powers and functions. As will be shown in later Chapters, the Conference has several times successfully pressed the Board to undertake programmes for which neither its members nor the Secretariat had demonstrated much enthusiasm.⁴ For, ultimately, the Conference has the undoubted political (some might say: moral) authority as the organ in which all Members are represented — and this is backed by the (albeit restricted) power of the purse, since it must approve each annual budget by a two-thirds majority.

7.2.2. Additional authority

An examination of the resolutions and decisions of the General Conference discloses that a number of these are not based directly on any statutory provision but evidently derive from other sources. Though most of these actions are only of minor import, it is worthwhile noting that these sources include:

- (a) The Rules of Procedure of the Conference, according to which it:
 - (i) Appoints various committees (e.g., Credentials Committee — Rule 28; General Committee — Rule 40);⁵
 - (ii) Approves credentials (Rules 28 and 29);
 - (iii) Approves its agenda and allocates items to its committees (Rules 18, 42(b) and 47);
 - (iv) Establishes a closing date for its session (Rule 42(b));
 - (v) Establishes an opening date for the next regular session (Rule 1);
 - (vi) Authorizes the Board to invite certain types of organizations to be represented at the next regular session (which in effect constitutes a suspension or extension, pursuant to Rule 105, of Rule 32(a)).⁶
- (b) Previous Conference Resolutions, such as the one by which it established the Working Capital Fund and which requires an annual decision on the uses to which the Fund may be put during the next fiscal year.⁷

- (c) International agreements to which the Agency is a party (even if these were not among those submitted to the Conference for approval), such as the agreement admitting the Agency to UNJSPF, according to whose Regulations the Conference elects certain members of the Staff Pension Committee – and incidentally determines how many members the Committee shall have.⁸
- (d) Referrals by the Board to the Conference pursuant to Statute Article V.F.1. Though the Board has never yet stated explicitly, in referring a question to the Conference, that it was doing so on the basis of that Article, its requests for a Conference decision on certain matters can most conveniently be explained in this manner. In this connection it should be noted that it is not clear whether the Board can on its own initiative refer any matter (not included in the specific recitations of Article V.E) to the Conference on a basis other than Article V.F.1; nor is it clear whether, having once done so, it is bound by the decision of the Conference – since the Conference has never yet contravened the recommendation of the Board in any question thus submitted to it, this point has remained moot. It may also be asked whether Article V.F.1 is a special grant of authority to delegate decisions to the Conference (which would imply either a formal superiority of the smaller organ over the larger one or an ad hoc reversal of roles) or whether it actually constitutes a special mechanism whereby the Board can extend the specific statutory authority of the Conference.⁹ In any case, the actions taken by the Conference which are at least apparently based on this Article, are:
- (i) Endorsement of the initial programme;¹⁰
 - (ii) Establishment of the Working Capital Fund;¹¹
 - (iii) Approval of Vienna as the location of the permanent Headquarters;¹²
 - (iv) Approval of the text of the Headquarters Agreement;¹³
 - (v) Approval of the Rules on the Grant of Consultative Status of Non-Governmental Organizations;¹⁴
 - (vi) Decision to seek participation in EPTA;¹⁵
 - (vii) Noting the Agency's Safeguards System, as well as the extensions thereof and the revisions thereto;¹⁶
 - (viii) Approval of the Executing Agency Agreement with the UN Special Fund;¹⁷
 - (ix) Various decisions taken pursuant to the Board-adopted Financial Regulations, e.g., consideration of the Agency's accounts and appointment of the External Auditor.¹⁸

7.3. PROCEDURES

7.3.1. Rules of Procedure

The original draft of the Rules of Procedure of the General Conference was prepared by the Preparatory Commission pursuant to the specific mandate in paragraph C.3 of Annex I to the Statute.¹⁹ It was largely a simplified version of the Rules of Procedure of the UN General Assembly.²⁰ A reduction in length had been achieved by replacing the separate rules for

committees by a single provision (Rule 82, providing that these bodies should apply as far as appropriate the rules governing the conduct of business at plenary meetings). No provisions were made for special subsidiary bodies (such as ACABQ or the General Assembly's Committee on Contributions).

These draft Rules were first adopted on a provisional basis at the first regular session of the Conference,²¹ and thereafter were considered in detail by the Administrative and Legal Committee of the first special session. On the Committee's recommendation,²² the draft proposed by the Preparatory Commission was adopted with only a minor refinement in the provisions covering the representation of other organizations and of Non-member States.²³

The original Rules have remained substantially unchanged. Minor amendments were adopted at the second, fourth and sixth regular sessions in order to:

- (a) Complete Rule 1 by fixing September as the month in which regular sessions would normally be convened;²⁴
- (b) Alter certain Rules relating to the representation and participation of specialized agencies at sessions of the Conference;²⁵
- (c) Change the Rules regarding the election of members of the Board, consequent on the amendment of Article VI. A. 3 of the Statute.²⁶

7.3.2. Sessions

7.3.2.1. Regular

Article V. A of the Statute requires the holding of regular annual sessions of the General Conference. Rule 1 of the Rules of Procedure provides that they shall normally be convened in September — a time chosen in part so as to precede slightly the normal convening of the UN General Assembly,²⁷ so that the Agency's annual report (which must be approved by the Conference) can still reach the Assembly comparatively early in its session.²⁸

Though the first regular and special sessions of the Conference²⁹ lasted a total of 23 days, subsequent sessions have never exceeded two weeks and the tendency has been towards their gradual contraction.³⁰ The briefest session took place in 1964, when the Conference spanned only eight days; this session followed immediately on the third Geneva Conference and it was felt that many of the informal contacts, which constitute a principal *raison d'être* of the General Conference, had already taken place; still, this abbreviation was protested,³¹ and subsequent sessions were again scheduled to last somewhat longer.

These short sessions are feasible because of the almost negligible amount of real business that comes before the Conference. This in turn reflects both positive and negative factors:

- (a) The narrowly restricted competence of the Conference, much of which was practically exhausted by the approval of several sets of "rules" during the initial years;
- (b) The considerable stability and still modest level of activity of the Agency — though greater activity would most directly affect the Secre-

- tariat and secondarily the Board, any increase in the importance of the Agency would necessarily also be reflected in the work of the Conference;
- (c) The gentlemen's understanding, to which lip service was paid from the first days of the Agency but which only became effective through practice, to keep the Agency free from most political controversies that properly should be fought out in the United Nations. This effort at apoliticizing the Agency has been effective because the geographic make-up of both of its representative organs makes the raising of most political issues less profitable than in many other international fora (i. e., the approximately 25 members of the United Nations that are not yet Members of the Agency are among the smallest and most labile participants in the General Assembly).

In view of the considerable cost of and the small amount of business transacted at each regular session, the question is increasingly being raised whether these should not take place on a biannual basis.³² The first obstacle to such a change is the Statute, which in a number of places requires or at least foresees annual sessions: in particular, the budget, which must be approved by the Conference, is required to be formulated and approved on an annual basis;³³ elections to the Board must be held annually; and the reports that must be submitted annually to the United Nations must be approved by the Conference. Altogether changes would have to be made at least in Statute Articles V. A; VI. A-D; XIV. A; in III. B. 4 or V. E. 6; and in VI. J or V. E. 4 in order to permit less than annual sessions of the Conference.³⁴

Aside from these statutory obstacles, there appear to be two main reasons for maintaining the annual rhythm: Considering the already limited significance of the Conference, many States that are not regular members of the Board fear that their influence over that body (and thus the activities of the Agency) would be reduced even further by less frequent sessions; also, the Conference offers an unparalleled opportunity for the principal personalities in the atomic energy field in each country and in several intergovernmental organizations to meet for informal conversations. These two objections make it unlikely that either the necessarily extensive amendments of the Statute be adopted or that some less drastic but immediately practicable alternative be approved, such as the reduction of every second annual session to a short formal meeting that could even be convened under special rules at UN Headquarters in New York (where all Members of the Agency are permanently represented through resident representatives or observers) to dispose only of the irreducible residue of business required by the present Statute.³⁵

7.3.2.2. Special

Article V. A of the Statute provides that the Director General shall convene the General Conference in special session when the Board or a majority of the Members request him to do so.³⁶ Procedural Rules 3-6 and 16-19 of the Conference regulate the implementation of this provision.

Only one special session has been held so far, under the circumstances and for the reasons discussed in Section 4.1. This session was convened

by the Secretary General of the First Conference pursuant to a unanimous decision of the Conference itself — which practically and logically took the place of a request by a majority of the Members.³⁷

7.3.2.3. Location

Article V. A of the Statute (and Procedural Rule 7) provide for the sessions of the Conference to take place "at the headquarters of the Agency", unless the Conference determines otherwise. The quoted words have in practice been interpreted to mean the headquarters city (i. e. . Vienna) rather than narrowly the "headquarters seat" (buildings) defined in the Headquarters Agreement. The Preparatory Commission convened the First Conference in Vienna, before its status as headquarters had yet been confirmed; all subsequent sessions have been held there, except for the Ninth, in Tokyo.³⁸ Thus no pattern of holding itinerant sessions has developed.

7.3.3. Structure and organization

In spite of the limited functions and the short duration of each session of the General Conference, its structure is almost as complex as that of the UN General Assembly — on which of course it is patterned. In the smaller context of the Agency this complexity has a certain rococo effect.

7.3.3.1. The Plenary

As in the General Assembly, the General Conference in plenary meeting is the forum for:

- (a) General debate;
- (b) Disposition of recommendations of committees;
- (c) Decisions on certain items not referred to any committee (including particularly elections and appointments of various types).

Because of the brevity of the sessions, the relative amount of business transacted directly in Plenary³⁹ is probably larger than in the United Nations.

The Plenary elects the President and the eight Vice-Presidents of the Conference. These officers, like those of the Committees, only hold their offices until the end of the session in which they are elected.

The President is the only Conference officer mentioned in the Statute,⁴⁰ and he is elected ad personam from among the delegates (each Member being entitled to one) at the Conference. However, because of the short duration of and limited activity at each session he has acquired none of the extensive representational and political status that presiding officers of similar organs have in some organizations, nor does he perform any functions between sessions of the Conference.⁴¹ Though the President elected at one session frequently acts as Temporary President at the next, he no longer does so in the ad personam capacity in which he was elected, since that function is to be performed by whoever is the delegate from the delegation from which the previous President had been chosen.⁴² Even if a special session is called, new elections must be held for a President.⁴³

The Rules of Procedure of course give no guidance on who should or should not be elected President. The following practice, based in part on gentlemen's agreements, appears to have developed:⁴⁴

- (i) The President is elected from the host State, whenever the Conference is held for the first time in that State;
- (ii) No delegate from the five "most advanced"⁴⁵ Members is elected President;
- (iii) Within the above limitations, as far as possible, the Presidency is rotated among the areas listed in Article VI.A.1 of the Statute;⁴⁶ the sequence up to now has been [Western Europe (Austria - host State)], South East Asia and Pacific, Far East, Eastern Europe, Latin America, Africa and the Middle East, South Asia, Western Europe, [Far East (Japan - host State)], South East Asia and Pacific, Eastern Europe, Latin America, Africa and the Middle East.

During the Plenary the President, or a Vice-President acting for him, has the usual powers of a presiding officer.⁴⁷ He is also ex officio Chairman of the General Committee,⁴⁸ Temporary Chairman of the two Main Committees when these are convened for the election of their Chairman,⁴⁹ and Chairman of the Committee for Pledges of Voluntary Contributions whenever that Committee has been established.⁵⁰ The only subsidiary body whose membership is proposed (albeit only nominally) by the President is the Credentials Committee,⁵¹ and neither the Rules of Procedure nor any resolutions empower him to appoint or nominate persons to particular posts, though customarily the informally selected, unopposed candidates for positions of External Auditor and of representatives on the Staff Pension Committee are formally proposed by the presiding officer.⁵²

The only other officers of the Conference itself, as distinguished from those of its Committees, are the eight Vice-Presidents. Unlike the President they are not elected ad personam; only countries are named, whose delegates then hold these posts. Pursuant to Procedural Rule 34, the Vice-Presidents are elected after the President and the Chairmen of the two Main Committees, "with due regard to equitable geographical representation"; unlike the Rules of the General Assembly,⁵³ those of the Conference include no distribution formula. Though Rule 34 is not entirely clear, its structure suggests that what is required is an equitable distribution considering at least these eleven officers as a unit rather than only the Vice-Presidents by themselves. Furthermore, Rule 40 provides that the General Committee, which consists of these eleven officers plus four additional Members elected by the Conference, "shall be so constituted as to ensure its representative character". As a matter of fact, no pattern is discernible by studying the vice-presidential elections by themselves, or even together with those of the President and the Chairmen;⁵⁴ only if one studies the composition of the General Committee as a whole (Section 7.3.3.2) do certain principles emerge - which suggests that it is entirely arbitrary whether a State is chosen to supply a Vice-President or an additional member of the General Committee.

The Vice-Presidents have only very restricted functions. In the absence of the President, a Vice-President appointed by him takes his place as presiding officer of the Plenary and the General Committee;⁵⁵ however, if the President should become unable to perform his functions, a new President must be elected.⁵⁶ As indicated above, the Vice-Presidents also participate, *ex officio*, in the General Committee.⁵⁷

Seating in the Plenary, as well as in the Main Committees (Section 7.3.3.4) follows the English alphabetical order, starting each year with the State currently providing the Chairman of the Board of Governors.⁵⁸

Four Committees are named in the Rules of Procedure, and others have occasionally been established on an *ad hoc* basis.

7.3.3.2. General Committee

The General Committee consists of 15 members: the President (who acts, *ex officio*, as Chairman and sole officer of the Committee) and the eight Vice-Presidents, the Chairmen of the two Main Committees and four "additional members" elected by the Conference.⁵⁹ No two of its members may come from the same delegation, and it must be "so constituted as to ensure its representative character" – presumably both in the geographical and in the functional sense, *i. e.*, a fair balance between the supplying and receiving Members is to be achieved.⁶⁰ The actual pattern of its membership is somewhat difficult to discern: the five "most advanced" Members are always represented (with Canada and the UK alternating annually with France and the USA for positions as Vice-Presidents or as additional members); for the rest, Latin America receives 1 or 2 seats, Western Europe 0 to 2 (in addition to France and the UK), Eastern Europe 1 or 2 (in addition to the USSR), Africa and the Middle East 1 to 3, South Asia 1 or 2, South East Asia and the Pacific 0 to 2, and the Far East 1 or 2.⁶¹ The Chairman of the Board of Governors and the Chairmen of other Conference committees may participate without a vote.⁶²

This rather "soft" formula for membership, in contrast to the rigid formulas applicable to the similar organ of the UN General Assembly⁶³ or to the IAEA Board of Governors,⁶⁴ merely reflects the considerable unimportance of this organ of the relatively impotent Conference. Its functions are the following:⁶⁵

- (a) To make recommendations on the provisional agenda, including any "additional items" proposed after the normal deadline, and to propose the allocation of agenda items to committees; though it is not to "discuss the substance of any item", provision is made for any State that has requested the inclusion of an item on the agenda to participate, without a vote, in this deliberation.⁶⁶
- (b) To recommend the closing date of the session.⁶⁷
- (c) To recommend an opening date for the next regular session (this function not being provided for in the Rules of Procedure but having been assumed by established practice).
- (d) To determine, in connection with the elections to the Board, the "areas" for which elections must be held in order to fulfil the geographic distri-

bution requirements of the Statute; as indicated in Sections 8.2.2.4.6-7, this somewhat unusual function is partly but not entirely ministerial, since it may require political decisions as to which area a given State is "representing".

- (e) To revise resolutions adopted by the Conference — a function it has never yet exercised.
- (f) To assist the President in conducting and co-ordinating the work of the Conference — a function which, because of the relative simplicity of the sessions, it has never yet been required to exercise.

Because of the scarcity and simplicity of its business, the General Committee meets only once, or at most twice, during each session of the Conference.

By tradition, which is not reflected in any rule and is probably not legally or logically defensible, meetings of the General Committee are closed and consequently its documents and records are marked for "Restricted Distribution".⁶⁸ This is the only organ of the Conference for which this is true, though Procedural Rule 52 permits the Conference or any of its Committees to decide that a particular meeting be held in private.

7.3.3.3. Credentials Committee

Pursuant to Procedural Rule 28, the Credentials Committee consists of 9 members, appointed by the Conference at the beginning of each session on the proposal of its presiding officer (i. e., the President).

No rule is stated as to the distribution of its members, and no precise pattern is discernible:⁶⁹ of the eight areas specified in the Statute Article VI.A.1, usually at least seven are represented, and the Soviet Union and the United States (the leading protagonists in its formalized corrida) always are; the principal criterion (which cannot be assured by purely geographic considerations) appears to be that the vote on the Chinese credentials should favour the Republican Government by approximately 6 : 2 : 1 (ranging from 5 : 3 : 1 to 7 : 2 : 0).⁷⁰

The Committee traditionally elects only one officer, a Chairman, who also acts as rapporteur.⁷¹ Though in principle he might participate, ex officio and without a vote, in the work of the General Committee,⁷² in practice the first meeting of the Credentials Committee, at which he is elected, invariably takes place after the first and usually only meeting of the General Committee.

No records are kept of the meetings of the Committee — this is the only regular organ of the Conference of which this is true. However, its report to the Conference recites its proceedings in somewhat greater detail than do those of the other committees.⁷³

7.3.3.4. Main Committees

Procedural Rule 45 provides for two Main Committees: the Programme, Technical and Budget (PT & B) Committee and the Administrative and Legal Committee (A & L). In the absence of any rule defining their membership,

they are automatically plenary organs by reason of Rule 82, by which the rules of the Plenary ordinarily apply fully to Committees.

Rule 46 provides that each Main Committee is to elect its Chairman who, pursuant to Rule 40, is ex officio a member of the General Committee. Because Rule 34 requires the Vice-Presidents of the Conference to be elected after these two Committee Chairmen, these officials are always elected, ad personam, at short initial meetings of the two Main Committees which are held, under the temporary chairmanship of the President, during a brief adjournment of the first or second Plenary meeting immediately before the vice-presidential elections.⁷⁴ Almost invariably⁷⁵ the President and these two Chairmen represent three different areas (thus helping to assure the over-all balance of the General Committee).

Rule 46 provides that the committees shall elect "other officers" but does not specify their titles or functions. Through the Sixth Conference, each Main Committee elected a Vice-Chairman and Rapporteur; thereafter two Vice-Chairmen and a Rapporteur were elected until the Thirteenth Conference, when the number of Vice Chairmen was again reduced to one. All Committee officers are nominally elected ad personam - but of the formal requirements that this selection be "on the basis of equitable geographical representation, experience and personal competence", in practice largely only the first is honoured.⁷⁶

By established practice, the preparation of its report on each agenda item is delegated by the Committee, at the conclusion of its consideration of the item, to the Rapporteur, who is to act in consultation with the Chairman.⁷⁷ In fact the reports (which are similar to those presented by the Main Committees of the UN General Assembly) are prepared by the Committee Secretary (a Secretariat official) who then clears them with the Rapporteur and the Chairman. Thereafter the Rapporteur submits them directly to the Plenary, without any review by the Committee.

7.3.3.5. Committees on voluntary contributions

The Second Conference appointed a Special Committee on Pledges of Voluntary Contributions to the General Fund.⁷⁸ Similarly such a Committee (no longer called "Special")⁷⁹ was established at the third to the seventh regular sessions.⁸⁰

This body is not provided for in the Rules of Procedure. Though called a Committee, it was actually a Pledging Conference and its only item of substantive business was to receive and record offers of voluntary contributions to the General Fund.⁸¹

To fulfil its special function the Committee of course had to have plenary membership. Its Chairman was always the President of the Conference, and the only officer it elected was a single Vice-Chairman/Rapporteur.

7.3.3.6. Sub-committees on scales of contributions

At the first special session of the Conference, the Programme, Technical and Budget Committee appointed a Sub-Committee on Contributions and Initial Financing;⁸² similarly at the second and third regular session the Com-

mittee appointed a Sub-Committee on [the Scale of Members'] Contributions. These organs were not called for by the Rules of Procedure, but were established pursuant to Rule 46. After the initial sessions this body has not been revived, since the formula whereby the UN scale of contributions is adapted to the requirements of the Agency has become fixed and is no longer the subject of controversy.⁸³

At all three sessions the Sub-Committee consisted in effect of all members of the PT&B Committee that wished to participate in its work. In each case a Chairman and a Vice-Chairman/Rapporteur were elected.⁸⁴

The reports of the Sub-Committees were naturally submitted to the parent Committee and not to the Plenary.⁸⁵

7.3.3.7. Officers

Sections 7.3.3.1-6 mentioned the various officers of the Conference in the context of its several organs. It may be useful to conclude with a general survey of these transient positions.

All officers of the Conference and its committees, except the eight Vice-Presidents and the four "additional members" of the General Committee, are nominally elected on an ad personam basis. They need not be one of the official delegates, of which each Member State may appoint only one to the Conference;⁸⁶ frequently, particularly in the case of Committee Vice-Chairmen and Rapporteurs, a junior member of a delegation is chosen. Since they are named personally, they must either perform their duties themselves (i. e., not through another member of their delegation), or assign them to another elected officer (e. g., a Vice-Chairman may act for the Chairman; or the Chairman may replace a Rapporteur in presenting the report of a Committee). However, members of the General Committee may be represented in that organ by another member of the same delegation.⁸⁷

In implementation of the injunctions in Procedural Rules 34, 40 and 46 and by means of accepted traditions and gentlemen's agreements, various distributional patterns are observed in the election of officers and the constitution of the non-plenary committees.⁸⁸ The long-term rotation in the Presidency has been referred to, as has the balance of distribution of the General Committee as a whole, and of the Credentials Committee. Similarly the considerations observed in electing the Chairmen of the two Main Committees in the light of the Presidential incumbent,⁸⁹ and in electing the subsidiary officers of each Main Committee have been mentioned.

The maintenance of these complicated and interrelated patterns (concerning over a score of officers) of course requires considerable advance planning. The required consultations and co-ordination are carried out by the leading permanent missions in Vienna.⁹⁰ They endeavour to agree on the principal officers (President, and Chairmen of the Main Committees) well before each session of the Conference, and on the subsidiary posts if possible shortly before the Conference convenes. The Secretariat does not participate in this selection process, and has consistently declined even to help advertise candidacies or to act as co-ordinator. This process of informal consultation works well enough, so that in thirteen years the only con-

tested election for any principal office was that for the Presidency of the Third Conference (the defeated candidate being unanimously elected President at the next regular session).⁹¹

7.3.4. Agenda

7.3.4.1. Procedure

The provisional agenda of each session of the Conference must be drawn up by the Director General, in consultation with the Board of Governors. For regular sessions this agenda must be distributed no later than 90 days before the Conference is to convene. To comply with those requirements, the Director General prepares and submits a draft for comment to the Board at its series of meetings in June; on this he also explains each item through a short annotation and suggests the allocation of certain items to particular Committees.⁹²

In practice, the provisional agenda consists almost entirely of items required by the Rules of Procedure in connection with the organization of the Conference (e.g., establishment of committees), of items on which action is required by the Statute (e.g., elections to the Board) and of some items on which action is required by other instruments (e.g., review of the annual accounts pursuant to Financial Regulation 12.04).⁹³ Little use has been made of the absolute right to propose items, that is enjoyed by the previous Conferences, by the Board, by all Member States and by those specialized agencies with which relationships have been concluded; similarly almost no use has been made of the conditional right to submit items possessed by the Director General (but only in agreement with the Board) and by the United Nations (which the Board must submit to the Conference in accordance with the Agency's relationship agreement with the United Nations).⁹⁴

Supplementary items may be proposed up to 30 days before the Conference, by any Member, by the Board, by the United Nations or by the Director General (in agreement with the Board).⁹⁵ Thereafter, and even during the Conference, "additional items" "of an important and urgent character" may be proposed by any Member, by the Board or by the United Nations - but even if the Conference decides to accept such an item its consideration must be delayed until seven days after its placement on the agenda (which would mean almost the entire normal duration of a session), unless the Conference by two-thirds vote decides otherwise.⁹⁶ Again, very little use has been made of either of these possibilities.

The provisional agenda, any supplementary items and any early proposals for including additional items are considered by the General Committee at its first (and generally only) meeting, immediately after its members have been appointed at the beginning of the Conference.⁹⁷ This consideration is almost always a mere formality, since practically all items are included pursuant to the Statute, the Rules of Procedure or some other binding instrument. In the Committee's report to the Plenary it also includes its recommendations as to the allocation of certain items to Committees - in which it practically always follows the suggestions of the Di-

rector General.⁹⁸ If any "additional items" are proposed subsequent to the Committee's first meeting, it must be reconvened to consider a supplementary report.⁹⁹

As soon as the General Committee's report on the agenda is submitted, it is considered in the Plenary and after adoption becomes the agenda of the session.¹⁰⁰ Prior to such adoption the Plenary automatically follows the unapproved provisional agenda, and generally has actually disposed of approximately one-third of the items before the agenda is formally adopted.¹⁰¹

7.3.4.2. Content

A comparison of the agendas of the twelve regular Conferences which followed the first regular and special sessions shows that they always consist of approximately 25 items. Of these, fully one-third relate to the organization of the current session itself;¹⁰² two more concern the next regular session.¹⁰³ The remaining items regularly include:

- (a) Applications for membership;
- (b) A statement by the Director General;
- (c) The general debate and consideration of the Board's annual report;
- (d) Elections to the Board;
- (e) The budget for the following year - and sometimes also supplementary appropriations for the current year;
- (f) The scale of assessed contributions for the following year;
- (g) The accounts for the past year;
- (h) Voluntary contributions to the General Fund for the next year;
- (i) The annual reports to the United Nations;
- (j) Appointment of the External Auditor (periodically);
- (k) Elections to the Staff Pension Committee (contingent item);
- (l) Appointment of the Director General (periodically).

When the number of these primarily "housekeeping" items is added to the merely organizational ones, and account is taken of the occasional structural or political questions submitted to the Conference (e.g., amendment or review of the Statute; relationship agreements with other organizations; the grant of consultative status to non-governmental organizations), it is seen that normally hardly any are devoted to what might seem to be the proper business of such an assembly: the consideration of nuclear energy programmes, activities and developments. Even granting due allowance for the fact that these questions can be and are raised in the general debate and in studying the budget (in practice, the two catch-all items), this paucity of substantive business is still a reflection of the impotence of the Conference as compared to the Board (whose diet is much richer in significant business). Programmatic items, such as the following, are generally included in the agenda of the Conference only if either the Board desires or requires broad support or a consensus on some important matter (e.g., safeguards), or if a significant group of States concludes that certain proposals would receive more sympathetic consideration in the Board if the Conference had first expressed its support (e.g., the Theoretical Physics Centre):

- (i) The safeguards system - considered in whole or in part at three sessions;
- (ii) Technical assistance - considered under various aspects three or four times;
- (iii) Development of nuclear power and studies of nuclear power costs - each considered once;
- (iv) An international insurance scheme for scientists - considered once;
- (v) The establishment of an international centre for theoretical physics;
- (vi) Fund of special fissionable materials - considered once;
- (vii) Nuclear explosions for peaceful purposes - considered once.

7.3.5. Conduct of business

Because of its repetitive agendas and the relatively few issues of real importance submitted to the Conference, its proceedings have acquired a certain cut-and-dried quality (which, incidentally, enables the Secretariat to predict almost to the minute the length of each session and even of most of the meetings).¹⁰⁴ In general the following pattern for disposing of the Conference's business has evolved:

7.3.5.1. Plenary

As soon as the organization of the Conference and any items of urgent business (e.g., the approval of new memberships) have been disposed of, the Director General and the representative of the UN Secretary-General address the Conference. These statements are not provided for in the Rules of Procedure - however since the second regular session the statement of the Director General has always been placed on the agenda, while the UN statement is merely scheduled informally as a traditional courtesy. In his speech the Director General usually points to the highlights of the past year's activities (which of course are more systematically and fully recorded in the Board's report to the Conference), and adds any exhortations on practical matters as seem opportune to him.¹⁰⁵

The statement of the Director General is followed by the general debate, the normal duration of which extends to well over half the sessions of the Plenary. Though formally addressed to the Board's report, other matters are frequently touched on:

- (a) Most delegates give an account of the recent progress, the current programmes and the prospects for the development of peaceful atomic energy in the State they represent,¹⁰⁶
- (b) Comments may be made on any issues before the Conference;
- (c) Proposals or suggestions of various types are presented, sometimes concurrently with or foreshadowing the introduction of draft resolutions in the Plenary or an appropriate Committee;
- (d) The Director General's address may be commented on.

As is customary in the analogous organs of other organizations, the general debate is of course not really a debate, but consists of a disjointed succes-

sion of speeches by practically every delegation. Only rarely, and mostly in the early years of the Agency, has any extensive use been made of a delegate's right to reply to a point made in a speech subsequent to his own. Even though the debate is nominally addressed to the report of the Board, no formal introduction or answer is given by the Chairman or other representative of the Board¹⁰⁷ – though the members of the Board in their capacity as participants in the Conference may occasionally take it on themselves to reply to certain points raised. Since the sixth regular session the Director General has closed the debate by answering certain questions raised or criticisms offered, in particular to the extent that these were actually addressed to the Secretariat even though nominally related to the decisions or the report of the Board.¹⁰⁸

As part of the general debate certain political resolutions are occasionally introduced, in particular with reference to disarmament. Unless supported by all the major powers these are generally sidetracked, either on the ground that the Agency (or the Conference) is formally not competent to take a decision on the question or merely with the argument that consideration by the Conference is not opportune and should be left to some appropriate organ of the United Nations.¹⁰⁹ Practically only at the seventh regular session, when the three sponsors of the Partial Test Ban Treaty of 5 August 1963 co-sponsored a resolution¹¹⁰ commending that treaty and commenting favourably on certain disarmament steps, did the Conference adopt a resolution on this subject.¹¹¹

Certain substantive items are disposed of directly in the Plenary:

- (i) Applications for membership;
- (ii) Approval of reports to United Nations organs;
- (iii) Elections to the Board;
- (iv) Appointment of the Director General;
- (v) Appointment of the External Auditor;
- (vi) Election of members to the Staff Pension Committee.

The two Main Committees, the General Committee, the Credentials Committee, and formerly the Committee for Pledges of Voluntary Contributions, all report to the Plenary, with various proposed resolutions or decisions. There these are generally debated only briefly – particularly if the report is from one of the plenary Main Committees in which all possible aspects were usually examined only a day earlier. In view of the identical voting requirements in the Committees and the Plenary, the recommendations of the former (particularly of the plenary committees) are invariably accepted by the Conference.

7.3.5.2. Programme, Technical and Budget Committee

The following agenda items are always referred first to the Programme, Technical and Budget Committee:

- (i) The budget for the following year;
- (ii) The scale of assessed contributions for the following year;

- (iii) Any supplementary appropriations required for the current year;
- (iv) Miscellaneous operational items, which usually relate to a resolution passed by a previous Conference on the initiative of the PT & B Committee.

Of these, the debate on the budget invariably takes the greatest part of the available time. In addition to considering the estimates proposed by the Board and the related resolutions (the budgetary appropriations and the use of the Working Capital Fund), the Committee must usually also consider the "programme" for the following year or, according to the more recent pattern, consider in alternate years the programme for the following two.¹¹² In this connection a number of draft resolutions are generally introduced relating to the existing or to proposed activities of the Agency. For example, resolutions have in the past been introduced and, on the recommendation of the Committee, passed on the following subjects:

- (a) "Assistance to less developed countries" (GC(II)/RES/27);
- (b) "Utilization by the Agency of the services and experience of existing research centres and of other sources of information; training of specialists in the use of isotopes in agriculture and medicine" (GC(II)/RES/29);
- (c) "Preparation by the Agency of manuals and codes of practice on health and safety" (GC(III)/RES/54);
- (d) "Assistance to less developed countries with the production of nuclear power" (GC(III)/RES/57);
- (e) "Transport of radioactive materials" (GC(IV)/RES/74);
- (f) "The sale of the Agency's scientific publications in the local currencies of Member States" (GC(IV)/RES/75);
- (g) "The establishment of an international center for theoretical physics" (GC(IV)/RES/76; see also GC(V)/RES/107, CG(VI)/RES/132 and GC(X)/RES/214);
- (h) "Exchange of scientific abstracts" (GC(IV)/RES/78);
- (i) "Preparation and distribution of radiation and neutron standards" (GC(IV)/RES/79);
- (j) "Studies of nuclear power costing" (GC(IV)/RES/86; see also GC(V)/RES/111);
- (k) "Establishment of an international insurance scheme for scientists" (GC(V)/RES/97);
- (l) "International co-operation in the utilization of research reactors" (GC(V)/RES/106);
- (m) "The functions of the Agency's Laboratory" (GC(V)/RES/108);
- (n) "International co-operation for developing nuclear power projects" (GC(V)/RES/109; see also GC(VI)/RES/128);
- (o) "The Agency's programme in nuclear power" (GC(VI)/RES/127);
- (p) "International conference on the peaceful uses of atomic energy" (GC(VI)/RES/129);
- (q) "Co-ordination of abstracting services in nuclear science" (GC(VII)/RES/150);
- (r) "Role of the Agency in promoting the peaceful uses of atomic energy during the Development Decade" (GC(VII)/RES/153);
- (s) "Co-operation with the United Nations in matters of energy and power" (GC(VII)/RES/155);

- (t) "Civil Liability for nuclear damage" (GC(VII)/RES/156);
- (u) "Transport of radioactive materials" (GC(VIII)/RES/174);
- (v) "Encyclopedic publication on nuclear science and technology" (GC(VIII)/RES/176);
- (w) "Agreements on international mutual emergency assistance" (GC(VIII)/RES/177);
- (x) "The application of nuclear energy to the desalting of water" (GC(LX)/RES/197);
- (y) "Review of the Agency's activities" (GC(X)/RES/217; see also GC(XI)/RES/230).

It is through such resolutions, which constitute about 15% of those passed by the Conference, that this organ actually exerts some initiative and influence on the work of the Agency. And it is through the consideration of these proposals (and of others that were not accepted) that practically the only element of unpredictability is introduced into the well-regulated proceedings of the Conference. Though many of these resolutions only commend actions already undertaken or planned, or on the other hand express pious hopes impossible of immediate realization, they signal the temper of the Conference and thus of the membership, and thereby may influence the Board or the Secretariat on particular issues.

7.3.5.3. Administrative and Legal Committee

Two agenda items are regularly assigned to the Administrative and Legal Committee:

- (a) The Agency's accounts for the previous year;
- (b) The representation of certain intergovernmental organizations at the next regular session of the Conference.

On an ad hoc basis the following items have appeared one or more times:

- (c) The Agency's safeguards system;
- (d) Amendment of the Rules of Procedure;
- (e) Rules relating to technical assistance;
- (f) Amendments to the Statute;
- (g) Relationship agreements with intergovernmental organizations.

Of all these items, safeguards is practically the only one that has been debated for more than one complete meeting of the Committee. Consequently during some years this body has been able to dispose of its work so promptly¹¹³ that consideration has been given to either abolishing it or assigning to it some of the business that has always been disposed of by the PT&B Committee.

7.3.5.4. Credentials Committee

Since the establishment of the Agency the Credentials Committee of the Conference has only been faced with two issues.¹¹⁴

At each Conference the question of the representation of China is raised and disposed of by a procedure which has become as formalized and unexciting as a minuet:

- (a) The representative of the Soviet Union or of some other Eastern European Member indicates that his delegation does not recognize as valid any credentials issued by the Chiang Kai-shek regime, and consequently proposes that the Committee should not recommend the acceptance of these credentials.¹¹⁵
- (b) The representative of the United States of America proposes that the Committee recommend a resolution to the Conference to the effect that no action be taken at the current session on any proposal to change the representation of China and that the credentials of the Government of the Republic of China conform to the Rules of Procedure.¹¹⁶ This proposal is justified primarily on the formal ground that these political issues should be decided by the UN General Assembly in accordance with the recommendation that body addressed in 1950 to the other UN organs and the specialized agencies.¹¹⁷
- (c) If the initial Soviet objection had been formulated as a formal proposal, then the United States further requests that its motion be given precedence.¹¹⁸
- (d) The American proposals are accepted by a vote of approximately 6:2:1.¹¹⁹
- (e) The proposed resolution is then reported to the Plenary, where it is passed after a debate whose length and acrimony is a fair index of the general political climate.¹²⁰

At every regular session from the first to the sixth the United States proposed that, following the example set in the UN General Assembly, no action be taken on the credentials of Hungary. This proposal was always accepted by the Committee and included in its report,¹²¹ which was always approved by the Plenary. This action had no practical effect on the representation of Hungary at the Conference, since Procedural Rule 29 requires that even delegates to whose admission an objection has been raised are to be seated, provisionally but with full rights, until the Credentials Committee has reported and the Conference has given a negative decision; since the American proposal was technically not an "objection" to the Hungarian credentials, the "non-decision" thereon by the Committee and the Plenary had no legal effect.

Procedural Rule 28 requires the Credentials Committee to be appointed at the beginning of each session of the Conference and to "report . . . without delay to the General Conference". Consequently at its first and the immediately subsequent sessions the Committee met early and submitted an interim report (including at that time both the Chinese and Hungarian issues), on which the Plenary acted during or just after the general debate;¹²² a final report, including no further political issues but merely indicating which of the originally delinquent delegations had in the meantime presented satisfactory credentials and which were still outstanding (and left for subsequent follow-up by the Director General), was submitted by the Committee toward the end of the session and adopted by the Plenary.¹²³ At the fifth regular

session the General Committee agreed that after the report of the Credentials Committee had been circulated the President should consult delegations as to when it should be considered by the Plenary; the result of these consultations was that the Committee, though meeting twice, was asked to prepare only a single report which was considered late in the session.¹²⁴ This change which, in violating the literal requirement of the Rules of Procedure, imitated UN practice, was made in part to eliminate the need for dual reports during the short session of the Conference but principally to delay the introduction of the politically divisive credentials issues until after the substantive work of the Conference had been completed and could no longer be interfered with. Since the fifth session, the Credentials Committee meets only once in each session, towards its end, and the Committee's report is considered as one of the last items of business of the Plenary.¹²⁵

7.3.6. Voting requirements

The second half of Article V.C of the Statute was deliberately modeled on Article 18 of the UN Charter.¹²⁶ After listing those decisions that the Conference must take "by a two-thirds majority of the members present and voting", it provides that all other decisions shall be made by a majority vote, except as the Conference by majority vote determines that particular questions or categories of questions should be decided by a two-thirds majority. The three types of decisions for which the Statute requires a two-thirds majority are those: "on financial questions";¹²⁷ approving amendments to the Statute; and on suspending a Member from the privileges and rights of membership. But unlike in the General Assembly, membership in the Agency is approved, the members of the Board are elected (cf. elections to the Security Council¹²⁸), and the appointment of the Director General is approved by simple majority.

In its Rules of Procedure the Conference has made only very limited use of its right to establish additional categories of questions requiring a two-thirds vote. These categories relate to the placement of "additional items" on the agenda of special sessions, the schedule of the consideration of such items at regular sessions, the reconsideration of a decision taken at the same session, and the suspension (but not the amendment) of the Rules of Procedure; in addition any amendments to proposals requiring a qualified majority must be adopted by a similar vote.¹²⁹ Aside from these minor exceptions incorporated in the Rules, the Conference has never used its power to designate additional questions or categories of questions as requiring a two-thirds majority.

Since no separate Rules exist for the conduct of business in the committees,¹³⁰ the two-thirds majority requirement applies to these bodies to the same extent as to the Plenary. Thus there is no possibility, as frequently happens in the General Assembly, of a proposal, favoured by a simple majority but unacceptable to a qualified one, being recommended by a Main Committee only to be defeated in the Plenary without any change in the voting alignments. In this connection it should also be noted that the quorum requirements are the same in committees as in the Plenary: a majority of the members of the body.¹³¹

7.3.7. Resolutions and decisions

Each formal, non-ephemeral, action of the Conference is set forth in a resolution or decision. Strictly speaking, there is no legal difference between these two forms, and some matters have been handled sometimes by decision and sometimes by a resolution.¹³² The more frequent form of a resolution is used whenever the Conference decides on an actual text — either because the wording of the proposal or of its preamble is of significance but usually merely because a particular text has been proposed to it. The form of a decision is used mostly for elections and appointments and for some other minor actions, which are taken by the Plenary without a formal committee report and usually upon the oral proposal of the President. However, there is no sharp dividing line.

Resolutions are numbered consecutively for all sessions of the Conference and are published twice: immediately upon adoption in the form of separate mimeographed sheets, and later assembled in a printed booklet prepared after each session. The decisions are numbered separately for each Conference and appear only in the printed booklet, following the resolutions. A cumulative index to all resolutions and decisions is published annually.¹³³

Though Procedural Rule 42(b) permits the General Committee to "revise the resolutions adopted by the General Conference, changing their form but not their substance" and reporting them for renewed consideration by the Conference, the Committee has never yet made use of this power. However, the Secretariat occasionally introduces slight editorial modifications between the text (in one or more of the four working languages) acted on by the Conference (which text usually appears in a report by a Conference committee or by the Board) and the temporary mimeographed issue, and more rarely in preparing the mimeographed text for final issue in printed form.

7.3.8. Cost of attendance

Article V.B of the Statute provides that "the cost of attendance of any delegation shall be borne by the member concerned". This is repeated in Procedural Rule 26. Consequently the Agency incurs no expenditures in connection with the travel or stay of delegations to the Conference.

Though some Members are represented at the Conference by representatives primarily accredited to diplomatic missions in Vienna or a neighbouring capital, certain smaller States evidently find even this solution impractical in view of the short duration of the Conference.¹³⁴ Consequently on the average three to four Member States are not represented at sessions of the Conference — and not surprisingly these are usually the same States that have forfeited their votes for continued non-payment of their assessed contributions.¹³⁵

7.3.9. Participation of Non-member States and of organizations

7.3.9.1. Non-member States¹³⁶

Procedural Rule 30¹³⁷ provides that any Non-member State which is a member of the United Nations or of any specialized agency¹³⁸ is to be invited

to attend the Conference and may participate without vote on matters of direct concern to it.¹³⁹

Rule 95 provides that a State (i. e., even one that is not a member of any other UN family organization) whose application for membership has been recommended by the Board may attend any meeting of the Conference at which its application is discussed and may participate, without vote, in the discussion.

7.3.9.2. The United Nations and the specialized agencies¹⁴⁰

Procedural Rule 31 provides that representatives of the United Nations and of the specialized agencies (i. e., whether or not a relationship agreement has been concluded with them) may attend sessions of the Conference and participate without vote on matters of common interest between them and the Agency. Though the United Nations and three or four of the specialized agencies are always represented, only infrequent use has been made of the right of participation – except for the statement regularly made by the representative of the United Nations in the opening meetings of the Plenary.

7.3.9.3. Other intergovernmental organizations¹⁴¹

Procedural rule 32(a) provides that other international organizations with which a relationship agreement has been concluded may, if that agreement so provides, attend sessions of the Conference and participate without vote on matters of common interest between them and the Agency. Up to now, such agreements have been concluded concerning the Inter-American Nuclear Energy Commission, the European Nuclear Energy Agency and the Educational, Scientific, Cultural and Health Commission of the Organization of African Unity.¹⁴²

Although not provided for in the Rules of Procedure, the Conference has at each of its sessions authorized the Board of Governors to invite other intergovernmental organizations engaged in the peaceful uses of atomic energy to be represented by observers at the next regular session.¹⁴³ This resolution has always been justified as an interim measure, pending the conclusion by the Agency of relationship agreements with all organizations the attendance of whose representatives might be in the interest of the Agency. However, for political and other reasons the conclusion of such agreements with several organizations has been indefinitely postponed, and instead the Board annually recommends that its power to issue ad hoc invitations be extended for another year.¹⁴⁴ This proposal is invariably referred to the Administrative and Legal Committee of the Conference, on whose favourable recommendation the Conference renews its grant.¹⁴⁵

It should be noted that these organizations are merely invited to send observers to the Conference, and neither the Rules of Procedure nor the annual resolutions authorizing the issue of the invitations provide for any participation by these observers in the work of the Conference. Consequently, whenever these have on occasion solicited the Chairman's permission to make an oral statement, this has always been refused.¹⁴⁶

7.3.9.4. Non-governmental organizations¹⁴⁷

Rule 32(b) authorizes the attendance of representatives of non-governmental organizations enjoying consultative status with the Agency in accordance with rules approved by the Conference. The Rules on the Consultative Status of Non-Governmental Organizations with the Agency provide that such organizations shall be invited to be represented by an observer at all sessions of the Conference. Such representatives may request the Director General to circulate short written statements to the Conference and may address committees of the Conference, if the body in question allows this after consultation with the Board's Committee on Non-Governmental Organizations.¹⁴⁸ While such organizations have occasionally made use of the right to circulate written statements,¹⁴⁹ none has ever formally submitted a request to make an oral statement.

NOTES

- 1 For example, IAEA/CS/Art.IV/Amend.2; /Art.V/Amend.1, 4, 6, 8; /Art.VI/Amend.4, para.1(b); /Art.VII/Amend.1, 2, 4; /Art.XVII/Amend.2; /Art.XVIII/Amend.1.
- 2 While Statute Article V.E.6 appears to restrict the need for Conference approval of reports to those required by the Relationship Agreement with the United Nations (Section 12.2.2.7), Article VI.J suggests that this necessity applies also to reports it may be required to submit to other organizations. Since up to now no such reports have been required or made, the question of a need for Conference approval has been moot.
- 3 Though Statute Article V.E.8 does not state explicitly that the various rules it provides for must be approved by the Conference on the recommendation of the Board (cf. the final clause of Article VII.E), up to now the Conference has always acted in this manner (e.g., GC(III)/RES/42). Indeed, this interpretation seems implied by the word "approve" with which each clause of the Article starts; had it been intended to give the Conference greater independence, the word "adopt" should have been used.
- 4 For example, the Theoretical Physics Centre at Trieste (Section 19.1.3.1).
- 5 However, as the Israeli representative noted at the Conference on the Statute, the General Conference has no general powers to establish subsidiary organs (IAEA/CS/OR.18, pp.39-40).
- 6 Sections 7.3.9.3 and 12.5.1.
- 7 Section 25.4.
- 8 Section 24.5.2.4.
- 9 See note 158 to Section 8.3.3(b).
- 10 Section 15.3.1.1.
- 11 Section 25.4.1.
- 12 Section 4.4.
- 13 Section 28.2.2.
- 14 Section 12.6.2.1.
- 15 Sections 18.1.3.2-3.
- 16 Sections 21.4.1.1 and 21.12.1.
- 17 Section 18.1.4. As indicated there, this might be considered as an Article XVI.A Relationship Agreement requiring Conference approval under Statute Articles V.E.7 and XVI.A.
- 18 Sections 25.8.2.2 and 25.8.2.4.
- 19 IAEA/PC/W.36; IAEA/PC/OR.35-41; /OR.45-46; /OR.50-52; IAEA/PC/W.57(S); IAEA/PC/OR.61, pp.8-12; IAEA/PC/W.77; GC.1/9 and /Corr.1 and /Add.1; as described in Section 4.1, this draft consisted of two parts: "Draft Provisional Rules of Procedure" and "Draft Supplementary Provisional Rules of Procedure for the Meetings of the General Conference in 1957".
- 20 At that time set forth in UN doc. A/520/Rev.4.
- 21 GC(I)/DEC/2. See GC.1/9/Add.2 for a change made in the Supplementary Provisional Rules.
- 22 GC.1(S)/21.
- 23 GC.1(S)/RES/15. For the text see GC(II)/INF/16.

- 24 GC(II)/DEC/10. GC(II)/INF/16/Add.1.
- 25 GC(IV)/RES/67. The amended text appears in GC(V)/INF/35.
- 26 GC(VI)/RES/133. Since then, the text of the Rules is set forth in GC(VII)/INF/60.
- 27 The various considerations in favour of or opposed to September/October sessions as against April/May sessions are recited and discussed in GC(II)/GEN/7 and GC(II)/GEN/OR.5, paras.1-13.
- 28 Section 32.1.4.
- 29 This is the correct and formal way of referring to the various sessions of the Conference, which is in principle a continuously existing organ of the Agency. Though this legal principle appears to be slighted by the use of the expression "First [General] Conference", this terminology is at once briefer and politically more realistic due to the discontinuous nature of the organization and work of the Conference and the absence of any activity between sessions — and thus it is the one generally used in this study.
- 30 Article VI.F of the Negotiating Group draft of the Statute would have restricted the length of General Conference sessions to 30 days, but this provision was deleted by the Working Level Meeting. Instead, Procedural Rule 8 now requires the Conference, at the beginning of each session, to fix, on the recommendation of the General Committee, a closing date (e.g., GC(XII)/DEC/6).
- 31 GC(VIII)/GEN/OR.12, paras.6-32.
- 32 Most recently the supporters of a biannual conference have relied on the recommendation in the second report of the UN Ad Hoc Committee of [14] Experts to Examine the Finances of the United Nations and the Specialized Agencies, that "those ... agencies whose legislative bodies now meet on an annual basis should consider the possibility of biennial sessions" (UN doc. A/6343, para.104(b)). Previously a proposal to that effect had been made in the 16th report of ACABQ to the 20th General Assembly (UN doc. A/6122, para. 36). However, for the reasons indicated below, the Board decided not to accept these recommendations (UN doc. A/7124, Annex XII, Recommendations 40 and 41).
- 33 While the English text of Statute Article XIV.A merely requires the submission of "annual budget estimates" which presumably need not necessarily be done annually, the French text requires that the submission be "chaque année". The Spanish text conforms to the English on this point.
- 34 The several necessary and the probably desirable statutory changes required for a switch to biannual sessions were recited by the Director General in a note he addressed to the Governor from Pakistan on 2 July 1963, the text of which was later communicated to the Board of Governors.
- 35 A proposal to that effect was made to the Board of Governors by the British Governor in February 1967, in connection with the recommendation of the Committee of 14 referred to supra note 32. The Director General communicated to the Board his misgivings about this proposal on April 1967. The Board debated the question at both its February and June 1967 series of meetings, but no strong support for the British proposal developed.
- 36 As pointed out in note 7 to Chapter 4, the Director General was deliberately not given any discretion as to whether to convene special sessions of the Conference.
- 37 Note 19 to Chapter 4.
- 38 Pursuant to GC(VIII)/DEC/7.
- 39 Though the Main Committees of the Conference (Section 7.3.3.4) are also plenary organs (i.e., all Members of the Agency are entitled to be represented therein), the custom has been established in the Agency of referring to the meetings of the Conference itself as the "Plenary".
- 40 Article V.C.
- 41 Thus when the King and Queen of Thailand visited the headquarters of the Agency on 30 September 1964, they were received by the Director General and the Chairman of the Board of Governors, but not by the President of the General Conference that had adjourned two weeks earlier (PR 64/55).
- 42 Conference Procedural Rule 33.
- 43 Idem. See, e.g., GC.1(S)/DEC/2, by which the Conference at the beginning of its first special session re-elected Mr. Karl Gruber, the President of the first regular session.
- 44 See Annex 3.2 (top line) or Annex 3.3 (first column).
- 45 Statute Article VI.A.1 and Section 8.2.2.1.
- 46 Though this practice is not based on a formal decision, such as UNGA/RES/1990(XVIII), Annex, para.1 (reproduced in A/520/Rev.8, footnote 4).
- 47 Conference Procedural Rules, particularly 49-51, but also 54-61, 63, 74, 79.
- 48 Idem Rule 40.
- 49 There appears to be no basis in the Rules of Procedure for this practice, which is copied from that of the UN General Assembly. Logically, by the application of Rules 33, 46 and 82, the Temporary Chairman

- should be the delegate from whose delegation the Chairman of the Committee at the last previous session was elected, or the Director General.
- 50 GC(II)/RES/18, para.1; GC(III)/RES/37, para.1.
- 51 Conference Procedural Rule 28.
- 52 For example,GC(XI)/OR.118, paras.6 and 12.
- 53 UNGA/RES/1990(XVIII), Annex, paras. 2 and 3 (reproduced in A/520/Rev.8, footnote 4).
- 54 Annex 3.2.
- 55 Conference Procedural Rules 49 and 40.
- 56 Idem Rule 36.
- 57 Idem Rule 40.
- 58 For example,GC(XII)/INF/102, para.19.
- 59 Conference Procedural Rule 40.
- 60 As suggested in IAEA/PC/OR,40, pp.10-11.
- 61 Annex 3.2.
- 62 Conference Procedural Rule 41.
- 63 A/520/Rev.8, Rule 38, as supplemented by UNGA/RES/1990(XVIII), Annex, paras.1-4 (idem, footnote 4).
- 64 Section 8.2.
- 65 Conference Procedural Rule 42.
- 66 Idem Rule 43.
- 67 Supra, note 30.
- 68 Sections 34.2.3 and 34.4. This restrictive classification of the Committee's records differs from the practice of UNGA.
- 69 Annex 3.2.
- 70 Section 7.3.5.4.
- 71 For example, GC(XI)/375, para.2.
- 72 Conference Procedural Rule 41.
- 73 For example, GC(XI)/375.
- 74 For example, GC(XI)/354, Annotations, footnote 2; GC(XI)/OR.111, para.12.
- 75 Annex 3.2. The one apparent exception up to now occurred at the Sixth Conference, when the President was a Ghanaian and the PT & B Committee Chairman a Lebanese — thus both were from "Africa and the Middle East". It should, however, be realized that for most political purposes that area should be sub-divided into a Middle Eastern, a North African (Arab) and a South-of-Sahara (Negro) region (and perhaps also a South African one), and if this is done a number of apparent violations of or at least anomalies in the pattern of the geographic distribution of offices can be explained (see also Section 8.2.2.4.5(b)).
- 76 In practice, the political stage-managers of the Conference (see Section 7.3.3.7) reach agreement as to the areas that each of the subsidiary officers is to represent. The Members from that area then select a particular delegation and inform the Secretariat. The Secretary of the Committee then obtains from that delegation the name of their candidate (who frequently is a junior alternate or adviser designated by the single delegate pursuant to Rule 25), and the Secretary then arranges for his formal nomination through other appropriate delegates.
- 77 For example, GC(IX)/COM.2/OR.39, para. 5.
- 78 GC(II)/RES/18.
- 79 The change in title was considered to result in a change in the identity of the Committee. Thus at the Second Conference it was numbered as the 3rd Committee, with documentation marked GC(II)/COM.3/...; thereafter it was treated as the 4th Committee (e.g., GC(VII)/COM.4/...).
- 80 At the Third Conference this was done by GC(III)/RES/37. At subsequent Conferences no explicit decision was taken, but the establishment of the Committee was the implicit consequence of the acceptance by the Plenary of the report of the General Committee on the "Adoption of the Agenda and Allocation of Items for Initial Discussion" (e.g., GC(IV)/128, item 19; see also GC(IV)/109, Annotation 19).
- 81 Section 25.5.2. In spite of this limitation, the Committee has considered and reported on proposals relating to voluntary contributions (see GC(V)/RES/100, which was adopted on the report of this Committee, GC(V)/187, para.6).
- 82 GC.1(S)/COM.1/OR.2, paras. 11-15.
- 83 Section 25.3.1.1.2.
- 84 For example, GC.1(S)/COM.1/6, para.3.
- 85 For example, GC.1(S)/COM.1/6.
- 86 Statute Article V.B.

- 87 Conference Procedural Rule 40.
- 88 For a complete list of Conference officers and committee members, see Annex 3.2.
- 89 Other considerations of course also play a part. Thus, after Dr. Gunnar Randers of Norway had successfully steered the draft of the first Safeguards Document through a Working Group appointed by the Board of Governors, he was elected Chairman of the A & L Committee of the Fourth General Conference which reviewed the Board's version of this Document (Section 21.4.1.1.1); five years later, after Dr. Randers had presided over a new Working Group established to prepare a Revised Safeguards Document for the Board, he again chaired the A & L Committee at the Ninth Conference which reviewed the new version (Section 21.4.1.1.4). However, an early suggestion that the Chairmen of Main Committees should not be members of the Board, has not been followed.
- 90 Section 13.2.1.4.
- 91 GC(III)/OR.25, paras. 9-36; GC(IV)/DEC/1. Possibly the sole contest for a minor post concerned the Vice-chairmanship of the PT & B Committee at the Fourth General Conference - GC(IV)/COM.1/OR.34, paras.1-16.
- 92 Conference Procedural Rules 11 and 16. The Board of Governors need only be consulted; however, the first time this was done, it is recorded as "adopting" the agenda for the Second General Conference; since then the Board has only discussed the Director General's draft, without reaching a formal decision, though he may be guided by any evident consensus.
- 93 For example, GC(XI)/354.
- 94 Conference Procedural Rules 12 and 17.
- 95 Idem Rule 13.
- 96 Idem Rules 15 and 19.
- 97 Idem Rules 14, 18 and 42(a).
- 98 For example, GC(XI)/367. For a minor exception, see GC(V)/170, para.3.
- 99 For example, GC(III)/95.
- 100 For example, GC(XI)/DEC/5.
- 101 For example, GC(XI)/367, footnote 1.
- 102 For example, GC(XI)/368, Items 1-5, 8-9, 22.
- 103 Ibid., Items 11 and 17 (invitations of organizations to the next regular session of the Conference).
- 104 Of course, the maintenance of this precise timing does require a fair amount of stage-managing, which is both easier and more essential because of the short duration of sessions - which never last long enough for the delegates to shake off the rather strict controls unobtrusively enforced by the Secretariat. Aside from extensive and meticulous planning, a number of devices are used that are probably familiar to all who conduct large international meetings, such as the "Daily Meeting" of the Conference and Committee Secretaries with the heads of all the relevant Secretariat services, as recommended by the UN General Assembly in its resolution "Methods and Procedures" (UNGA/RES/362(IV), Annex II, para.39).
- 105 Sections 9.3.6, 10.2 and 32.1.3.
- 106 At the end of the first decade it was suggested that Conference sessions could be considerably shortened and at the same time the information on national programmes be presented more clearly, if this data were submitted in writing before the Conference and perhaps digested and tabulated by the Secretariat (GC(X)/OR.107, para.127). The first part of this proposal was already implemented at the Eleventh Conference (GC(XI)/INF/97/Rev.1) and this has been repeated annually.
- 107 At its 92nd meeting, just before the Second General Conference was convened, the Board gave extensive consideration to a South African proposal that the Board be formally represented at the Conference, but decided to make no such arrangements. Conference Procedural Rules 41 and 55 permit the Chairman of the Board to participate in the General Committee and to be granted precedence in addressing organs of the Conference - a privilege rarely utilized (see, however, GC(IX)/COM.2/OR.39, para.7).
- 108 For example, GC(X)/OR.110, paras.1-18 (though the statement was not made as part of the agenda item "general debate", it was clearly designed to close that discussion) and GC(XI)/OR.117, paras.29-33.
- 109 GC(IV)/DEC/11. See also GC(V)/175 and GC(V)/OR.60, para.1.
- 110 GC(VII)/250.
- 111 GC(VII)/RES/160; even then, to avoid creating a precedent for the future consideration of similar questions, the resolution was entitled "Action pursuant to Resolution 982 (XXXVI) of the Economic and Social Council of the United Nations" - a reference to an ECOSOC request for co-operation with the UN Secretary-General on studies on converting to peaceful uses the resources that might be released by disarmament. A rather similarly titled, weaker resolution had been adopted the previous year (GC(VI)/RES/130).
- 112 Section 15.3.2.

- 113 At the Eleventh General Conference, the entire business of the Committee, including all elections except those of the Chairman, was disposed of in 20 minutes (GC(XI)/COM.2/OR.44).
- 114 From time to time regrets have also been expressed in the Committee about the absence of certain States (e.g., the German Democratic Republic) from the membership of the Agency (e.g. GC(XI)/375, para.3), but quite properly the Committee has never attempted to exceed its terms of reference by acting on such questions. Similarly the Committee has never acted on, but only recorded, objections to the credentials of South Korea and South Viet-Nam (e.g., GC(XII)/398, para.3).
- 115 For example, GC(III)/91, para.4.
- 116 Ibid. para. 6.
- 117 UNGA/RES/396(V).
- 118 GC(III)/91, para.9.
- 119 Idem para.10.
- 120 For example, GC(III)/OR.29, paras.1-39 (passim).
- 121 For example, GC(III)/91, para.12.
- 122 For example, GC(III)/91 approved by GC(III)/RES/38 and 39.
- 123 For example, GC(III)/104 approved by GC(III)/RES/56.
- 124 GC(V)/GEN/OR.9, paras. 10-19; GC(V)/189, para.2; GC(V)/OR.61, paras. 1-79. The issue of timing was again raised briefly at the tenth and twelfth sessions (GC(X)/OR.109, para.18; GC(XII)/GEN/OR.16, paras.4-7). At the thirteenth session this procedure delayed the approval of the reappointment of the Director General, since it was considered that this should not take place until the Credentials Committee had reported (GC(XIII)/GEN/OR.17, paras. 7-13).
- 125 See also GC(VI)/GEN/OR.10, para. 9(a); GC(VI)/218, para.2; GC(VI)/OR.71, paras. 5-67.
- 126 IAEA/CS/Art.V/Amend.5.
- 127 This vague phrase derives from Statute Article XIV.H. While it has always been interpreted as encompassing a vote to approve the budget or any part of it, it is not clear whether it would apply to a proposal to return the budget to the Board with recommendations, and whether it applies to the fixing of the scale of assessed contributions pursuant to Statute Article XIV.D. In any event, no objection was raised to the ruling that a proposal for a retroactive adjustment of the current year's budget and of certain rates of assessed contributions (Section 25.3.3.2.5) required a two-thirds majority (GC(VIII)/COM.1/OR.62, paras. 13 and 16). Similarly it was held that a recommendation that the travel expenses of Governors be reimbursed by the Agency (Section 8.4.9) requires a two-thirds majority (GC(III)/COM.1/OR.22, para.10).
- 128 UN Charter Article 18(2).
- 129 Conference Procedural Rules 15, 19, 66, 69(d and e) and 105.
- 130 Idem, Rule 82.
- 131 Idem Rules 53 and 82, the former being based on the final sentence of Statute Article V.C.
- 132 For example, the approval of States for membership (GC.1(S)/DEC/10 (Finland) and GC(XI)/RES/219 (Malaysia)); approval of appointment of Director General (GC.1(S)/DEC/7 (Cole) and GC(V)/RES/91 (Eklund)); authorizations to make editorial changes in approved relationship agreements (GC(II)/DEC/8 and GC(VII)/RES/141, para. 2).
- 133 Section 34.2.3.
- 134 See, e.g., GC(XI)/INF/96/Rev.2 for the composition of delegations to the Eleventh General Conference.
- 135 Statute Article XIX.A; Section 25.3.5.
- 136 Section 13.3.6.
- 137 The adoption of this Rule at the First General Conference led to one more collateral airing of the controversy about "universality" of participation in the work of the Agency (Section 6.1.1; GC.1(S)/COM.2/4/Add.1; GC.1(S)/COM.2/OR.3, paras. 17-42 and /OR.4, paras. 1-57 (passim); GC.1(S)/27; GC.1(S)/OR.11, paras.26-47, /OR.12, paras. 1-17 and /OR.13, para.4). This issue was also raised in several independent proposals aiming at "universality" (GC.1(S)/COM.2/8, para.1; GC.1(S)/COM.2/OR.5, para.3; GC.1(S)/28; GC.1(S)/OR.12, para.37; and GC(II)/OR.15, paras.1-14).
- 138 This is the same classical formula (Section 2.8.1) by which eligibility for "initial" membership in the Agency is defined by Statute Article IV.A. This Rule has been held inapplicable to a State which merely was an associate member of FAO and did not have membership in any other specialized agency (cable of 20 September 1960 by Director General to President of Senegal).
- 139 Ordinarily the observers accredited by Non-member States do not participate in any debates in the Plenary or the Committees. However at the seventh regular session the representatives of Nigeria and the Ivory Coast (both of which had just been approved for membership — and thus could have participated under

Procedural Rule 95 — but had not yet deposited their instruments of acceptance) participated in the general debate and even commented sharply on the participation of South Africa in the Agency (GC(VII)/OR.75, paras. 11-14 and /OR.77, paras. 27-32). While this might be considered as establishing a deliberate precedent for a wide interpretation of the phrase "matters of direct concern" to a Non-member, in fact the non-membership of these States had merely been overlooked by the President and his Secretariat advisers, and probably by most of the delegates.

140 Sections 12.2.2.3 and 12.3.3.1.

141 Section 12.5.1.

142 INFCIRC/25 and /Add.2. Section 12.5.2.

143 For example, GC(XI)/RES/225.

144 For example, GC(XI)/359.

145 For example, GC(XI)/371. The organizations to which such invitations have been issued by the Board pursuant to the Conference's authorization are listed in Section 12.5.1. As indicated there, the invitation addressed to EURATOM has always elicited some controversy, both in the Board and in the Administrative and Legal Committee, since the representatives of the Eastern European members contend that this organization is not devoted solely to the peaceful uses of atomic energy.

146 See the General Conference Secretariat's "Notes for the Guidance of the President" (unpublished and unnumbered documents), e.g., as prepared in August 1966 for the tenth regular session, p.24.

147 Section 12.6.

148 INFCIRC/14, para.3.

149 For example, GC(V)/INF/44 (European Atomic Forum) and /45 (International Confederation of Free Trade Unions).

CHAPTER 8. THE BOARD OF GOVERNORS

PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Article VI

General Conference Rules of Procedure (GC(VII)/INF/60), mainly Rules 83-88

Rules of Procedure of the Board of Governors (GOV/INF/60 and /Mod.2)

Relationship Agreement with the United Nations (INFCIRC/11, Part I. A), Articles VII. 1, VIII. 1

8.1. DEVELOPMENT

The Board is the first organ that was conceived of in planning the Agency. The initial US Sketch of the Statute contained the proposal that:

"The highest executive authority in the agency should be exercised by a board of governors, of limited membership, representing Governments. In determining the composition of the board of governors, it might be desirable to take account of geographic distribution and membership by prospective beneficiaries. It is expected that the principal contributors would be on the board of governors . . . Arrangements could be worked out to give the principal contributing countries special voting privileges on certain matters, such as allocations of fissionable material." ¹

Thus from the beginning, the Board was intended to be a small, efficient unit with power to run the Agency with little interference from other organs. It was to be composed of and controlled mostly by those States supplying to the Agency nuclear material (in particular special fissionable material) and perhaps technology, and to have extensive powers of co-option to assure a largely self-perpetuating membership.

Though at each subsequent stage in the formulation of the Statute the severity of these principles was somewhat modified, their main lines were preserved. The principal changes, which will be discussed in greater detail in subsequent Sections, were:

- (a) The expansion of the Board, until at present the nuclear material producers constitute a bare minority (12 out of 25), and the reduction of its powers of co-option to apply to a bare majority (13 out of 25) of its members.
- (b) The establishment of the General Conference, with limited but still substantial powers, to check the Board.
- (c) No substantial direct reduction in the plenary powers of the Board, except as implied by (a) and (b) above; the only power completely lost was that to approve amendments to the Statute (in any case subject to

ratification by two-thirds of the membership), which in the Negotiating Group draft was to be exercised by the Board alone, in the Working Level Meeting draft by the Board and the General Conference, and in the final text approved by the Conference on the Statute by the General Conference alone.²

The practice has substantially followed the design. The Board has become a reasonably efficient and flexible working organ, reflecting with substantial accuracy the interests of various groups of Members according to their actual significance to the Agency's work. Not hampered by a veto it has never been actually paralysed, though strongly controversial issues are handled gingerly: i. e., slowly and often with the frustrating compromises characteristic of all democratic political institutions.

8.2. COMPOSITION

The formulae and practices regulating the composition of the Board of Governors of the IAEA are probably the most involved of those designed for any comparable international organ.³ The statutory provisions themselves are complex: they establish in effect six categories or sub-categories of Board membership, to all of which different criteria, different methods of selection, different terms and different rules as to possible continuity on the Board – but in all cases identical voting powers – apply.⁴ In addition, account must be taken of certain Rules of Procedure regulating the exercise of the statutory powers of selection. There are also a number of established practices and customs, some of which are based on explicitly stated or implicitly accepted gentlemen's agreements.

8.2.1. Development

The Board of Governors was to be established as the most important organ of a potentially powerful organization. Its composition therefore was naturally controversial from the beginning – in particular since it was clear that it would be necessary to depart from the principle of strict geographical distribution by which most similar organs are constituted.

8.2.1.1. Issues

During the various stages of formulating the Statute, the following were the principal, closely interrelated issues concerning the composition of the Board:⁵

- (a) Should membership be based on a "functional" or on a "geographic" (i. e., "representative") basis, and if both were to be used what would be their relative weights?
- (b) If membership on the Board was to be, at least in part, "functional", what functions were to be taken into account and according to what criteria should these be evaluated? Thus different criteria relevant to the following types of functions were recognized:

- (i) Production of special fissionable materials – either ability to produce or actual contributions to the Agency;
 - (ii) Production of source materials – either ability to produce or actual contributions to the Agency;
 - (iii) Progress in nuclear technology – as measured by level of industrialization, by contribution to scientific knowledge or by actual significance as a supplier of technical assistance;
 - (iv) Potential receivers or beneficiaries – theoretically or actually "representative" of a given group or region.
- (c) Which organ was to select the members of the Board? The following possibilities were considered with respect to part or all of the composition:
- (i) Permanent members to be named in the Statute;
 - (ii) Election by the General Conference;
 - (iii) Designation (co-option) by the Board;
 - (iv) Designation by a special electorate (e. g., functional representatives to be selected by members of that functional group – in which case a procedure would have to be established for previously selecting the members of that group).
- (d) How large should the Board be? Though this was really a secondary issue, relating more to the proposed efficiency and powers of the body (it being recognized that the larger the body the more awkwardly it would operate and the less effective power it could exercise over the Director General), it was also clear that the smaller the Board the more it would be dominated by the suppliers (since all these States could insist on a place on the Board) rather than by the receiving States selected by geographic criteria.

8.2.1.2. Evolution

8.2.1.2.1. Original Statute

The US Sketch of the Statute, quoted in Section 8.1, did not concern itself with the details of the distribution of seats but indicated that the principal contributors as well as prospective beneficiaries should be represented, account being taken of geographic distribution.

The Negotiating Group draft provided for the following composition:⁶

- (a) The 5 "most important contributors of technical assistance and fissionable materials", to be designated annually by the Board;
- (b) 5 other "principal producers and contributors of uranium, thorium and ... other source materials", to be selected annually from and by a special panel composed of the 5 States designated under (a), above, and the 8 "principal producers and contributors of uranium, thorium and ... other source materials" designated by the Board;

- (c) 6 members to be elected by the General Conference with due regard to the "representation" of beneficiaries, to "equitable geographic distribution . . . of the entire Board" and to "contributions of services, equipment, facilities and information".

This portion of the Negotiating Group draft was subject to considerable criticism at the 10th General Assembly, and was equally the target of a great number of the proposals subsequently forwarded to the American Government⁷ and of many of the amendments proposed in the Working Level Meeting⁸. The principal suggestions with respect to the draft were:

- (i) The Board should be enlarged;
- (ii) The permanent members of the Security Council should automatically be on the Board (a proposal evidently designed to assure eventual Board membership for the People's Republic of China);⁹
- (iii) The representation of the source materials producers should be eliminated or reduced;
- (iv) The representation of the special fissionable material producers and of the suppliers of technical assistance should be decreased;
- (v) The representation of the receiving States, or of the smaller Member States should be increased;
- (vi) The General Conference should select the principal "contributors" and the representatives of the "producers", or at least should have the right to challenge the Board's designations;
- (vii) The industrialized countries should be better represented.

The Working Level Meeting naturally found it difficult to compromise these various proposals.¹⁰ Its draft¹¹ (which later passed substantially unchanged into the final text) provided for:

- (1) A Board of (normally) 23 members — 7 larger than in the Negotiating Group draft;
- (2) Of these, 13 were to be suppliers as against 10 geographically selected States;
- (3) Of the 23 States: 2 would in effect be appointed by direct operation of the Statute (i. e., each year 2 would serve from a panel of 4 States named in the Statute, which would be automatically rotated); 11 would be designated by the Board; and 10 would be elected by the General Conference;
- (4) Of the 13 suppliers: 10 were characterized as being "advanced in the technology of atomic energy" (i. e., in the ability to produce special fissionable material) "including the production of source materials" — without account being taken of the actual assistance each supplies to the Agency; 2 were to be "other producers of source materials" and 1 would be a "supplier of technical assistance" (i. e., a producer of scientific equipment).

This scheme was incidentally ingeniously designed to assure all participants in the Working Level Meeting of practically permanent seats on the

Board (9 to stay on steadily and 3 to serve every second year), while only one State not participating in the Meeting (Japan) would receive a reasonably certain (pending the admission of Communist China) continuous seat and one (Poland) an alternating seat.

A number of amendments were proposed by the Conference on the Statute:

- (A) The elimination of the 3 members to be designated by the Board from among the "other producers of source materials" and the suppliers "of technical assistance" – with a simultaneous increase from 10 to 13 of the members to be elected by the General Conference;¹²
- (B) The splitting of the area "Africa and the Middle East" into two parts, thus increasing its representation by 2 : 1 to be designated by the Board and 1 to be elected by the General Conference;¹³ alternatively the
- (C) Increasing of the number of States to be elected by the General Conference from "Africa and the Middle East" from 1 to 2;¹⁴
- (D) Introducing the requirement of taking into account, in designating the "members most advanced . . .", their actual contributions to the Agency of information, materials, services, equipment and facilities;¹⁵
- (E) Adding to the criteria for designating the "supplier of technical assistance" the supply of scientific knowledge.¹⁶

None of these amendments¹⁷ was adopted and consequently the final text of this portion of the Statute is practically the same as in the Working Level Meeting draft.

8.2.1.2.2. Amendments

The Fourth General Conference passed a resolution requesting the Board to prepare the draft of a statutory amendment to increase the representation of "Africa and the Middle East" on the Board.¹⁸ In the Board a number of proposals were advanced, including an increase of the elected membership to 12 of which 2 would come from the area of Africa and the Middle East, or an increase in the designated membership to provide for the selection of an additional "most advanced" member from the areas of "Latin America" and "Africa and the Middle East".¹⁹ The proposal finally submitted by the Board to the Conference provided for an increase in the elected membership to 12, three each to come from Latin America and Africa and the Middle East.²⁰ This amendment was adopted at the Fifth Conference²¹ and came into force on 23 January 1963 on the receipt of the necessary number of acceptances;²² it actually entered into effect with the elections that took place at the Seventh Conference.²³ The direct effect of the amendment was to increase from 1 to 3 the representation of Africa and the Middle East, and also to give Latin America statutory assurance of maintaining the two additional elected seats that it had previously held merely on the basis of a gentlemen's agreement; incidentally the amendment increased the ratio of beneficiary States to the functionally selected supplier States; equally it increased the proportion of States elected by the General Conference as against those designated by the Board.

The Democratic Republic of the Congo, before the Ninth General Conference, proposed an amendment to Statute Article VI. A. 2, to delete the names of the 4 States mentioned in the first clause of the first sentence thereof;²⁴ the effect would have been to give the Board complete freedom to designate annually any two States as "other producers of source materials". On the recommendation of the Board,²⁵ the General Committee of the Ninth Conference proposed that consideration of this amendment be deferred to the next regular session.²⁶ The Board subsequently recommended that the proposed amendment "be held in abeyance until such time as it may be felt appropriate to take a further review of the issues involved"; it was suggested that this might happen in connection with a general review of the Statute.²⁷ Pursuant to this recommendation the Tenth Conference took no action on this matter.

The 1968 Conference of Non-Nuclear-Weapon States was severely critical, in three of its Resolutions, of the "unrepresentative" composition of the Agency's Board of Governors.²⁸ While that Conference was still meeting, the Twelfth General Conference considered in its Plenary and adopted a Resolution that referred directly to those complaints and requested the Board of Governors:

"to review Article VI of the Statute and to submit to the General Conference at its thirteenth regular session a report containing a study of ways and means by which the membership of the Board will adequately reflect:

- (a) the progress and developments in the peaceful uses of nuclear energy achieved by many Members of the Agency, including the developing countries;
- (b) an equitable geographical distribution; and
- (c) the continuing need for the effectiveness of the Board as the executive body of the Agency."²⁹

The UN General Assembly, apprised of both the CNNWS and the General Conference Resolutions,³⁰ extensively debated the strength and nature of the endorsement it should give to the CNNWS recommendations and then: (i) called on the Agency in general terms to give them careful consideration and to report to the UN Secretary-General on the actions taken thereon³¹ and (ii) requested the Director General of the Agency to keep the Secretary-General informed of any action taken in connection with the General Conference Resolution.³²

In February 1969, the Board of Governors, having already received three proposals as to its reconstitution, established an Ad Hoc Committee of the Whole to Review Article VI of the Statute and invited Members of the Agency not serving on the Board to be represented in accordance with Procedural Rule 50 or to submit their views in writing.³³ The Committee met seven times in April, June and September, and considered statutory amendments proposed by Belgium,³⁴ the Democratic Republic of the Congo,³⁵ Italy (two successive proposals),³⁶ Mexico,³⁷ Pakistan,³⁸ the Philippines³⁹ and the United Arab Republic.⁴⁰ Not unexpectedly, these varied widely from one another:

- (a) Though all would increase the size of the Board, their goals varied from 31 to 34 members;
- (b) except for the Mexican proposal, the relative influence of the Board in naming its members would decrease compared to that of the General Conference; in particular, two proposals would make the Nuclear-Weapon States permanent Board members and have all others elected by the Conference;
- (c) the special categories of "producers of source materials" and "supplier of technical assistance" created by Article VI. A. 2 would be abolished under most of the proposals and modified under the others;
- (d) several of the plans called for the present area classifications in Article VI. A. 1 to be slightly or considerably revised;
- (e) several plans would abolish the "floater" sub-category under Article VI. A. 3.

Though the total distribution of Board members among the various areas would not differ greatly among these plans, each was more or less subtly designed to assure the sponsor of either a para-permanent seat on the Board, or at least of an improved chance of periodic election by increasing the number of seats of its area or by reducing the number of States in that area or by changing the selection criteria. Though most of the proposed formulae would be considerably simpler than the existing one, their general effect would be to change the Board from a body at least ostensibly composed with a particular bias toward nuclear capability to one that is merely geographically balanced as are the central organs of most world-wide intergovernmental organizations.

In June 1969 the Ad Hoc Committee submitted a report to the Board, in which the only substantive consensus was "that there should be a modest expansion in the size of the Board"; the parent body passed this directly on to the General Conference, with the assurance that it intended to continue its study of Article VI as an urgent matter and had for this purpose arranged to reconvene the Committee soon;⁴¹ the Committee's inconclusive meeting in September was separately reported to the General Conference.⁴² After debate in its Administrative and Legal Committee, including considerable maneuvering about the text of a resolution,⁴³ the Conference merely requested the Board to take into account the views expressed at the Conference and "to make every effort to present a draft amendment in sufficient time to permit its consideration by the General Conference at its fourteenth regular session".⁴⁴ The Ad Hoc Committee was reconvened in December 1969 and again in February 1970, to consider, in addition to most of the earlier proposals: certain general criteria submitted by Nigeria, a revised proposal by the United Arab Republic (co-sponsored by Lebanon), a modified one by Belgium and a new one submitted by seven East European States. By March, 23 members of the Committee had agreed to co-sponsor a slightly modified version of the revised Italian proposal, and the informal consultations were evidently concentrated on that text — which would increase the size of the Board to 33 : 13 to be designated by the Board in accordance with criteria closely based on present Statute Article VI. A. 1 (though there would be 9 "most advanced" members), and 20 to be elected by the General Conference according to a formula adapted from present Article VI. A. 3.

8.2.2. Categories of Board Members

8.2.2.1. Most advanced Members (VI. A. 1)

Article VI. A. 1 of the Statute provides that the outgoing Board shall designate for membership on the next Board:

"the five members most advanced in the technology of atomic energy including the production of source materials and the member most advanced in the technology of atomic energy including the production of source materials in each of the following areas not represented by the aforesaid five:

- (1) North America
- (2) Latin America
- (3) Western Europe
- (4) Eastern Europe
- (5) Africa and the Middle East
- (6) South Asia
- (7) South East Asia and the Pacific
- (8) Far East. "

8.2.2.1.1. Criteria

The principal criterion in this category is the level of advancement in the technology of atomic energy, with the secondary consideration of the production of source materials. "Advancement in the technology" in practice means, at least in the case of the 5 "most advanced" members, the ability to produce special fissionable material (i. e., enriched uranium, plutonium or uranium-233). The measure is only the level attained in the technology and not the amount of assistance rendered to the Agency, as had been foreseen in the Negotiating Group draft⁴⁵ and as was later proposed in an amendment submitted at the Conference on the Statute.⁴⁶

None of the historical material on the Statute sheds much light on exactly what the criteria for designation under Article VI. A. 1 should be. Nor can much information be gained from the practice of the past decade, since, as indicated in Section 8.2.2.1.4, the Board has almost always made its designations after only informal consultations of which merely the conclusion (the list of agreed designees) appears on the record. However, after Argentina had for some years claimed the Latin American seat to which Brazil had been designated five successive times, the Board appointed a Panel of Experts to determine which of the two States was the "most advanced" regional member.⁴⁷ That Panel took into account the following fields (which, however, should not be considered exhaustive since consideration could only be given to fields in which at least one of the States had actually established a programme):

- Production of uranium;
- Design and construction of small experimental reactors;
- Accelerator technology;

Production of thorium and beryllium;
Metallurgy (both as involved in the manufacture of fuel elements and generally);
Utilization of experimental facilities and research reactors;
Production and use of isotopes;
Health and safety;
Research in physics and chemistry.

It should be noted that the statutory statement of the criterion is purely technical and objective,⁴⁸ and does not depend on any political considerations (aside from the necessity of determining into what "area" a given State falls). This is the reason that a panel of technical experts was appointed to judge the rival claims of Argentina and Brazil. However, it has occasionally been suggested that at least those States that are designated as the most advanced in a particular area should in a sense be representative of that area, or at least should not be unacceptable to the majority of the Member States in the area.⁴⁹ Thus Argentina, when it first unsuccessfully challenged the Brazilian seat, claimed the support of a majority of the Latin American States. In the opposite sense, South Africa's seat has repeatedly been challenged, in the Board and gratuitously even in the General Conference, on the ground that that State is entirely unrepresentative of the area Africa and the Middle East.⁵⁰ The majority of the Board has consistently rejected both the positive and the negative claims of this sort, on the ground that the Statute does not permit this type of evaluation. It might also be pointed out that if the States designated from particular areas are to be acceptable to that area, then it would be anomalous for the 5 States selected as the most advanced in the world not to have to be acceptable to the area which in effect they also "represent"⁵¹ since no other representative from the area can be designated in this category.

8.2.2.1.2. Sub-categories and incumbents

It will be seen that Article VI. A.1 actually establishes two sub-categories of Board membership, to which slightly different criteria apply:

8.2.2.1.2.1. Most advanced in the world

The first sub-category consists of "the five members most advanced" which of course means among all the Members of the Agency.

From the beginning it has been accepted that these States are: Canada, France, USSR, United Kingdom and United States of America.⁵² None of these States have been replaced or even challenged during the first decade of the Agency. Though not listed in this Article of the Statute, it is interesting to note that such listing had actually been proposed by the United States at the Working Level Meeting.⁵³

8.2.2.1.2.2. Regionally most advanced

The second sub-category consists of the "members most advanced . . . in each of the [listed] areas not represented by [those in the first sub-category]".

Evidently, the selections in the second sub-category cannot take place until the members of the first have been determined. It also appears that the Statute does not fix an absolute number for the members of this sub-category, since this depends on the number of areas represented by the members of the first sub-category. Up to now this number has always been three (North America represented by Canada and the United States; Western Europe by France and the United Kingdom; and Eastern Europe by the Soviet Union); however, theoretically these five States might represent as few as one and as many as five areas and thus the number of members of the second sub-category could vary between three and seven. Consequently the size of the Board itself is actually not fixed, but under the unamended Statute could have varied between 21 and 25 (though invariably it was 23), and under the amended Statute between 23 and 27 (though it has always been 25).

The designation of members in these two sub-categories must necessarily be a two-stage procedure, and the Preparatory Commission (which made the initial designations for the first Board) consequently listed its designees under each of these sub-categories separately.⁵⁴ However, India objected to this form of reporting the designations,⁵⁵ and consequently the Board in making and reporting its designations has invariably and illogically combined the two sub-categories⁵⁶ — though this change was still challenged by some members of the Board as late as 1959.⁵⁷ In practice it is of course possible to identify unambiguously at least four of the five most advanced States, since whenever two or more States are designated from the same area all must be among the five most advanced.

In view of the requirement that States chosen under this sub-category be in a particular area, the question might arise which States constitute each area. In practice no such problems have yet arisen under Article VI.A.1; it is therefore discussed in Section 8.2.2.4.6, in connection with Article VI.A.3 where this question has arisen several times.

The States designated by the Preparatory Commission and by the early Boards under this sub-category were:⁵⁸

Latin America: Brazil
 Africa and the Middle East: South Africa
 South Asia: India
 South East Asia and the Pacific: Australia
 Far East: Japan

Over the years these designations have been subject to the following (chronologically arranged) challenges and changes:

- (a) When the Preparatory Commission was considering its designations for the first Board and when the first Board was considering those for the second, some members recorded reservations to the selection of Japan as the Far East designee, on the ground that no definitive choice could be made in the absence from membership of the People's Republic of China.⁵⁹

- (b) Brazil had been a member of the Working Level Meeting, and thus became a named⁶⁰ (not elected) member of the Preparatory Commission and was designated by the Commission to the first Board. Argentina had become an elected member of the Preparatory Commission,⁶¹ but at the time when the designations to the first Board were being made it was in no position to challenge the Brazilian claim to most advanced status in Latin America, because Argentina's ratification of the Statute was subject to a reservation which had at that time not yet been accepted;⁶² however, it was elected by the General Conference to the first Board for a two-year term.⁶³ At the expiration of that non-renewable Article VI, A. 3 term Argentina challenged the Article VI, A. 1 designation of Brazil.⁶⁴ The Board nevertheless designated Brazil to the third Board, and subsequently disregarded a second challenge which Argentina submitted by letter in connection with the designations to the fourth Board.⁶⁵ The Fourth General Conference again elected Argentina to serve on the fourth and fifth Boards,⁶⁶ and it is there that Argentina made its third challenge in connection with the designations for the sixth Board (to which it again could not be elected by the Conference). The fifth Board consequently appointed a three-member Panel of Experts "to report to the Board ... on its findings, having regard to the provisions of Article VI, A. 1 of the Statute, as to whether Argentina or Brazil was the Latin American member 'most advanced in the technology of atomic energy including the production of source materials' ". After six meetings in Paris (because of time limitations it did not travel to South America) at which it considered extensive documentation submitted by the representatives of the rival Governments the Panel concluded "that there is not sufficient basis for stating either that Argentina or Brazil is the Latin American country 'most advanced ...' ". Though this report thus did not help the Board to resolve the dispute, a compromise had meanwhile been reached between the two States (with apparently the concurrence of a majority of the other Latin American States) - which, while not ever officially recorded, evidently provides as follows: Argentina was to be designated, under Article VI, A. 1, to the sixth and seventh Boards, while Brazil would be elected to the same Boards by the Sixth General Conference; thereupon Brazil would be designated to the eighth and ninth Boards and Argentina would be elected to them - this pattern to continue indefinitely. Though doing some violence to logic or to the tenets of statutory construction, the advantage of this compromise was that it permitted the two Governments to share the prestige of being the nuclearly most advanced States in Latin America while also allowing both of them to serve continuously on the Board.
- (c) After South Africa had been designated seven times running as the most advanced State in the area Africa and the Middle East, objections were made in connection with the designations to the eighth, ninth and tenth Boards - and even in the in this respect impotent General Conference. Two grounds for such challenges were advanced:⁶⁷
- (i) Each year it was asserted that South Africa could not be considered a representative of the area since the designation was obviously unacceptable to most Members therefrom.

- (ii) In the designation for the ninth Board it was also suggested that South Africa was no longer the State most advanced in the area, but that either Israel or the United Arab Republic or both had surpassed it.

The majority of the Board refused to react to the first line of challenge for the reasons indicated in Section 8.2.2.1.1, and in connection with the second it was obviously not thought politically opportune to investigate, by means of a technical panel, the rival claims that South Africa, Israel and the United Arab Republic might have to the seat in question.

8.2.2.1.3. Term

Designations under both sub-categories are for one-year terms which are renewable without restriction, and thus a State can stay on the Board indefinitely, subject to an annual "objective" evaluation.⁶⁸

8.2.2.1.4. Designation procedure

The designations under both sub-categories are made by the Board, except that those for the first Board were made by the Preparatory Commission.⁶⁹ Procedural Rule 47 of the Board⁷⁰ merely repeats the statutory requirement, without expanding on it. The designations must take place not less than 60 days before each regular annual session of the General Conference,⁷¹ and are notified to all Member States in a General Conference document.⁷²

In practice the designations have invariably been made after informal consultations outside of the Board leading to an announcement by the Chairman of the complete list (except during the Argentina/Brazil dispute), subject to challenges relating to problem areas made more for the record than to change the consensus reported by the Chairman. As indicated above, this procedure makes it impossible to determine with certainty how the statutory criteria are actually interpreted by the Board.

Should a contest require the taking of a vote, a simple majority would suffice, since neither the Statute, nor the Rules of Procedure nor any special decision of the Board requires a two-thirds majority for decisions on Board designations.⁷³

8.2.2.2. Other producers of source materials (VI. A. 2, first clause)

Article VI. A. 2 of the Statute provides that:

"The outgoing Board . . . shall designate for membership on the Board two members from among the following other producers of source materials: Belgium, Czechoslovakia, Poland and Portugal".

8.2.2.2.1. Criteria

The nominal criterion for election under this category is that the State should be a producer of source material. However, in fact the sole necessary and sufficient condition is that the State be one of the four listed in this clause of the Statute⁷⁴— whether or not it is actually a source material producer.

This has become particularly clear in the light of the continued selection of Belgium in this category after the Congo, which constituted the only source from which Belgium produced natural uranium, was separated from its mother-country in 1960 and indeed became a Member of the Agency in its own right; since then Belgium has not produced any source material, but has regularly been designated to the Board every second year.⁷⁵

The nominal purpose of this provision is to assure a place on the Board for those source material producers that do not find a place on the Board under either sub-category of Article VI. A. 1 (under which advancement in the technology of the production of source materials is also to be taken into account); this plainly discriminatory provision was justified on the ground that it was essential to the success of the Agency that its membership have as complete as possible a monopoly of the world's uranium and thorium supplies – both to permit the Agency to further all legitimate peaceful uses and to inhibit the development of a world black-market in unsafeguarded materials – and such a monopoly could only be assured by granting a special position to each of the few substantial producers of source material. More realistically, the provision was designed to assure both Western and Eastern Europe of an additional place on the Board. Finally it should be recognized that this device made it possible (and apparently this was the only way) to assign a regular place on the Board to every participant in the Working Level Meeting (where this clause originated).

8. 2. 2. 2. Term

Members in this category are designated for one-year terms, which are not immediately renewable.⁷⁶

8. 2. 2. 3. Designation procedure

The procedure for designations to this category is normally the same as that applicable to category VI. A. 1 (see Section 8. 2. 2. 1. 4) – though as pointed out below the actual selection procedure is a mere formality.

8. 2. 2. 4. Automaticity of designations

Even though the Statute appears to establish objective criteria for designations under this category and to set up a procedure for the making of designations conforming to such criteria, the statutory rule actually leaves no freedom of action whatsoever to the Board. This is so because two States must be selected each year from among the four named in the Statute, and neither of these two States can immediately succeed itself – and thus they must automatically be succeeded after one year by the other two. Once the initial selection (for which twelve combinations were mathematically possible, but only two politically feasible)⁷⁷ was accomplished by the Preparatory Commission,⁷⁸ the future pattern of designation was rigidly set beyond any possibility of disturbance by either the Board or the General Conference (except through amendment of the Statute).⁷⁹

The Board recognized that its task here is completely ministerial, by stating in the designations it made to the fifth⁸⁰ and subsequent Boards, that under this category the two States "have been automatically designated". The purpose of this indication was to avoid the suggestion that all members of the Board actually favoured the selection of Portugal — whose designation had repeatedly been challenged on political grounds.⁸¹ These challenges of course did not relate to the nature of Portugal's activities on the Board or within the Agency, but to its colonial policy which has been attacked in the United Nations and in a number of specialized agencies.

8.2.2.2.5. Proposed amendment

During the designations for the ninth Board, the representative of the Congo suggested that the Statute be amended by deleting the names of the four States mentioned in Article VI. A. 2. The subsequent disposition of this amendment is described in Sections 5.3.2.3 and 8.2.1.2.2 (second paragraph).

The proposed amendment had two inter-related purposes. In the first place it would remove the anomaly whereby Belgium is designated to the Board every second year as a producer of source material, which it is not — while other States, such as the Congo, which do produce source material, have no opportunity of being designated under this category. In the second place it would eliminate the basis for the automatic designation of an unpopular State, such as Portugal.

8.2.2.3. Supplier of technical assistance (VI. A. 2, second clause)

Article VI. A. 2 of the Statute further provides:

"The outgoing Board . . . shall also designate for membership on the Board one other member as a supplier of technical assistance".

8.2.2.3.1. Criteria

The Statute states as the sole criterion that the member designated under this category shall be a "supplier of technical assistance". At the Conference on the Statute, Italy proposed that this language, which originated in the Working Level Meeting, should be expanded by adding the words "[supplier of] . . . and (or) scientific knowledge".⁸² Later it withdrew this amendment, upon receiving assurance that the supply of scientific knowledge would indeed be taken into account in making designations under this category.⁸³

Although the word "supplier" implies (unlike the words "advanced" or "producer", which define the previous categories) that under this clause some active, rather than merely potential, assistance to the Agency or to its less developed Members is required, it has never been suggested that actual performance in this respect should in some way be insisted on or even be evaluated.

8.2.2.3.2. Practice

By unchallenged practice, the designation under this category has from the beginning of the Agency been rotated among the following four Scandinavian States, in the indicated sequence: Sweden, Denmark, Norway, Finland. Because the actual decisions as to designations are always made by informal consultations it is impossible to establish to what extent and in what way account has been taken of the statutory criterion.⁸⁴

8.2.2.3.3. Term

Members in this category are designated for a one-year term, which is not immediately renewable.

8.2.2.3.4. Designation procedure

The procedure for making designations under this category is the same as set forth in Section 8.2.2.1.4 with respect to designations under Article VI, A.1. In communicating its designations to the General Conference, the Board for some years combined the three designations it made under both clauses of the first sentence of Article VI, A.2. This practice was discontinued when it was found desirable to indicate that designations made under the first clause had to be made automatically.⁸⁵

8.2.2.4. Geographic representatives (VI. A. 3)

The final category of Board members are those elected by the General Conference. In the original text of the Statute ten members were to be so elected: one each from seven indicated areas and three from any area — but "with due regard to equitable representation on the Board as a whole of the members in the areas listed in [Article VI, A.1]". After the entry into force of the first amendment to the Statute, twelve members are to be elected under this category: three each from the areas "Latin America" and "Africa and the Middle East", one each from five other areas and one further member.

8.2.2.4.1. Criteria

The Statute does not indicate any criteria that have to be met by States elected under this category.⁸⁶ It is only stated that certain of them are to be "representatives" of indicated areas and that the election shall be "with due regard to equitable representation on the Board as a whole ...".

8.2.2.4.2. Term

Members in this category are elected for two-year terms, which are not immediately renewable — i. e., a State must wait for at least one year after leaving the Board before it becomes a candidate for election again.⁸⁷ However, a State which had served on the Board in another category can thereupon immediately commence a term as an elected member, and vice-versa.⁸⁸

The only exception to this statutory rule was allowed at the beginning of the Agency. At the first regular session of the Conference 10 Board members were elected, but of these 5 received only a one-year term — which however did not preclude immediate re-election at the second Conference for a two-year term.⁸⁹

8.2.2.4.3. Sub-categories

It is immediately apparent that Article VI. A. 3 in effect creates two sub-categories of elected Board members, to which by statutory rule and established practice different criteria apply.

8.2.2.4.3.1. Geographical seats

In its unamended form the Statute required that seven members, and in its amended form eleven members, be elected from seven of the eight "areas" listed in Statute Article VI. A. 1. This statutory requirement is implemented in part by General Conference Procedural Rule 88,⁹⁰ which provides that:

"In the separate elections in respect of geographical areas invalid votes shall also include votes cast for Members which are not in the geographical area in respect of which the election has taken place."

The statutory requirement is that the elections by the Conference shall result in the Board including "representatives of areas". The question therefore arises whether States elected under this sub-category must fulfil any requirement in addition to merely being located in the area. During the formulation by the Preparatory Commission of the draft Rules of Procedure of the General Conference, it was proposed that these should formally require that any State elected must be acceptable to the area concerned. The attempt to introduce such a rule became the most controversial issue in connection with the draft being prepared by the Commission.⁹¹ Finally, at its last meeting a compromise was reached, which was subsequently announced at the first regular session of the Conference in the following terms:

"In the separate elections of members of the Board of Governors representing the geographic areas listed in sub-paragraph A.1 of Article VI, the General Conference should take into account the preference of the members of the area concerned."⁹²

The gentlemen's agreement thus recorded has generally been followed, whenever (as is usually true) an area has been able to agree on a candidate — and therefore if such agreement is reached at the Conference, there usually are no more than a few scattered votes for other candidates. Apparently the only time when this rule was not observed was during the Fifth Conference when Viet-Nam was elected for the Far East, even though four members of the area (constituting at least a majority of its then maximum membership of seven) desired the election of China and maintained the view

that Viet-Nam was not even a member of the area;⁹³ by electing Viet-Nam the Conference both overruled the objection to the classification of Viet-Nam by the four undisputed members of the area and also their preference as to the area's candidate.

The general acceptance of this gentlemen's agreement incidentally made it impossible to follow an alternative proposal — that each elective seat should be compulsorily rotated among the Member States in the area.⁹⁴

In view of the statutory requirement that States elected under this sub-category should be "representatives of the area", the question was raised at the first regular session of the Conference whether a member thus elected has the duty "to represent the interests of every country in [the area] without exception".⁹⁵ However no answer to this question was given⁹⁶ and it would be difficult to deduce such a duty from the statutory history or to induce it from the behaviour of the elected members of the Board in exercising their functions.

8.2.2.4.3.2. "Floaters"

The Statute originally provided for three (i. e., ten minus seven) members to be elected without indication of geographic area; the amended Statute provides for only one (twelve minus eleven). By popular terminology these non-geographic seats are known as "floaters".⁹⁷ Though in number no longer significant, their legal status remains complex.

No formal criteria at all are stated in the Statute for the election of floaters. However it will be recalled that the elections by the Conference are to be conducted "with due regard to equitable representation on the Board as a whole ...". Since no question of "equitable representation" can be raised in connection with the members elected for geographic seats (unless the word "equitable" is taken to refer to non-geographic factors⁹⁸), any improvement in the equity of the overall balance must arise from the election of the floaters.

In practice the distribution of the floating seat(s) is controlled by a number of informal gentlemen's agreements — the security of which however has sometimes been in doubt:

- (a) At the Conference on the Statute Latin America was promised two of the then available three floaters.⁹⁹ This agreement was indeed complied with at every election until the Statute was amended. Since through that amendment the two additional elective seats for Latin America were formalized, it had no further claim to any floaters.
- (b) At the Conference on the Statute a similar promise of a single floater was made to Africa and the Middle East¹⁰⁰ — and this promise was probably instrumental in causing the defeat of two amendments that had been submitted to the Conference in order to increase the representation of that area.¹⁰¹ At the First General Conference Turkey was elected to the third floating seat¹⁰² — but as indicated below it is not clear whether Turkey was considered as a representative of Africa and the Middle East, or of Western Europe. In any case, in subsequent elections Africa and the Middle East was never assigned any of the floating seats

so that, until the amendment of the Statute, it was only represented on the Board by one elected State. Indeed it was this violation of the promise made at the Conference on the Statute, combined with the rapid increase in the number of Members from the area, that provided the main spur in the successful drive to amend Article VI. A. 3 of the Statute. After that amendment was passed the area of course had no further claim to any floating seat.

- (c) At the Conference on the Statute, Western Europe was not explicitly promised a floating seat — indeed such a promise would have been inconsistent with the promises of two extra seats to Latin America and one to Africa and the Middle East. At the First General Conference Turkey was elected to the third floating seat; while it is still unclear whether Turkey was meant to represent Western Europe, at all subsequent elections a Western European State was elected to the remaining floater. This practice, unlike that with respect to Latin American floaters, was not formalized by the amendment to Article VI. A. 3 — except in that the General Conference, acting on the recommendation of the Board, included the following preambular paragraph in its Resolution approving the amendment:

"[The General Conference] Believing that any statutory amendment should not be detrimental to the existing pattern of area representation on the Board,"¹⁰³

In historical context this somewhat Delphic provision was of course meant to assure Western Europe of the continuance of the practice whereby the last remaining floater would be assigned to it. This indeed has been done since the amendment entered into force. However, already at the Fifth Conference the seed of a challenge to this practice was introduced by the General Committee, when its report stated (in a formula that has since been automatically repeated) that "the remaining [non-geographic] member may be elected from any geographic area in so far as its election is not precluded by the provisions of Article VI of the Statute".¹⁰⁴ Up to now the Conference has not seen fit to act on this implied invitation to disregard the established practice favouring Western Europe.¹⁰⁵

Though floaters are, at least formally, not elected to represent a particular area, it is clear that each floater is in an area. Since members elected by the General Conference serve for two years, it is also clear that at the election held one year after a floater has been chosen account may have to be taken of its continuing membership on the Board in determining the areas from which representatives must now be elected (e. g., after Switzerland was elected as a floater at the Seventh Conference, need there be an election for a Western European geographic seat at the eighth Conference?).

The legal situation is by no means entirely clear. If the words "representative" and "in this category" are read restrictively, then only States which were explicitly elected with respect to a given area can be considered to be its representatives, and this group of geographic representatives would

then form a separate category (i. e., the sub-category described in Section 8.2.2.4.3.1). On the other hand, if the word "representative" is read to apply generally to any State actually in an area and the word "category" is read in its natural sense as applying to all States elected under Article VI. A. 3, then account must be taken of floaters in holding the next elections to the Board – i. e., floaters must be "shifted" to any appropriate and otherwise vacant geographic seats before it is decided that a vacancy requiring an election indeed exists.

At the elections held during its second regular session, the Conference, acting on the recommendation of its General Committee which in turn had followed a recommendation of the Director General, held elections, *inter alia*, for the areas of "Western Europe" and "Africa and the Middle East" (but not for "Eastern Europe" to which Romania had been elected at the first regular session for a two-year term).¹⁰⁶ Since Turkey had been elected at the first regular session for a two-year term,¹⁰⁷ this decision of the Conference either meant that floaters were not to be shifted or that Turkey was neither in the area Western Europe nor in Africa and the Middle East (the two areas from one of which a floater should have been elected at the First Conference according to the inconsistent gentlemen's agreements described above) – and thus logically could only be attributed to Eastern Europe (a classification which commends itself for its geographic but not its political logic¹⁰⁸). It is however likely that none of these considerations motivated the Director General, the General Committee or the Conference itself – but merely that no thought had at that time yet been given to the possibility and possible legal necessity of shifting floaters.

From the Third Conference on, the practice has consistently been to shift floaters. Therefore no formal election has since been held for Western Europe, since that seat is always occupied by the floater elected at the last previous session; similarly no elections were held for Latin America at the third to the sixth sessions.¹⁰⁹

The practice of shifting floaters has been challenged twice. Mexico raised but did not press the point in the General Committee of the Third Conference.¹¹⁰ More seriously, at the fourth regular session, Czechoslovakia, speaking in the name of almost all members of the Eastern European area, declared that any shift of floaters would be objectionable if this would lead to a violation of the formal gentlemen's agreement that geographic seats were to be assigned with a view to the preferences of the members of the area concerned;¹¹¹ this statement reflected the fact that the announced understanding on elections to geographic seats neither applied to the selection of floaters, nor to the later assignment of a floater to a particular area (e. g., it would in principle be possible to elect Greece as a floater under the gentlemen's agreement assigning one such seat to Western Europe, and for the Conference to decide at its next regular session that Greece according to its geographic location is in Eastern Europe and consequently a geographic area election need only be held for Western but not for Eastern Europe).

8.2.2.4.4. Pattern of elections

Once it was accepted that floating seats should be shifted to geographic ones, and in view of the gentlemen's agreements in favour of Latin America and

Western Europe, the following patterns of elections persisted between the third and sixth regular sessions: At the odd-numbered regular sessions elections were held for Eastern Europe, for South Asia and for the Far East, and one Latin American and one Western European floaters were elected; elections were held at the even-numbered regular sessions for Africa and the Middle East and for South East Asia and the Pacific, and two Latin American and one Western European floaters were elected.¹¹²

The amendment that increased the number of elected Board members from 10 to 12, made no provision for initially electing one of the two new members for a one-year term so as to create a 6-6 pattern of elections in alternate years.¹¹³ Therefore the Seventh Conference (the one which followed the entry into force of the amendment) elected seven members to the Board for two-year terms, and thereafter five members have been elected at each even-numbered session and seven at each odd-numbered one. At the odd-numbered sessions elections must be held for one Latin American, one Eastern European, two Africa and Middle Eastern, one South Asian and one Far Eastern seats, plus for one floater (from Western Europe). At the even-numbered sessions elections are held for two Latin American, one Africa and Middle Eastern, and one South East Asia and Pacific seats, plus for one floater (from Western Europe).¹¹⁴

8.2.2.4.5. Subsidiary gentlemen's agreements

In addition to the gentlemen's agreements relating to the distribution of seats among the areas, several informal understandings appear to exist¹¹⁵ as to the distribution of seats within certain areas. These naturally apply to the geographic seats and the floaters considered as a unit, since they are not bound by the somewhat artificial distinction between the two sub-categories of elected members.

- (a) With respect to the three Latin American seats, the Brazil/Argentina compromise as to the Article VI. A.1 designation requires that one of these two States should alternately occupy one of the elected places.¹¹⁶
- (b) Within Africa and the Middle East it appears to be understood, since the increase in the number of seats for that area, that one of them should represent the Middle East (including the United Arab Republic), one of them a State north of the Sahara (i. e. , an Arab State) and one a State south of the Sahara (i. e. , a Negro State – and this seat, in turn, alternates every two years between the English- and the French-speaking States of the area).
- (c) One of the two Western European seats (one of which is always represented by a floater) has always been assigned to one of the following three members of EURATOM: Italy, Netherlands or Germany. (France of course has a "permanent" seat under the first sub-category of Article VI. A. 1; Belgium has a seat every second year under the first sub-category of Article VI. A. 2, and thus Luxembourg appears to be the only EURATOM member not assured of a periodic seat on the Board).

8. 2. 2. 4. 6. Definition of areas

At the Working Level Meeting the Soviet Union unsuccessfully proposed that the list of States making up the areas to be set forth in Article VI, A, 1 of the Statute should itself be set forth in an annex to that instrument.¹¹⁷ Consequently the Statute gives no guidance as to the States comprising a given area.¹¹⁸ From time to time formal requests have been made that a list be constituted for a given area or for all areas, but these have never been complied with.¹¹⁹ By its decision to elect Viet-Nam to the Far Eastern seat, the Conference has in effect decided that it is not up to the States in an area to decide on or to limit its membership.¹²⁰

Nevertheless it is possible to establish with reasonable certainty the composition of most areas, i. e. , to assign a geographic attribution to most Member States. These attributions can result from one or more of the following legal or quasi-legal acts:¹²¹

- (a) A decision by the Preparatory Commission or the Board that a particular State designated under the first sub-category of Article VI, A, 1 represents a particular area for which therefore no further designations under the second sub-category need be made.
- (b) A decision by the Preparatory Commission or the Board to designate a State for a particular area under the second sub-category of Article VI, A.1.
- (c) The election of a State by the General Conference with respect to a particular area.
- (d) The determination by the General Committee that no election need be held for a particular area — which in effect assigns one of the "floaters" elected at the previous Conference to that area. Though the Committee does not specify which floater it considers as representative of an area, an unambiguous assignment of a particular State may still be deduced since most Members can be eliminated from possible attribution to a given area by one of the other "acts" here listed.
- (e) The unchallenged recording of votes in the Plenary Conference in an election for a geographic area. Since Procedural Rule 88 provides that in these elections a vote cast for a State not in that area shall be invalid, in theory any vote recorded by the tellers, announced by the President and not challenged by any member of the Conference suggests that the indicated candidate is in the area for which the ballot was being held. In fact it would be dangerous to draw such a conclusion, since the tellers will only disqualify votes cast for States "manifestly not in the area"¹²² and neither the President nor any member of the Conference is apt to challenge a few scattered votes for a minority candidate if the result of the election is not affected by them.¹²³ Therefore experience shows that certain States have received unchallenged votes for as many as four different areas.¹²⁴
- (f) Geographic location, if not contradicted too strongly by political logic, can provide a reasonably useful guide as to States as to which no clearer method of attribution is possible (principally those that have never yet served on the Board, or that only serve under either sub-category of Article VI, A. 2). Thus if a State is located between two States that are

clearly assigned to a given area, one can assume that it too belongs to the same one.¹²⁵

- (g) From time to time, during the formulation of the Statute and later, certain States have announced lists of the States which in their view constitute a given area.¹²⁶ The validity and persuasiveness of any such list depends of course on the context in which it was issued.

On the basis of the above, Table 8A indicates for each Member of the Agency its area attribution, together with the bases on which that attribution was made.¹²⁷ Table 8B summarizes this information by showing the composition of each area. Notes to these tables, including an explanation of the symbols used, are given on pages 190 and 191.

TABLE 8A. "AREA" ATTRIBUTION OF IAEA MEMBERS

Afghanistan	SA(GC)	Korea, Rep.	FE(GC)
Albania	EE(G)	Kuwait	A&ME(G)
Algeria	A&ME(GC)	Lebanon	A&ME(GC)
Argentina	LA(GC; B)	Liberia	A&ME(G)
Australia	SEA&P(P-1)	Libya	A&ME(G)
Austria	WE(GEN); EE(V)	Liechtenstein	WE(G)
Belgium	WE(G)	Luxembourg	WE(G)
Bolivia	LA(V; G)	Madagascar	A&ME(GC)
Brazil	LA(P-1; B; GC; GEN)	Malaysia	? ; SEA&P(G); FE(G)
Bulgaria	EE(GC)	Mali	A&ME(G)
Burma	? ; SA(V); SEA&P(V)	Mexico	LA(GC; GEN)
Byelorussian SSR	EE(G)	Monaco	WE(G)
Cambodia	? ; FE(V); SA(V); SEA&P(G)	Monrocco	A&ME(GC)
Cameroon	A&ME(G)	Netherlands	WE(GC; GEN)
Canada	NA(P-2)	New Zealand	SEA&P(V)
Ceylon	SA(GC)	Nicaragua	LA(G)
Chile	LA(GC)	Niger	A&ME(G)
China	FE(GC)	Nigeria	A&ME(GC)
Colombia	LA(GEN; GC)	Norway	WE(G)
Congo, Dem. Rep.	A&ME(GC)	Pakistan	SA(GC)
Costa Rica	LA(G)	Panama	LA(G)
Cuba	LA(V)	Paraguay	LA(G)
Cyprus	? ; WE(G); EE(G); A&ME(G)	Peru	LA(GC)
Czechoslovakia	EE(G)	Philippines	FE(GC)
Denmark	WE(G)	Poland	EE(G)
Dominican Rep.	LA(G)	Portugal	WE(G)
Ecuador	LA(G)	Romania	EE(GC)
El Salvador	LA(GEN ? ; V)	Saudi Arabia	A&ME(V, G)
Ethiopia	A&ME(V)	Senegal	A&ME(V)
Finland	WE(G); EE(G)	Sierra Leone	A&ME(G)
France	WE(P-1)	Singapore	SEA&P(GC)
Gabon	A&ME(G)	South Africa	A&ME(P-1)
Germany, Fed. Rep.	WE(GEN)	Spain	WE(GEN)
Ghana	A&ME(G)	Sudan	A&ME(G)
Greece	WE(GEN)	Sweden	WE(G)
Guatemala	LA(G)	Switzerland	WE(GEN)
Haiti	LA(G)	Syria	A&ME(G)
Holy See	WE(G); ?	Thailand	SEA&P(GC)
Hungary	EE(GC)	Tunisia	A&ME(GC)
Iceland	WE(G); ?	Turkey	WE(GEN); A&ME(V, G); EE(V, G)
India	SA(P-1)	Uganda	A&ME(G)
Indonesia	SEA&P(GC)	Ukrainian SSR	EE(G)
Iran	A&ME(GC)	USSR	EE(P-2)
Iraq	A&ME(GC)	United Arab Republic	A&ME(GC)
Ireland	WE(G)	United Kingdom	WE(P-2)
Israel	A&ME(V)	United States	NA(P-2)
Italy	WE(GC; GEN)	Uruguay	LA(GC)
Ivory Coast	A&ME(G)	Venezuela	LA(GC)
Jamaica	? ; LA(G); NA(G)	Viet-Nam	FE(GC)
Japan	FE(P-1)	Yugoslavia	EE(GC); WE(V)
Jordan	A&ME(G)	Zambia	A&ME(G)
Kenya	A&ME(G)		

TABLE 8B. SUMMARY OF "AREA" ATTRIBUTION OF IAEA MEMBERS

NORTH AMERICA (NA)	AFRICA AND THE MIDDLE EAST (A&ME)
Canada	Algeria
<u>United States</u>	Cameroon
Jamaica X	Congo, Dem. Rep.
	Ethiopia
LATIN AMERICA (LA)	Gabon
Argentina	Ghana
Bolivia	Iran
Brazil	Iraq
Chile	Israel?
Colombia	Ivory Coast
Costa Rica	Jordan
Cuba	Kenya
Dominican Republic	Kuwait
Ecuador	Lebanon
El Salvador	Liberia
Guatemala	Lybia
Haiti	Madagascar
Mexico	Mali
Nicaragua	Morocco
Panama	Niger
Paraguay	Nigeria
Peru	Saudi Arabia
Uruguay	Senegal
<u>Venezuela</u>	Sierra Leone
Jamaica?	South Africa
	Sudan
WESTERN EUROPE (WE)	Syria
Austria	Tunisia
Belgium	Uganda
Denmark	<u>United Arab Republic</u>
Finland?	<u>Zambia</u>
France	Cyprus X
Germany, Fed. Rep.	
Greece	SOUTH ASIA (SA)
Holy See?	Afghanistan
Iceland?	Ceylon
Ireland	India
Italy	<u>Pakistan</u>
Liechtenstein	<u>Burma?</u>
Luxembourg	Cambodia X
Monaco	
Netherlands	SOUTH EAST ASIA AND THE PACIFIC (SEA&P)
Norway	Australia
Portugal	Indonesia
Spain	New Zealand
Sweden	Singapore
Switzerland	<u>Thailand</u>
Turkey	<u>Malaysia?</u>
<u>United Kingdom</u>	Burma X
Cyprus?	Cambodia X
EASTERN EUROPE (EE)	FAR EAST (FE)
Albania	China
Bulgaria	Japan
Byelorussian SSR	Korea, Rep.
Czechosloviaka	Philippines
Hungary	<u>Viet-Nam</u>
Poland	<u>Cambodia?</u>
Romania	Malaysia X
Ukrainian SSR	
USSR	UNASSIGNED (?, X)
<u>Yugoslavia</u>	Burma (SA)
Cyprus X	Cambodia (FE)
Finland X	Cyprus (WE)
	Jamaica (LA)
	Malaysia (SEA&P)

8. 2. 2. 4. 7. Election procedure

8. 2. 2. 4. 7. 1. Determination of elective places by the General Committee

Procedural Rule 86 requires the General Committee to determine at each regular session "the number of elective places which must be filled on the Board of Governors so as to ensure that, after the end of the session, the Board of Governors shall include twelve Members elected by the General Conference" and to "specify each geographical area in respect of which a Member or Members must be elected to membership on the Board of Governors to ensure that" the statutory requirements are fulfilled. The Committee must therefore match the States elected for two-year terms at the last regular session, both for geographic seats or as floaters, to the list of area representations required by Article VI. A. 3 of the Statute. As to States that had been elected to geographic seats, the function of the Committee is entirely ministerial; however, as to floaters the Committee has to hazard an area attribution, which on occasion might be politically controversial. In practice the Committee always has before it a recommended draft report by the Director General,¹²⁸ together with an explanatory memorandum, and up to now this draft report has in substance always been accepted.

In order to facilitate compliance by the Conference with the statutory requirement regarding the "equitable" overall distribution of Board seats (which is repeated without exegis in Procedural Rule 83), the General Committee regularly informs the Conference of the list of all other States already designated or elected to the next Board — but does not attempt to offer any further guidance.¹²⁹

8. 2. 2. 4. 7. 2. Balloting in the Plenary

In view of the complex gentlemen's agreements to be observed, the elections always take place toward the end of the Conference session, so as to give maximum time for informal consultations among the delegations from each area as to which elections are to be held. The results of these consultations are then informally communicated to the other delegations.

The mechanism of informal consultation works well enough so that balloting contests for geographic seats are relatively rare — though scattered votes for supernumerary candidates are sometimes cast by delegations who either were not informed of the agreed candidate, or who perhaps do not consider themselves bound by the old gentlemen's agreement, or to whom the agreed candidate is particularly distasteful. Contested elections therefore only take place either if the area cannot agree on its candidate(s),¹³⁰ or if the choice of the area is unacceptable to a sizeable fraction of the Conference.¹³¹ Since the floaters are in effect also geographically committed, contests here too are rare — though the gentlemen's agreement as to area consent does not formally apply.

The procedure of the elections is designed to inhibit debate. Procedural Rule 79 prohibits nominations and requires the use of secret ballot; Procedural Rule 74 prohibits explanation of votes taken by secret ballot. By accepted practice, the Presidents of the Conference discourage any other debate in connection with elections and, in contrast to their practice under other agenda items, only permit such comments as are actually directly germane to the election but violate neither the rule against nominations nor that against explanations of votes.¹³²

Since neither the Statute, nor the Rules of Procedure nor any special decision of the Conference specifies that Board elections should require a two-thirds majority, the normal simple majority rule prevails.¹³³

Although the Rules of Procedure relating to elections are based on those of the UN General Assembly,¹³⁴ an interesting improvement in the method of counting votes has been introduced. Following the example of the General Assembly, the recorded count in the early elections indicated merely the number of ballot papers collected, the number of those that were invalid or abstentions, the consequent majority required and the votes cast for each candidate.¹³⁵ This method of counting disregarded the fact that, in elections for two or more elective places, a ballot might be partially valid and partially invalid, or may indicate only partial abstention. Starting with the Sixth General Conference, the tellers have calculated the total number of votes cast (consisting of the total number of ballot papers multiplied by the total number of seats to be filled) and distributed these among invalid votes, abstentions, and valid votes; the majority required is then calculated by dividing the number of valid votes by twice the number of seats to be filled and raising the resulting figure to the next higher digit. While this procedure cannot prevent the possibility (always inherent in multi-seat elections requiring a simple majority) of more than the required number of candidates attaining the indicated majority,¹³⁶ it does reflect more clearly the actual distribution of effective and wasted votes and also avoids the necessity of holding an additional ballot if one candidate fails to receive a sufficient number of votes merely because of a large number of abstentions.¹³⁷

8.2.3. Overall distribution of Board membership

Table 8C shows the overall distribution, by geographic areas as well as by statutory (functional) categories, of all the seats on the Board — reflecting the situation both before and after the amendment of Statute Article VI, A. 3.

In addition to the functional and geographic distribution of Board membership, one of the features to note about the composition of the Board is its relative stability. According to the present pattern of elections, each new Board of 25 sees only 8 - 10 members that did not serve on the previous Board — and of these "new" members nearly half had served on one or more Boards within the past four years.

TABLE 8C. DISTRIBUTION OF BOARD SEATS SUMMARIZED

Statute Article (Sub-) Category	Board designations ¹				General Conference elections		Total	Members of Agency	Percentages of		
	VI. A. 1		VI. A. 2		VI. A. 3				Agency Members	Board Members	Assessed Contributions
	Most Advanced in: World	Region	1st clause	2nd clause	Geographic	Floater					
North America	2						2	2	2	8	34
Latin America		1			(1)8 ^g	(2 ^h)0	(4)4	19 + 1 [?]	19	16	4
Western Europe	2		1 ^c	1 ^d	1 ^e	1 ^{be}	6	22 + 1 [?]	22	24	29
Eastern Europe	1		1 ^c		1		3	10	10	12	19
Africa & the Middle East		1			(1)3 ^f		(2)4	31	30	16	2
South Asia		1			1		2	4 + 1 [?]	5	8	2
South East Asia & the Pacific		1			1		2	5 + 1 [?]	6	8	2
Far East		1			1		2	5 + 1 [?]	6	8	8
Total	5	5	2	1	(7)11	(3)1	(23)25	103	100	100	100

^a Informal gentlemen's agreement.

^b "Formal" gentlemen's agreement.

^c Automatic "designations" - no discretion in Board.

^d Scandinavian rotation.^a

^e 1 of these 2 seats always held by one of 3 EURATOM members, the other by a non-Scandinavian, non-EURATOM country^a.

^f 1 Middle East, 1 Arab Africa, 1 Negro Africa (alternating between an English- and a French-speaking State).

^g One of these is Argentina if Brazil is under VI. A. 1, and vice-versa.^a

() Before amendment of Article VI. A. 3, if figure different from post-amendment result.

? States doubtfully assigned to an area (i.e., States listed as "unassigned" in Table 8B).

8.3. FUNCTIONS AND POWERS

8.3.1. Plenary powers granted by Statute

The Negotiating Group draft of the Statute would have vested the Board "with complete authority to carry out the functions of and determine the policies of the Agency ...".¹³⁸ The final text of Article VI.F of the Statute, which reflects extensive subsequent pressures to enhance the powers of the General Conference and correspondingly to reduce those of the Board, still contains a general, plenary grant of powers in the following terms:

"The Board of Governors shall have authority to carry out the functions of the Agency in accordance with this Statute, subject to its responsibilities to the General Conference as provided in this Statute."

This grant, by its terms, contains only two, self-evident limitations: the Board is to carry out its functions in the manner provided for in the Statute, and it is to comply with the various statutory provisions requiring it to share some of its authority with the Conference or to carry out certain functions pursuant to rules approved by the Conference. The second proviso cannot be read as generally subordinating the Board to the Conference; it merely constitutes a reminder of some specific limitations contained in other portions of the Statute.

One special power that the Board has arrogated to itself, on somewhat doubtful grounds but evidently derived from this plenary grant, is that of addressing recommendations to the membership. The Statute does grant such a power explicitly (but not necessarily exclusively) to the General Conference.¹³⁹ Nevertheless the Board has never hesitated to issue recommendations, including those commending each newly approved Agency safety standard¹⁴⁰ and that convening the international Conference on Civil Liability for Nuclear Damage to which it invited the entire membership.¹⁴¹ Even if the Conference was not granted a monopoly in this area, the question might still be raised whether these recommendations were within the narrow definition of "carry[ing] out the functions of the Agency".

8.3.2. Statutory limitations

8.3.2.1. Particular statutory requirements

Certain provisions of the Statute that apparently specify how and what the Board is to do are actually intended to constitute limitations or requirements binding the Agency itself, rather than only a specific organ (e.g., the requirement in Article XIII that the Board enter into reimbursement agreements with Member States furnishing materials, services, equipment or facilities, in effect establishes the requirement that the Agency should generally reimburse Members for any assistance furnished to it). Other provisions of the Statute, however, are clearly designed to regulate the Board itself:

- (a) Article IV.B requires the Board, in recommending a State for membership, to determine its ability and willingness to carry out the obligations of membership in the Agency, giving due consideration to its ability and willingness to act in accordance with the UN Charter.¹⁴²
- (b) Article XI.E specifies the various points to which the Board is to give consideration before approving an Agency project.¹⁴³
- (c) Article XIV.E sets forth the factors to be taken into account by the Board in establishing scales of charges for assistance rendered to Member States.¹⁴⁴

8.3.2.2. Requirement of concurrent action with or approval by the General Conference

In certain important areas the Board is precluded from acting on its own since a valid decision requires the concurrence of the General Conference:

- (a) Adoption of the budget (Articles XIV.A and V.E.5);¹⁴⁵
- (b) Appointment of the Director General (Articles VII.A and V.E.10);¹⁴⁶
- (c) Conclusion of relationship agreements with organizations (Articles XVI.A and V.E.7);¹⁴⁷
- (d) Submission of reports to the United Nations (Articles VI.J and V.E.6);¹⁴⁸
- (e) Approval of States for membership (Articles IV.B and V.E.2);¹⁴⁹
- (f) Suspension of Members from the privileges and rights of membership (Articles XIX.B and V.E.3);¹⁵⁰
- (g) Formulation of general rules for the Staff Regulations (Article VII.E).¹⁵¹

8.3.2.3. Powers subject to rules approved by the General Conference

In certain areas the Board can only exercise its powers subject to rules approved by the General Conference – which rules may, however, in accordance with statutory requirements or established practice, be closely based on texts originally formulated by the Board for the Conference's approval. These rules control:

- (a) The exercise by the Board of the borrowing power of the Agency (Articles XIV.G and V.E.8);¹⁵²
- (b) The acceptance of voluntary contributions to the Agency (Articles XIV.E and V.E.8);¹⁵³
- (c) The uses of the General Fund (Articles XIV.F and V.E.8);¹⁵⁴
- (d) The formulation of the Staff Regulations (Article VII.E).¹⁵⁵

8.3.3. Additional statutory powers

In view of the plenary grant of powers to the Board, it is hardly necessary to mention and certainly not to analyse some of the subsidiary grants contained in the Statute – such as the right to elect its officers, adopt its rules of procedure, establish committees, and appoint persons to represent it in its¹⁵⁶ relations with other organizations. However, the Statute also grants the Board certain significant powers which cannot strictly speaking

be classified as "carry[ing] out the functions of the Agency" or which focus the plenary grant onto particular questions; in addition to some of the shared ones already listed in Section 8.3.2.2 (e.g., the approval of members), these include the power to:

- (a) Co-opt the majority of its own members (Article VI.A.1 and 2);¹⁵⁷
- (b) Extend the competence of the General Conference (Article V.F.1);¹⁵⁸
- (c) Require the Conference to consider the Board's observations on amendments to the Statute (Article XVIII.C(i));¹⁵⁹
- (d) Convene special sessions of the General Conference (Article V.A.);¹⁶⁰
- (e) Extend the statutory definitions of the terms "special fissionable material" and "source material" (Article XX.1 and 2);¹⁶¹
- (f) Request advisory opinions from the International Court of Justice (Article XVII.A);¹⁶²
- (g) Make particular disposition with respect to nuclear materials made available to the Agency (Article IX.B, C, E, F);¹⁶³
- (h) Instruct the Director General as to the negotiation of privileges and immunities agreements (Article XV.C).¹⁶⁴

8.3.4. Non-statutory functions and powers

Since the statutory powers of the Board are largely co-extensive with the functions of the Agency itself, the possibility of that organ acquiring additional powers through other instruments is naturally limited. Instruments promulgated by itself (e.g., the Financial Regulations or the Safeguards System) in effect only regulate the exercise of its existing powers. Nevertheless, though the Board's powers are not subject to any substantial increase through non-statutory instruments, the following devices deserve mention:

8.3.4.1. Delegation from the General Conference

The General Conference does not have any extensive powers to exercise or to share; but of these it has made some minor attributions to the Board:

- (a) The most important power possessed by the Conference is the requirement that it approve the budget. Nevertheless, to allow some flexibility in the financial operations of the Agency between the annual Conference sessions, it has delegated to the Director General, acting with the prior approval of the Board (which in effect amounts to a delegation to the Board), authority to make transfers between budget sections, to make certain advances from the Working Capital Fund, and even to utilize certain contingent appropriations.¹⁶⁵
- (b) Although Article V.E.6 of the Statute requires the General Conference to approve reports to be submitted to the United Nations, the Conference has regularly authorized the Board to prepare and submit directly to the United Nations a supplement to the annual report to the General Assembly, as well as the Agency's entire report to ECOSOC.¹⁶⁶
- (c) The Board is authorized to place items on the provisional agenda of the Conference and to propose supplementary and additional items; in addi-

tion, the Director General must consult with the Board in drawing up the provisional agenda and must secure its agreement for placing items proposed by him on the provisional supplementary list.¹⁶⁷ Each year the Board is authorized to invite certain types of intergovernmental organizations to be represented by observers at the next regular session.¹⁶⁸ And in the Rules on the Consultative Status of Non-Governmental Organizations, the Conference authorized the Board's Committee on Non-Governmental Organizations to make recommendations to Conference committees with regard to proposed oral statements by representatives of NGOs.¹⁶⁹

8.3.4.2. Encroachment on the Director General

The Director General is "under the authority of and subject to the control of the Board of Governors" and must "perform his duties in accordance with regulations adopted by the Board".¹⁷⁰ Thus the Director General has few if any powers which he can exercise independently of Board control, and any further extension of the Board's statutory authority in this direction seems to be precluded. Nevertheless, even in the "appointment, organization and functioning of the staff" for which Article VII.A makes the Director General responsible, the Board has insisted on exercising controls which are more extensive than those assumed by the governing bodies of most specialized agencies (not to speak of the United Nations, which has no organ corresponding to the Board). Thus the Board is consulted on the initiation and termination of all appointments at the level of Director or above;¹⁷¹ in addition the Board has reserved the right to approve the appointment of all Agency inspectors, regardless of grade.¹⁷²

8.3.4.3. Derived from international agreements

To the extent that international agreements extend the jurisdiction of the Agency, they may thereby extend the powers of the Board. Of course the agreements explicitly foreseen by the Agency's Statute, such as the Privileges and Immunities Agreement¹⁷³ and Project, Supply¹⁷⁴ and Safeguards¹⁷⁵ Agreements, cannot be said to have such an effect.¹⁷⁷ However, the Vienna Convention on Civil Liability for Nuclear Damage, an agreement of a type not directly foreseen in the Statute and to which the Agency is not itself a party, authorizes the Board to establish maximum limits for the exclusion of small quantities of nuclear materials from the application of the Convention; in addition, the Conference that formulated the Convention called for the Agency to establish a Standing Committee to carry out certain tasks in connection with the Convention and the Board complied with this recommendation.¹⁷⁸

Although up to now no other similar agreements have been concluded which explicitly assign any new function to the Agency,¹⁷⁹ it is foreseeable that in the future the Agency in general or the Board in particular may be invested with certain quasi-judicial functions by various multilateral or bilateral agreements in the nuclear energy field.¹⁸⁰

8.3.5. Delegation of functions and powers by the Board

Under Statute Article VI.F.1 the Board may, in effect, delegate to the General Conference its power to take a decision on any matter.¹⁸¹ The extent to which it has exercised this power is described in Section 7.2.2 (d).

The Board has also delegated functions and powers to the Director General. These are mentioned in Sections 9.3.2-4.

8.4. PROCEDURES

The Board, unlike the General Conference, has a considerable amount and variety of work to do. Because of this, and also because of its smaller size, the privacy of its meetings and the substantial continuity of its membership (not only in terms of Governments but also of persons), the structure and procedures of the Board are not as rigid and stylized as those of the Conference and through the practice gained in over four hundred meetings many unnecessary trappings and formalities have been stripped away.

8.4.1. Rules of Procedure

The Rules of Procedure of the Board were originally drafted by the Preparatory Commission - which took as its model its own Rules, but also made comparisons with and introduced ideas from the Provisional Rules of Procedure of the Security Council and from those of the governing bodies of ILO and FAO.¹⁸²

The principal issues faced by the Commission in formulating this draft were: the functions to be assigned to the Director General (to convene meetings, to preside in the absence of the elected officers, to propose agenda items, etc.); the unrelated question of whether the Director General was to be subject only to the Board or also to the General Conference; the voting majorities to be required for various types of decisions; the right of the Board to invite representatives of Non-member States; and the privacy of meetings. All these were resolved, except whether the meetings should in general be open or closed; the Preparatory Commission was only able to agree that this point would have to be decided by the Board itself, at one of its initial meetings, to be conducted privately.¹⁸³

The Board considered the draft Rules of Procedure at its first meeting and adopted them with only one minor amendment.¹⁸⁴ Though the Preparatory Commission had extensively debated whether the draft rules could sensibly provide for their own adoption by a two-thirds vote,¹⁸⁵ in the event no vote at all was taken. As recited in Section 8.4.10, the question of open or closed meetings was first postponed and then resolved in favour of privacy.

The Rules adopted at the first meeting of the Board have from time to time been amended since, though without altering them substantially.¹⁸⁶ However, consequent on the initial sharp disagreement on voting majorities and on privacy of meetings, the Rules were initially designated as "Provisional" and this designation has been maintained up to now (perhaps in imitation of those of the Security Council).

8.4.2. Governors and their staffs

It is clear from Article VI of the Statute and from Procedural Rule 1, that the members of the Board are States and not persons. Each such member is represented¹⁸⁷ on the Board by a "Governor" – who in popular terminology¹⁸⁸ may be referred to as the member of the Board.

Procedural Rule 3 requires that the credentials of each Governor be issued by the Head of State or Government, or by the Minister of Foreign Affairs. The Governor himself may then notify to the Director General the names of his alternates, experts and advisers – and the Board has formally interpreted this Rule as permitting a Governor to delegate in writing to a member of his staff the right to submit notifications. The credentials of each Governor are submitted to and examined by the Director General, who submits a report to the Board for approval.¹⁸⁹

Though Procedural Rule 11 warns the members of the Board that they should be prepared to meet at short notice, there is no requirement that Governors reside near the headquarters city. Indeed, practically the only Governors that do so are those from medium-sized States, who at the same time are accredited as Ambassadors to Austria and also as Resident Representatives to the Agency. The largest members have Missions in Vienna, nominally headed by an absentee Governor, but actually by a resident lieutenant accredited as Resident Representative; smaller members may not be represented in Vienna at all, and their Governors may have to travel either from their home country or from some European capital where they are accredited as diplomats. In other words, being a Governor is never a full-time occupation, even for the Chairman of the Board.

Neither ordinary Governors nor the officers of the Board are remunerated by the Agency.

8.4.3. Voting and quorum requirements

The Statute itself provides for only one type of decision to be made by a two-thirds majority: "on the amount of the Agency's budget",¹⁹⁰ At the Working Level Meeting and the Conference on the Statute attempts had been made to raise the majority required for budgetary questions to three-quarters and indeed to require such a majority for other types of questions too (e.g., the approval of amendments to the Statute – a function of which the Board was later entirely deprived);¹⁹¹ also at the Conference on the Statute an unsuccessful attempt was made to require a two-thirds vote for the imposition of any sanctions in connection with safeguards.¹⁹²

The Statute, in deliberate imitation of the Article 18 of the UN Charter (which of course relates to the General Assembly), also authorizes the Board to determine other questions or categories of questions to be decided by a two-thirds majority.¹⁹³ In the Preparatory Commission it was proposed that the Board's Rules should specify a number of categories of such questions: e.g., the formulation of observations to be submitted to the General Conference on proposed amendments to the Statute, and the preparation of reports to UN organs.¹⁹⁴ Ultimately, the only substantive question as to which a qualified majority is required by the Rules of Procedure is the appointment of the Director General.¹⁹⁵ In addition, two-thirds votes

are required for a number of procedural questions, including the reconsideration of proposals or amendments within four months of a decision thereon, and for the amendment or suspension of any Procedural Rule.¹⁹⁶ Since the Provisional Rules were adopted no proposal has been made to designate, either in the Rules themselves or by separate resolution, any other categories of questions as requiring decision by two-thirds majority.¹⁹⁷ However, occasionally the Board has decided on an ad hoc basis that particular questions should be so decided: the establishment of SAC, and the recommendation to the Conference of the target for voluntary contributions for 1960.

Unlike the Working Level Meeting, which took its decisions by an absolute majority of all its members,¹⁹⁸ the Board takes its decisions by a normal or two-thirds majority of the "members present and voting" - but requires a quorum of two-thirds of the Governors.¹⁹⁹ Both these voting and the quorum requirement also apply automatically to Board committees.²⁰⁰

The actual practice of the Board with respect to voting is discussed in Section 8.4.7. The impact on the Board of the automatic loss of franchise decreed by Statute Article XIX.A for Members falling too far in arrears in the payment of their assessed contributions is discussed in Section 25.3.5.4.

8.4.4. Meetings

Unlike the General Conference, which in effect exists only during its sessions (whether regular or special), the Board is continuously in existence.²⁰¹ However, it does change its membership once a year, on the adjournment of the regular session of the Conference, when the terms of all designated and of approximately half the elected members automatically terminate and their replacements simultaneously take office.²⁰² It is thus customary to speak of the Board by number: e.g., "the fifth Board" - meaning the Board as constituted between the adjournments of the fifth and sixth regular sessions of the General Conference.²⁰³

The officers of the Board are elected at the first meeting of the newly constituted Board, and hold office during the entire year. At that meeting action is also taken to re-constitute those committees that are to continue in existence for the new Board. Other procedural decisions and dispositions, unless specifically limited to the term of one Board, automatically continue in force for the next. However, no series of meetings (see below) continues from one Board to the next, since care is always taken to exhaust the last agenda adopted by the Board before its existence is terminated by the adjournment of the Conference.

The introductory sentences of Procedural Rule 11 provide:

"The Board shall be so organized as to enable it to function continuously and shall meet as often as may be necessary. For this purpose, each Member (sic) of the Board should be prepared, at short notice, to attend meetings of the Board."

The Rule goes on to state the circumstances in which meetings of the Board may be called. Read together with Rule 13, meetings may be called

under the following circumstances and normally subject to the following time limits:

- (a) Meetings whose date has been decided by the Board at an earlier meeting – for these no notice at all need be given;
- (b) Meetings to consider a matter referred by the General Conference back to the Board – to take place without delay and in any case within 48 hours;
- (c) Meetings requested by the Chairman, by any member of the Board, or by the Director General – for these at least 72 hours notice must be given;
- (d) Meetings requested by "any Member of the Agency to consider any matter of an urgent character arising out of Article XII.A.6 of the Statute" (relating to safeguards inspections) – for these at least 72 hours notice must be given.

In view of the structure of these Rules, it is not proper to speak of the Board as having "sessions" – instead it has individual "meetings" which may be grouped into a "series" when the agenda adopted at one meeting is not fully disposed of and the uncompleted items are automatically carried over to further immediately consecutive meetings (for which no new agenda need be adopted).

During its initial year, the Board held series of meetings at approximately bi-monthly intervals.²⁰⁴ This frequency was gradually reduced until the present pattern was adopted,²⁰⁵ which has been in force for a number of years and sets the political rhythm of the Agency:

- (i) A single meeting (in late September or early October) immediately follows the adjournment of the General Conference, to elect the officers and to re-constitute the Committees of the new Board and to dispose of any other formal or urgent business.
- (ii) A series of meetings is held toward the end of February, at which, inter alia, requests and recommendations from the General Conference and from UN organs are considered and the Director General is given assignments and guidelines for reports and drafts to be submitted for consideration in June.
- (iii) A series of meetings is held in the middle of June, at which matters to be submitted to the General Conference are considered.
- (iv) A short series of meetings is held in the middle of September, immediately preceding the regular session of the Conference.
- (v) Infrequently and irregularly special meetings are called during the year or during the General Conference.

8.4.5. Structure and organization

8.4.5.1. Officers

The Board has only three officers: a Chairman and two Vice-Chairmen, all elected *ad personam*²⁰⁶ from among the accredited Governors at the first session of a "new" Board – i.e., at the first meeting of the Board following the adjournment of a regular session of the Conference. These officers

hold office until the election of their successors at the first meeting of the subsequent Board.²⁰⁷ They are not eligible for immediate re-election to the same post.

Aside from the prohibition of re-election, there are no formal rules governing the selection of the Board's officers. By informal agreement the representatives of the big powers (i.e., the five "most advanced" Members, excepting Canada) are not candidates for these positions and the chairmanship is rotated in turn to each of the Article VI.A.1 "areas". Although either the Chairman or one of the Vice-Chairmen has always been elected from one of the three Eastern European States on the Board, and the three officers almost always represent three different areas,²⁰⁸ the pattern of election does not fit the classical "troika" rule (one "Western", one "Socialist" (Communist), one "Neutral").

The Chairman has the usual duties of a presiding officer. Rule 6 permits him to participate in the meeting as a Governor and even to vote - though the practice has uniformly been that the Chairman makes use of the alternative permitted by that Rule to designate another member of his delegation to participate in the discussion and to vote in his place.

The Chairman in addition is authorized to call meetings of the Board (but this may equally be done by any member), and to waive the time limits for notices of meetings and for the circulation of the agenda. He must be consulted by the Director General in preparing the provisional agenda. Though not provided for in the Rules, the Chairman of the Board serves as Chairman of most of the Board's Committees. By early practice he was generally charged only with proposing to the Board the membership of new or reconstituted Committees, but more recently he actually selects the members after appropriate consultations but without formal confirmation by the Board.

Unlike the President of the General Conference, who holds office only during the session for which he was elected, the Chairman has that position and title for an entire year - regardless of whether the Board is meeting. He therefore sometimes acts as the political representative of the Agency - though this role is usually restricted to ceremonial functions,²⁰⁹ since by established practice the Director General or his appointees are the representatives of the Agency for all substantive negotiations and vis-à-vis other organizations (including participation in their political organs), unless in a given case the Board has decided otherwise.

Though the formal functions of the Chairman do not appear to be particularly extensive, his informal ones are important. Through his constant contacts with the Secretariat (aided almost always by an office maintained for him in the Headquarters building) and with members of the Permanent Missions to the Agency (for which purpose almost all Chairmen - though not remunerated by the Agency - have arranged their national assignments so as to be able to spend the full term of their office in Vienna), he is able to ensure the smooth and as far as possible non-controversial conduct of the business of the Board. These techniques of consultation, in which the Chairman plays the leading role, have over the years been improved to the extent that the Director General or any Governor preparing a proposal can in advance calculate with considerable accuracy the chances of success and can

also eliminate any unnecessarily controversial features from those proposals that are genuinely intended to gain acceptance.

The Chairman of the Board may also participate, *ex officio* and without a vote, in the meetings of the General Committee of the General Conference.²¹⁰ In the Plenary and in committees of the Conference he may be accorded precedence for the purpose of explaining a report or recommendation of the Board.²¹¹

The two Vice-Chairmen are not ranked. To avoid questions of precedence, they are elected in a single ballot. If the Chairman is absent during a meeting, he must designate which Vice-Chairman is to take his place;²¹² it is not clear what happens if the Chairman has not made such a selection before he absents himself.²¹³ However, if the Chairman becomes unable to perform his functions, the Board must elect a new Chairman – a contingency it has not yet had to face.²¹⁴

8.4.5.2. Committees

Article VI.I of the Statute authorizes the Board to establish such committees as it deems advisable. By Procedural Rule 57 the Board has expressed this authority as extending to the establishment of "such committees and other subsidiary bodies and [the appointment of] such rapporteurs as it may deem desirable". In fact the Board has frequently made use of its right to establish such organs – in general in order to give preliminary consideration to matters which are either so detailed and politically relatively innocuous that study by a group smaller than the Board seems more efficient, or are so "technical" (e.g., scientific or legal) that consideration by persons other than the usual Board representatives seems desirable, or finally are politically so sensitive that a preliminary attempt to reach a compromise in a limited but balanced forum appears to be the safest course.

The membership of committees is determined in various ways:

- (a) By the decision establishing the Committee;
- (b) By the Board on the proposal of its Chairman;
- (c) By the Chairman, after appropriate consultations – a device used more and more frequently, especially in re-constituting committees at the beginning of a new Board;
- (d) By permitting all interested members of the Board to participate – i.e., leaving the membership nominally open-ended (though in practice care is taken that the actual participation is "balanced");
- (e) By establishing a "committee of the whole";
- (f) By permitting all interested Members of the Agency to participate.

Though, according to Procedural Rule 58, which nominally binds committees to follow the rules of the Board itself, committees should normally elect their own chairman, the decisions by which they are established usually provide for the Chairman of the Board, or in his absence for one of the Vice-Chairmen, to assume this post.²¹⁵ However, in establishing the four committees which it charged with considering various aspects of the safeguards system, the Board in each case provided that Dr. Gunnar Randers was to

serve as Chairman, ad personam and not as the representative of Norway (which as a matter of fact was not always a member of the Board during the period when these committees were in operation).²¹⁶

Some committees are established for an ad hoc purpose (e.g., to formulate rules governing the acceptance of voluntary contributions or to assist the Director General in negotiating agreements for the supply of materials) and, having completed their task (normally by means of a report to the Board), they automatically cease to exist. Other committees serve a continuing purpose and these must be reconstituted each year by the appointment of new members; recent practice has been to reconstitute formally only those committees for which a need during the coming year is anticipated (e.g., the Technical Assistance Committee and the Administrative and Budgetary Committee²¹⁷), leaving other continuing committees dormant.

The terms of reference of each committee are of course specified by the Board. In the case of ad hoc committees, the questions submitted to them have generally received at least a cursory preliminary consideration by the Board before it decides to refer them to a smaller organ. However, in the case of the active standing committees the practice is for the Director General (after consultation with the Chairman) to refer certain items directly to them (e.g., the annual budget, the annual accounts and questions relating to staff emoluments are automatically submitted to the Administrative and Budgetary Committee), on the basis of whose report the Board for the first time considers the item.

Board committees of course generally have no power of disposition, but may merely examine questions and transmit their recommendations to the Board. However, there are some exceptions:

- (i) The Committee on Non-Governmental Organizations is authorized, by the Conference-approved Rules Relating to the Consultative Status of NGOs, to advise committees of the Conference directly on whether authorized representatives of such organizations should be permitted to make oral statements. The NGO Committee is also authorized to address requests for further information directly to organizations applying for consultative status.²¹⁸
- (ii) The informal practice has developed that after the Technical Assistance Committee, which regularly meets early in December, has considered and recommended approval of the programme of regular assistance to be financed from the Agency's own resources during the coming year, the Director General can proceed with the implementation of that programme even before the Board has approved the Committee recommendations during its meetings in February.²¹⁹

Though summary records must be prepared of all meetings of the Board (excepting only any informal, closed consultations - which strictly speaking do not constitute "meetings"), such records are only prepared for committee meetings "when required".²²⁰ In practice some committees have no summary records (e.g., the Ad-hoc Committee on the Agency's Inspectors), some have only very brief records which only summarize the principal arguments advanced and identify the speakers (e.g., the Technical Assistance Committee),

and for some full summary records are kept (e.g., the Working Group to Review the Agency's Safeguards System).²²¹

The committees of the Board (unlike those of the General Conference) constitute a set of precisely designed political instruments which have greatly increased the flexibility and efficiency of the Board, while at the same time reducing its work-load (as well as that of the Secretariat in servicing it). Although to the extent convenient, these subsidiary organs conform to general patterns, certain anomalies are worth noting – since each reflects a particular practical objective, which in most instances was attained by the device in question:

- (A) Though Board committees are primarily instruments of their parent, the Committee on Non-Governmental Organizations has been assigned functions directly by the General Conference.²²²
- (B) Though Board committees normally consist of Board members, there have been an increasing number of exceptions to this rule. The ad hoc appointment of Dr. Randers as Chairman of the four safeguards Working Groups has already been mentioned. In reconstituting the second of these, the "Working Group to Review the Agency's Safeguards System", which was originally constituted essentially as a committee of the whole of the 7th Board, the 8th Board decided that those States that had participated in the Working Group but were no longer members of the 8th Board could continue to participate without a vote in the Group.²²³ Gradually this door has been opened wider: in June 1967 the Board invited those Members of the Agency that had submitted comments on a proposed extension of the Revised Safeguards Document, to send observers to the "working group" considering this matter;²²⁴ then in February 1969 the Board invited "Members of the Agency not serving on the Board . . . to be represented at [the meetings of the Ad Hoc Committee of the Whole to Review Article VI of the Statute] in accordance with Rule 50 of its Provisional Rules of Procedure";²²⁵ and at its very next meeting the Board invited "all interested Members of the Agency wishing to do so, to participate in the work of the [Ad Hoc Committee on the Use of Nuclear Explosions for Peaceful Purposes]."²²⁶ The question might even be raised whether these ever larger groups, in which perhaps up to half the membership of the Agency participates, can still be called "committees of the Board", though undoubtedly it is that body which convenes them.
- (C) Though not designated a "committee", the Panel which the Board charged with rendering advice on whether Argentina or Brazil was the State "most advanced . . . in Latin America", within the meaning of Statute Article VI.A.1,²²⁷ was also a subsidiary body established pursuant to Procedural Rule 57. Its membership consisted of three experts appointed by the Chairman in consultation with the Director General and with representatives of the two Governments.

Over the years the Board has created 22 non-ephemeral committees, i.e., bodies with regular meetings and a substantial task beyond the formulation of a particular compromise text.²²⁸ These are listed in Section 34.2.4.

As can be seen from their names, most of these were established for a special, narrow task – though in some cases the initial assignment was later extended: the Committee to Advise the Director General on Negotiations with Specialized Agencies was also charged with formulating the rules concerning the consultative status of NGOs; the Special Working Group of Expert Representatives on Safeguards, which largely formulated the initial safeguards system, was later revived to extend that system to large reactors. Of the remaining ones, only two are regularly active at the present time (the Technical Assistance and the Administrative and Budgetary Committees) while several others are dormant – i.e., they exist in principle but have not been convened for some years and have indeed not been reconstituted with new memberships.

When the third Board first met, it was proposed that the Chairman and the Director General should jointly review the already hodgepodge structure of the Board's committees (during the first two years 10 had been constituted) and recommend simplifications or improvements. After extensive consultations, these officials decided that the time for any far-reaching changes had not yet come and consequently they did not recommend any structural changes. Since then, by informal agreement and without explicit explanation, a simplification has been achieved by reconstituting routinely only a few of the standing committees, while the others have been permitted to expire or to stay dormant. New ad hoc bodies are established from time to time as necessary, but need rarely be continued beyond the Board that created them.

Lately the trend has been towards the establishment of larger and larger bodies, which, as indicated in paragraph (B) above, have finally sprung the confines of the Board's own membership. Rather than achieving the precise political balance that was carefully sought in the earlier groups, the more recent ones aim at a type of "participatory democracy", by enabling all sufficiently interested Member States to influence directly the decisions of the Board on certain vital issues.

8.4.6. Agenda

As its last item of business at the end of each series of meetings, the Board considers arrangements for its future meetings. The discussion of this item, on which formal decisions are rarely taken, provides guidance to the Director General in preparing the provisional agenda for the next series of meetings.

This list is prepared by the Director General in consultation with the Chairman of the Board. It must include, *inter alia*, items referred to the Board by the General Conference, items whose inclusion is requested by any Member of the Agency (an infrequently used privilege), items referred to the Board by the United Nations or a specialized agency in accordance with a relationship agreement,²²⁹ and items which the Director General, after consultation with the Chairman, considers necessary.²³⁰ Each item entered on the provisional agenda is explained by a short annotation.

After its consideration and adoption, the provisional list becomes the agenda for the entire series of meetings, which normally continues until

all items have been disposed of – as a matter of fact, the only formal link connecting the several meetings in a series is the use of a common agenda.²³¹ During such a series the agenda may and frequently is amended without particular formality.²³²

One Procedural Rule of the Board, which caused much controversy in the Preparatory Commission and which since then has been entirely disregarded, provides that:

"The Director General with the approval of the Board of Governors shall from time to time, as the Board deems necessary, communicate to all Members of the Agency a list of matters of general interest which may be under consideration by the Board."²³³

Since all matters under consideration by the Board are listed on its agenda, of which all Members of the Agency receive copies,²³⁴ it has never been necessary to take any action under this Rule.

Unlike the agendas of the General Conference, which contain mostly routine and repetitive items, the agendas of the Board reflect the full range of the Agency's work. Of course, there are some perennial items, particularly such as relate to matters to be submitted by the Board to the Conference, for example: the Budget, the Accounts, and the Board's Report on the affairs of the Agency. For the rest, it is difficult to discern any particular pattern in the Board's agendas. Some items persist on half a dozen successive agendas, until they are finally disposed of – occasionally by rejection or indefinite postponement, but frequently by acceptance and incorporation into the routine activities of the Agency.

8.4.7. Conduct of business

Because of its smaller size and more frequent meetings, the business of the Board is not conducted with the full formality and rigidity characteristic of the General Conference. The majority of items are considered by the Board on the basis of documentation prepared by the Secretariat and containing recommendations by the Director General. Certain items of lesser importance, particularly if no immediate decision is required, are presented by the Director General orally. Still other items are considered on the basis of documentation and recommendations submitted by the Chairman or by a member of the Board, or on the basis of a committee report.

Normally agenda items are considered one by one – though sometimes several related items are grouped together. Items may be disposed of in various ways:

- (a) Most frequently the recommendation, contained in the documentation on the basis of which the item is considered, is accepted with or without modifications (an outcome which must usually be credited to adequate prior consultations).
- (b) Often the Board merely takes note of a report or information.
- (c) Items may be postponed – even to a series of meetings of a later Board.
- (d) Items may be referred back to the Secretariat for further study or negotiations.

- (e) Items may be referred to a standing committee, or an ad hoc body may be established.

During the initial years, votes were frequently taken – often by roll-call – not only on the final disposition of items, but also on procedural issues and even on minor drafting amendments. In sharp contrast, recently it has become the practice to reach either a consensus or just a decision that all members of the Board can accept or at least tolerate, if necessary after placing certain reservations on record. Thus, during the 9th Board only one decision was taken by a vote (excluding the election of officers).

At almost every series of meetings one or more "periodic reports" by the Director General are considered.²³⁵ Since these are designed to cover all the activities of the Agency, an opportunity is thus afforded for comments to be made on any aspect of the programme to which no other item of the agenda relates. Though decisions are rarely taken during the consideration of these reports, the comments made serve to inform the Director General as to the views of the Board or at least as to the mood of its members. Sometimes, too, he may in the course of such a discussion give a promise or announce an undertaking, which ultimately may have practically the same effect as a decision of the Board.

8.4.8. Decisions

The decisions of the Board are recorded by the Secretariat and published in a special series of documents.²³⁶ Only very minor decisions and those of an entirely ephemeral character are excluded, but those by which a text under consideration (whether finally adopted or rejected) was amended are included, as are also negative ones (e.g., the refusal to accept a resolution) and certain procedural ones (e.g., whether a meeting should be open or closed).

Such a document is issued after each series of meetings of the Board – as a matter of fact the consecutive numbering of the series of meetings is reflected only in the symbol of these documents. Every decision is numbered serially – a new series being started for every Board but not for every series of meetings. The decisions are grouped under headings corresponding to the titles of the agenda items (in the order in which these appeared on the provisional list – which does not correspond to the order of consideration), and under each heading the related decisions are presented in the chronological order in which they were taken.

Unlike the General Conference, which usually acts on written texts that on adoption become "resolutions" of the Conference, the Board generally acts on written or oral recommendations not couched in a particular textual form. Therefore the text of the decision as recorded by the Secretariat may come from any of the following sources:

- (a) The text may be that of a formal resolution adopted by the Board – which is done relatively infrequently and generally only in connection with important items or when it is intended that a decision be communicated to the General Conference or to Member States. The draft of the text may have been prepared by the Director General, by the

Chairman or by any member of the Board and, if the matter is delicate, may have been amended considerably before adoption.

- (b) When the Board merely accepts a recommendation contained in a document, that recommendation is paraphrased so as to make it reasonably comprehensible outside the context in which it was originally presented.
- (c) When a decision is taken on an oral summary of a debate by the Chairman (or sometimes by a member of the Board), that summary is reproduced or appropriately paraphrased.

The documents containing the Board's decisions are never reviewed by the Board. In practice, of course, the Secretary of the Board consults with the Chairman or with any specially interested members if there is any doubt about the formulation of a particular decision. As a result, there never has been a formal challenge to the statement of a decision, and only once or twice has it been necessary to revise a particular text or to add one omitted through oversight.

These documents, like practically all others issued for the Board, are marked for "Restricted" distribution and "for official use only".²³⁷ Decisions which the Board wishes to publicize are usually included in some unrestricted documents submitted to the General Conference or are published in an Information Circular (INFCIRC). Decisions that the Board wishes to call to the particular attention of Member States (all of which receive copies of Board documents) may be communicated to each Government by a circular note from the Director General.

8.4.9. Cost of participation

Though the Negotiating Group draft of the Statute would have provided explicitly that the cost of attendance of Governors and their staffs "be borne by the Member appointing them",²³⁸ this provision was deleted by the Working Level Meeting, whose draft contained no disposition, as it did with respect to the General Conference, concerning the method by which the cost of participation in the work of the Board should be met. When this omission from the draft Statute was mentioned at the Conference on the Statute, the representative of the United States stated his view that the same rule would apply to the Board as to the General Conference: i.e., that the costs of attendance would have to be borne by each State concerned.²³⁹ This indeed became the practice.

No provision on this point is contained in the Rules of Procedure, in the Financial Regulations or in any other instrument or decision.

At the Third General Conference a proposal was made in the Programme, Technical and Budget Committee to the effect that the Agency should defray the expenses of Board attendance. The reason given was that unless this was done, the poorer Members of the Agency would be unable to participate fully in the work of the Board when they were elected to membership in it - particularly since these States were often the ones most distant from Vienna. This proposal was not approved by the Committee and consequently was never considered by the Plenary.²⁴⁰

8.4.10. Privacy and participation of outsiders

The Preparatory Commission (which itself met in private but preferred not to take any votes) was unable to resolve the issue of whether the Board's meetings should be public or private. This was the sole question it left open in the draft Rules of Procedure it submitted to the Board, though recommending that this point be decided at a closed meeting.²⁴¹

By informal agreement the Board's first five meetings were closed. At the 5th meeting it adopted:

"Rule 21. Private and Public Meetings

"The Board may decide to hold meetings in private or public. In the absence of a decision to hold public meetings, meetings shall be in private."

A year later a proposal was made that the Board should reverse this Rule, i.e., that it should normally hold public meetings. This proposal was defeated and has not since been revived.

On the adoption of Rule 21, the understanding was recorded that a decision to hold a public meeting could be made by majority vote, and did not require a suspension of the rules of procedure which, pursuant to Rules 36(e) and 60, would require a two-thirds majority. In the event, the Board has only once decided to hold an open meeting,²⁴² though several proposals that particular matters (e.g., the formulation of the Agency's initial safeguards system; the establishment of the Middle Eastern Radioisotope Centre) should be discussed in public meeting have been made and rejected.

Although not stated either in Rule 21, or in any other Procedural Rule or decision of the Board, it was understood from the beginning that the decision in favour of private meetings meant that the Board's documents and records would not be distributed freely.²⁴³ Consequently almost all Board documents are marked "RESTRICTED Distribution", and the Board explicitly required that the caution: "This document is circulated to Members of the Agency for official use only" appear on the front page.²⁴⁴ Occasionally the Board has "declassified" certain of its documents (e.g., its Rules of Procedure) or records (e.g., those relating to its consideration of the amendment to Article VI.A.3 of the Statute²⁴⁵), usually in order to make possible their circulation as part of an unrestricted General Conference document.

The Board's decision to hold its meetings normally in private caused some concern by the other Member States, which was expressed at the first special session of the General Conference.²⁴⁶ Thereupon the Board at its first series of meetings passed a resolution allowing the attendance of one accredited observer from each Member of the Agency and providing for the distribution to these States of the Board's agenda, the final (i.e., revised) summary record of its meetings and a report on its decisions. This resolution was revised in March 1958 and, though not incorporated in the Rules of Procedure, is still in effect.

The Agency has entered into Relationship or Co-operation Agreements with the United Nations, with certain specialized agencies and with regional intergovernmental organizations, which provide for at least some reci-

procal representation and exchange of information. From time to time the Rules of Procedure of the Board have consequently had to be amended to enable compliance with the terms of these Agreements.

In the light of the Board's Rules, of its March 1958 decision, of the several informal understandings referred to above, of the relevant provisions of Relationship and Co-operation Agreements, and of the Rules on the Consultative Status of Non-Governmental Organizations adopted by the General Conference, the following practices apply to the participation in the Board of persons who are not Governors or members of their staffs:

- (a) All Members of the Agency receive copies of all Board documents, with the exception of the provisional official records and papers specifically marked for "Limited distribution" (e.g., Committee documents). Each Member may send an observer to meetings of the Board, who does not have the right to participate in the debates. However the Board may invite representatives of a State to participate, without a vote,²⁴⁷ and has done so on several occasions:
 - (i) When a State has been particularly concerned about an item on the agenda (e.g., a representative of Austria was invited to attend meetings at which the site of the Headquarters was discussed).
 - (ii) After the General Conference had approved the amendment to Statute Article VI.A.3 but before it had entered into effect, the Board arranged that two States from "Africa and the Middle East" selected by the Chairman in consultation with the States from that area (in the event Ghana and Tunisia) be represented at the meetings of the 5th and 6th Boards "in order to participate in its work with the same rights as Members of the Board, to the extent that the Statute permits". In effect these representatives acted as members of the Board for all purposes, including the right to introduce proposals, except that they could not vote.²⁴⁸
- (b) Non-member States do not receive copies of Board documents, nor are they automatically invited to send an observer. However, the Board may²⁴⁹ (though it never yet has) invite such a State to be represented at any of its meetings.
- (c) The United Nations receives the provisional agenda and the supporting documents. The Secretary-General or a representative designated by him is entitled to attend meetings of the Board and to participate without vote when matters of common interest to the Agency and the United Nations are being discussed.²⁵⁰ A representative of the United Nations has indeed attended almost every meeting of the Board, but his interventions have been rare.
- (d) Specialized agencies with which the Agency has concluded a Relationship Agreement receive the provisional agenda and the supporting documents. Their representatives are invited, as appropriate, to attend meetings of the Board, and to participate without vote when matters of common interest are being discussed.²⁵¹
- (e) Other intergovernmental organizations with which the Agency has concluded a Relationship (Co-operation) Agreement receive the provisional

agenda and the supporting documents relating to items of interest to them. The Board may invite their representatives to attend any of its meetings.²⁵²

- (f) Specialized agencies and other intergovernmental organizations with which the Agency has no Relationship Agreement do not receive Board documents nor are they automatically invited to be represented at its meetings. However, the Board may invite such representation.²⁵³
- (g) Non-governmental organizations having consultative status may send an observer to attend public meetings of the Board and may receive any non-restricted documents that the Director General deems appropriate for them.²⁵⁴ In view of the uniformly private meetings of the Board and the restricted nature of its documentation, these rights are in practice nugatory. The Board may, however, invite any such organization, whether or not it has consultative status, to be represented at its meetings.²⁵⁵
- (h) The Board may also invite any individual to attend its meetings. Under this authority the Board has occasionally invited persons whom it had appointed ad personam to a position on one of its committees or subsidiary organs to participate in the relevant debates in the Board.²⁵⁶
- (i) The Director General and members of his staff may attend (without the right to vote).²⁵⁷ With the approval of the Chairman the Director General or his representative may make oral or written statements.²⁵⁸

From time to time the members of the Board are convened for an entirely private meeting. Mostly these are called by the Director General to discuss senior personnel appointments.²⁵⁹ At these meetings only Governors and the Director General are present, without any member of their staffs. No records are kept of these consultations, which indeed are not considered as meetings of the Board though for convenience they usually take place during a regularly scheduled series of formal meetings.

NOTES

1 Memorandum addressed by the United States to the Soviet Union on 19 March 1954, para.C, reproduced in UN doc.A/2738, No.8, and reprinted in UNGA Off. Rec.(9th sess.), Annexes, Agenda Item No.67, p.5(1954).

2 Section 5.3.1.

3 Though the formulae regulating the composition of the Board were of course designed entirely with a view to creating a politically acceptable and effective organ within the context of the Agency, they appear to have been formulated with sufficient realism so that a decade later they were in a sense incorporated into the Treaty on the Non-Proliferation of Nuclear Weapons (Section 21.3.2.3 - UNGA/RES/2373 (XXII), Annex) to govern the amending process of that instrument (Article VIII.2 - quoted infra note 180).

4 Statute Article VI.A-D.

5 The issues relevant to the evolution of the statutory provisions on the composition of the Board are discussed by Stoessinger, *op.cit.* Annex 5, No.60, pp.128-132.

6 WLM Doc.2, Article VII.A-E.

7 WLM Doc.3.

8 WLM Doc.2(Add.7).

9 *Ibid.*, USSR proposal of 18 April 1956.

- 10 See the divergent positions reflected in WLM Doc.11(Rev.1), Attachment 3; WLM Doc.12(Rev.1), Attachment 1; WLM Doc.10(Rev.1), Attachments 5 and 6, and especially the reservation recorded in WLM Doc.31, Annex IV, paras.2(d), 3(a) and 4(d).
- 11 WLM Doc.31, Annex III, or IAEA/CS/3, Article VI.A-D.
- 12 IAEA/CS/Art.VI/Amend.4.
- 13 IAEA/CS/Art.VI/Amend.5.
- 14 IAEA/CS/Art.VI/Amend.6.
- 15 IAEA/CS/Art.VI/Amend.2.
- 16 IAEA/CS/Art.VI/Amend.7.
- 17 Nor were other oral suggestions accepted, such as the reservation on the Board of a place for the People's Republic of China (IAEA/CS/OR.20, pp.14-16; /OR.23, pp.23-25).
- 18 GC(IV)/RES/85.
- 19 GOV/641, 644, 669, 686 and /Add.1-7, 703, 707; GOV/OR.240, 241, 251, 252, 254/Add.1. These documents were declassified by the Board to permit free circulation at the General Conference (GC(V)/151/Add.1, para.1).
- 20 GC(V)/151, para.3.
- 21 GC(V)/RES/92.
- 22 INFCIRC/41; INFCIRC/42/Rev.5, Part II.
- 23 Section 5.3.3.8.
- 24 GC (IX)/805.
- 25 GC (IX)/309.
- 26 GC (IX)/311, para.2.
- 27 GC (X)/330, para.17.
- 28 CNNWS Resolutions F (third para. of preamble and para.1), H (seventh para. of preamble and part V) and K, all reproduced in UN doc.A/7277, para.17.
- 29 GC (XII)/RES/241.
- 30 INFCIRC/124, circulated under cover of UN doc.A/7175/Add.1, Annex.
- 31 UNGA/RES/2456 (XXIII), paras.A.3-4.
- 32 UNGA/RES/2457 (XXIII), paras.2-3.
- 33 GC (XIII)/408, p.2, para.2. Altogether 50 States were represented at the first series of Committee meetings, and 48 at the second, 43 at the third, and 44 at the fourth.
- 34 GOV/COM.20/8.
- 35 GOV/COM.20/5.
- 36 GOV/1307 and GOV/COM.20/10.
- 37 GOV/1322, replaced by GOV/COM.20/2.
- 38 GOV/1324.
- 39 GOV/COM.20/OR.2, para.39.
- 40 GOV/COM.20/4.
- 41 GC (XIII)/408.
- 42 GC (XIII)/415.
- 43 GC (XIII)/427.
- 44 GC (XIII)/RES/261, which in INFCIRC/134, Annex, was duly communicated to the UN General Assembly as a response to its 1968 requests.
- 45 WLM Doc.2, Art.VII.A.1 and 2.
- 46 IAEA/CS/Art.VI/Amend.2.
- 47 Section 8.2.2.1.2.2(b).
- 48 However, an Indian suggestion to state these objective criteria more specifically (IAEA/PC/OR.59, p.20) was never seriously considered.
- 49 This point of view was advanced in particular at the 145th, 214th and 373rd meetings of the Board.
- 50 GC (VIII)/OR.84, para.3; GC (VIII)/GEN/OR.12, paras.42-43; GC (IX)/GEN/OR.13, paras.19-20. Also asserted at 328th, 360th and 373rd meetings of the Board.
- 51 That is the word actually used in Statute Article VI.A.1.
- 52 These are 5 of the 6 permanent members of the former UNAEC (listed in UNGA/RES/1(1)), excepting only China.
- 53 WLM Doc.2(Add.7), proposal of 20 March 1956. It is also interesting to note that these five States are specifically listed in Statute Article XXI.E, which required that at least three of them had to ratify the Statute before it could come into force.

- 54 GC.1/10, paras. (a) and (b).
- 55 IAEA/PC/W.68, also reproduced in GC.1/16.
- 56 For example, GC(II)/38, para. (a).
- 57 At the 214th meeting of the Board.
- 58 GC.1/10, para. (b) and, for example, GC(II)/38, para. (a).
- 59 IAEA/PC/OR.51, p.4, and at the 88th meeting of the Board.
- 60 In para. A of Annex 1 to the Statute.
- 61 IAEA/CS/OR.39, pp.61-62.
- 62 Sections 5.1.5.3(v) and 6.1.4.
- 63 GC(I)/DEC/5 and 7. As a matter of fact, it was this election which finally assured the depositary Government that no Member maintained any objection to the Argentine reservation (Section 5.1.5.3; INF/CIRC/42/Rev.5, Part 1, para.5(c)).
- 64 At the 145th meeting of the Board.
- 65 At the 214th meeting of the Board.
- 66 GC(IV)/DEC/9.
- 67 Supra note 50.
- 68 Statute Article VI.C.
- 69 Statute Article VI.A.1 and Annex I, para.C.4. Section 3.3.1.2.
- 70 GOV/INF/60.
- 71 The 60-day requirement was also held to apply to designations made by the Preparatory Commission (IAEA/PC/W.29(S), paras.2-5).
- 72 For example, GC(XI)/356.
- 73 Section 8.4.3. Incidentally, the Preparatory Commission, in drafting the Rules of Procedure of the Board, agreed that these designations were not elections to be settled by a secret ballot (IAEA/PC/OR.54, p.19).
- 74 This clause is one of only four places in which the Statute names particular States, and is one of two having continuing significance. The others are: Article XXI.C (designating the United States as the depositary Government); Article XXI.E (listing five States of which three had to ratify the Statute in order for it to enter into force); and Annex I, para. A (listing the twelve non-elective members of the Preparatory Commission).
- 75 For example, GC(X)/329, para.3.
- 76 Statute Article VI.A.2 and C.
- 77 Since Belgium was not yet a Member of the Agency, the choice had to be: Portugal and either Czechoslovakia or Poland.
- 78 GC.1/10, para. (c).
- 79 That the list of States in Statute Article VI.A.2 should be periodically reviewed was suggested in WLM Doc.2(Add.7), proposals of 20 March 1956 (USA) and 21 March 1956 (India; USA).
- 80 GC(V)/160, para.3.
- 81 For example, GC(IX)/GEN/OR.13, paras.19-20. Most of the debates naturally took place in the Board (of course always in the year in which Portugal was not a member – but Portugal at least once answered these challenges by a letter communicated to the Board in September 1961).
- 82 IAEA/CS/Art.VI/Amend.7.
- 83 IAEA/CS/OR.23, p.4.
- 84 Statute Article VI.A.2 and C.
- 85 Section 8.2.2.2.4.
- 86 In the Negotiating Committee draft three separate and basically incompatible criteria had been prescribed for this category (Section 8.2.1.2.1(c)).
- 87 Statute Article VI.A.3 and D.
- 88 It is this circumstance that makes possible the arrangement between Argentina and Brazil described in Section 8.2.2.1.2.2(b).
- 89 Statute Article VI.D. In a slight departure from the strict wording of the Statute, the First General Conference actually decided which of the ten members it had elected to the first Board should serve for two-year terms (GC.1/9, Supplementary Provisional Rule of Procedure P; GC.1/DEC/7).
- 90 GC(VII)/INF/60.
- 91 IAEA/PC/OR.41, pp.7-11; /OR.50, pp.7-12; /OR.61, pp.8-12.
- 92 GC.1/OR.2, para.3; repeated GC.1/COM.2/OR.3, para.1. The representatives of Israel and South Africa explicitly stated their disagreement (respectively GC.1/OR.3, para.49 and GC.1/COM.2/OR.3, para.3).

- 93 GC(V)/OR.59, paras.3, 8, 17-19.
- 94 Proposal advanced by Israel at the Conference on the Statute (IAEA/CS/OR.12, p.61) and repeated at the First General Conference (GC.1/OR.3, para.49).
- 95 Propounded by Israel at the First and Second General Conferences, GC.1/OR.3, para.49; GC(II)/OR.21, para.96.
- 96 The President of the Second General Conference specifically refused to rule in favour of the Israeli proposal (GC(II)/OR.21, para.97).
- 97 The term "floater" does not appear in any formal rule. However, it has been used extensively in Agency debates (e.g., GC(IV)/OR.45, para.22(a)).
- 98 See, e.g., the discussion of the composition of the General Committee of the General Conference (Section 7.3.3.2).
- 99 IAEA/CS/OR.20, p.6 and /OR.23, pp.16-35 passim.
- 100 IAEA/CS/OR.20, pp.6, 12, 24-25 and /OR.23, pp.16-35 passim.
- 101 IAEA/CS/Art.VI/Amend.5 and 6; IAEA/CS/OR.73, pp.2-12.
- 102 GC.1/DEC/6.
- 103 GC(V)/RES/92, para.(c).
- 104 GC(V)/172, para.2. The proposal that led to this formulation had been made by India (GC(V)/GEN/OR.9, paras.35-53).
- 105 A further refinement of the gentlemen's agreement regarding the Western European floater is mentioned in Section 8.2.2.4.5(c).
- 106 GC(II)/GEN/5, para.3; GC(II)/59; GC(II)/OR.21, paras.98 and 99.
- 107 GC.1/DEC/7.
- 108 Table 8A, note 3(a).
- 109 For example, GC(IV)/127, para.2, in which account had evidently been taken of the continuing membership on the Board of Mexico and Spain, which had been elected as floaters at the Third Conference (GC(III)/DEC/8).
- 110 GC(III)/GEN/OR.6, para.47.
- 111 GC(IV)/OR.45, para.22; see also *ibid.*, para.18.
- 112 For example, GC(V)/DEC/9 and GC(VI)/DEC/9.
- 113 Cf. Statute Article VI.D.
- 114 For example, GC(X)/DEC/9 and GC(XI)/DEC/8.
- 115 Unlike some of the more formal understandings referred to in Sections 8.2.2.4.3.1 and 8.2.2.4.3.2, these "subsidiary agreements" do not appear to have been recorded in any accessible document, nor have they been publicly alluded to. They can, however, be deduced from the actual pattern of elections (Annex 3.1), in the same way that an understanding regarding the pattern of designating Scandinavian States under the second clause of Article VI.A.2 (Section 8.2.2.3.2) can only be deduced empirically.
- 116 Section 8.2.2.1.2.2(b).
- 117 WLM Doc.2(Add.7) and Doc.2(Add.25); when that proposal was not accepted, the Soviet Union at least attempted to put on record its definition of the area "Eastern Europe" (WLM Doc.27(Rev.1), Attachment 1). A decade later the UN General Assembly decided that such area definitions may be useful and included them in the Resolution by which it established UNIDO (UNGA/RES/2152 (XXI), Annex).
- 118 Some indication of the intention of the statutory drafters can be deduced from the various "areas" that were proposed at the Working Level Meeting (WLM Doc.2(Add.7) (USSR: 5 areas; India: 8 areas; Australia, Belgium, Brazil, Portugal and South Africa: 7 areas); see also WLM Doc.26(Rev.2), para.2.A (replacement of the term "East Asia" by "Far East").
- 119 Perhaps the first such query was raised by Denmark at the Conference on the Statute with respect to Africa and the Middle East (IAEA/CS/OR.19, p.28). Other requests were made unsuccessfully with respect to the Far East (Philippines, China GC(V)/OR.59, paras.3-9) and Africa and the Middle East (India at the 27th meeting of the Board). The Soviet Union proposed in the Preparatory Commission that the definition of all areas should be included in the Conference Rules of Procedure (IAEA/PC/OR.50, pp.7-12; /OR.61); and Pakistan made a similar proposal when the draft Rules were discussed at the first special session (GC.1(S)/COM.2/OR.3, para.42).
- 120 GC(V)/OR.59, paras.3, 8, 17-19. This is logical, for otherwise some States might be excluded from all areas.
- 121 Also Table 8A, note 2.
- 122 This gloss on Procedural Rule 88 appears merely among the Secretariat's guiding hints to Tellers printed on the back of the official tally sheets.

- 123 Originally it had been proposed that a special provision regarding such challenges be added to Rule 88 (GC.1(S)/COM.2/3 – which refers to "Rule 86" since in the draft then under consideration (GC.1/9 and /Add.1) that was the number assigned to it), but this was withdrawn when it proved to be controversial (GC.1(S)/COM.2/OR.3 and 4 *passim*).
- 124 For example, Thailand has received unchallenged votes for: South-East Asia and the Pacific (GC(II)/OR.21, para.100 (29 votes); GC(IV)/OR.45, para.7(49 votes – elected)), South Asia (GC(III)/OR.31, paras.5 and 6 (13 votes)), Far East (GC(III)/OR.31, paras.7 and 8 (12 votes)) and even Africa and the Middle East (GC(IV)/OR.45, para.4(2 votes – obviously cast due to a misunderstanding as to the area as to which a vote was being taken – but not challenged)). Viet-Nam has also received unchallenged votes for three areas. In some instances, geographically incompatible votes were cast at a single meeting of the Conference.
- 125 Some problems in applying geopolitical criteria to particular areas are discussed in Table 8A, note 3.
- 126 At the Working Level Meeting, the Soviet Union placed on record its views as to the composition of Eastern Europe (WLM Doc.27 (Rev.1), Attachment 1), but the United Kingdom and the United States promptly announced that they would not be bound by that list (WLM Doc.27 (Rev.1), para.2). Indeed Greece, which the Soviet Union had attributed to Eastern Europe, was later attributed, as a floater, to Western Europe (GC(V)/DEC/9; GC(VI)/219, paras.2,3 and 5).
- 127 A partial table of this type, based only on criteria (a)-(d) above (and thus not covering any State that had not yet served on the Board or that had only been designated pursuant to Article VI.A.2), was issued by the Director General in GOV/COM.20/7.
- 128 For example, GC(XI)/GEN/31.
- 129 For example, GC(XI)/369, para.3.
- 130 For example, 3 ballots were required to elect two members from Africa and the Middle East at the Seventh General Conference (GC(VII)/OR.81, paras.20-27).
- 131 For example, the election of the Republic of China from the Far East (GC(VII)/OR.81, paras.34-36).
- 132 For example, GC(IV)/OR.45, paras.12-21.
- 133 Section 7.3.6.
- 134 Compare Conference Procedural Rules 81 and 82 with General Assembly Rules 95 and 96 (UN doc.A/520/Rev.8). Since the elections require only a simple majority, it has been possible to design the Conference Rules so as to preclude the possibility of any extended deadlock (except perhaps the unlikely contingency of a 3 or 4-way dead heat repeated in several ballots).
- 135 For example, GC(V)/OR.59, para.21.
- 136 In the election of two Board members from Africa and the Middle East at the Ninth General Conference, the results of the ballot were as follows (GC(IX)/OR.99, para.12):

Members to be elected	2
Ballot papers returned	70
Invalid votes	0
Abstentions	7
Valid votes	133 = (2 x 70 - 0 - 7)
Required majority	$34 = \frac{133}{2 \times 2} + \frac{3}{4}$
Votes obtained:	
Tunisia	52
Ghana	45
Israel	32
Senegal	4

Having obtained the required majority, Tunisia and Ghana were declared elected. However, it is easy to see that if 2 or more of the votes that had been cast for Senegal had been shifted to Israel, that State would also have had the "required majority" – and Procedural Rule 81 (based on UNGA Rule 96) provides:

"When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the majority required shall be elected."

Presumably, however, if that contingency had arisen, the Conference would have disregarded the precise wording of the Rule and (in imitation of the General Assembly which at its 679th Plenary Meeting (12th session) cast 80 ballots for 8 Vice-Presidents and saw 9 candidates attain at least 41 votes (the "required majority"), whereupon it merely disregarded the lowest) would have declared only the two leading candidates elected. Of course this potential embarrassment could be avoided by a simple amendment of Rule 81, in the sense of the practical solution suggested in the previous sentence.

- 137 To cite an actual example from another type of election in which the same system of counting votes has been introduced, in the election of the two Vice-Chairmen of the fifth Board, 22 ballots were cast, with candidate A receiving 22 votes, B 8 votes and C 1 vote; there also must have been 13 partial abstentions. Under the classical formula the "required majority" would have been $12 = 22/2 + 1$, necessitating another vote for the second place (the results of which would presumably have been: ballots = 22; abstentions = 13;

required majority $5 = \frac{22 - 13}{2} + \frac{1}{2}$; B = 8 = elected). Under the "IAEA formula", the required majority

on the first ballot was merely $8 = \frac{2 \times 22 - 13}{2 \times 2} + \frac{1}{4}$, so both A and B were elected on the first ballot.

138 WLM Doc.2, Article VII.H.

139 Statute Article V.D.

140 Sections 22.2.2.2.2 and 22.2.2.3.4.

141 Section 23.1.4.

142 Section 6.1.3.

143 Section 17.2.1.1.

144 Sections 17.5 and 25.7.2.

145 Sections 25.2.2.2 and 25.2.2.4.

146 Sections 9.2.1 and 9.2.3.2.

147 Sections 12.2.1.1, 12.3.2.2 and 12.5.2.

148 Sections 12.2.2.7, 32.1.4-5 and 32.3.1.

149 Section 6.1.3.

150 Section 13.1.13.

151 Section 24.1.2.

152 Section 25.6.1.

153 Section 25.5.1.

154 Sections 25.1.4.3 and 25.2.4.2.

155 Sections 24.1.3.1 and 24.1.3.2.2.

156 Curiously, the reference in Statute Article VI.1 appears to be to the Board's relationships rather than to those of the Agency. In fact, the Board has never appointed such persons and, as pointed out in Section 9.3.6, it is the Director General who always represents the organization.

157 Sections 8.2.2.1-3.

158 It has been suggested that the Board's power to refer questions for decision to the Conference is analogous to the veto-proof right of the Security Council, under the "Uniting for Peace Resolution" (UNGA/RES/377(V), part A.1) to refer matters to the General Assembly if the Council itself is deadlocked because of the veto (see Stoessinger, op.cit. Annex 5, No.60, p.133). However, if that was the purpose of the statutory drafters, they failed to consider that the Board can only become genuinely deadlocked on matters requiring a two-thirds vote; the only such decision specified in the Statute (see Section 8.4.3) is that "on the amount of the Agency's budget", and this the Board presumably cannot delegate to the Conference. In fact, as described in Section 7.2.2(d), the Board has only used Statute Article V.F.1 in order to reinforce decisions it has reached itself on questions as to which widespread political approval appeared desirable.

159 Section 5.3.3.3.

160 Section 7.3.2.2.

161 Section 16.1.

162 Section 27.1.2.

163 Section 16.2.2.

164 Section 28.3.1.

165 Sections 25.2.4.1.2-3 and 25.4.4.

166 Sections 32.1.4-5.

- 167 Section 7.3.4.1.
- 168 Sections 7.3.9.3 and 12.5.1.
- 169 Sections 7.3.9.4 and 12.6.3.
- 170 Statute Article VII.B.
- 171 Sections 9.3.3, 24.1.4 and 24.7.2.
- 172 Sections 21.8.1.1 and 24.7.3.3.
- 173 Section 28.3.
- 174 Section 17.2.1.2.
- 175 Sections 16.4-5.
- 176 Section 21.5.
- 177 The same might be said of Emergency Assistance agreements of the type described in Section 23.4.
- 178 Sections 23.1.5-6.
- 179 The Treaties for the Denuclearization of Latin America and for the Non-Proliferation of Nuclear Weapons (Sections 21.3.2.2-3) strictly speaking do not assign any new functions to the Agency, but merely provide new scope for the exercise of the statutory safeguards function. However, as mentioned in Section 23.3, the 1958 UN Conference on the Law of the Sea practically identified the IAEA as the principal one of "the competent international organizations" with which States are to co-operate to prevent radioactive pollution of the seas, pursuant to Article 25(1) of the Convention on the High Seas (450 U.N.T.S.11).
- 180 Not precisely in point, but symptomatic, is the provision in the Treaty on the Non-Proliferation of Nuclear Weapons (UNGA/RES/2373(XXII), Annex), by which amendments to the Treaty can only enter into force on, *inter alia*, the approval and ratification by all parties to the Treaty "which, on the date the amendment is circulated, are members of the Board of Governors of the [IAEA]" (Article VIII.2). The power here is assigned not to the Board but to its members.
- 181 *Supra* note 158 to Section 8.3.3(d).
- 182 IAEA/PC/W.54(S); IAEA/PC/OR.57, pp.8-20.
- 183 IAEA/PC/W.54(S); /W.67; IAEA/PC/OR.57, pp.8-20; /OR.59, pp.17-23; IAEA/PC/W.69; /W.70; /W.72; /W.73; IAEA/PC/OR.60; IAEA/PC/W.74; /W.75; IAEA/PC/OR.60; /OR.62, pp.7-18; /OR.63, pp.13-26; /OR.64, pp.3-8.
- 184 Consisting of a minor addition to Rule 15(e) relating to the contents of provisional agendas.
- 185 IAEA/PC/OR.64, pp.5-6.
- 186 The original version appeared in GOV/INF/5 and in GC.1(S)/INF/7. Later amendments are incorporated in GOV/INF/32 and in GOV/INF/60, which itself has been twice altered by amendments set forth in GOV/INF/60/Mod.1 and 2.
- 187 Even though it is clear that Governors are instructed representatives of their States, this is explicitly restated in the US IAEA Participation Act (22 U.S.C. Sec.2023).
- 188 And apparently even in the second sentence of Board Procedural Rule 11 (quoted in Section 8.4.4)!
- 189 Not surprisingly, the only challenge that has ever been raised in the Board with respect to the credentials of a Governor concerned those of the designee of the Republic of China when he first took his seat in the 7th Board.
- 190 Statute Articles VI.E and XIV.H.
- 191 WLM Doc.31, Annex IV, para.2(f). IAEA/CS/Art.XIV/Amend.1 (cancelled by /Corr.1); /Amend.4, para.5; /Art.XVIII/Amend.3.
- 192 Section 21.7.2.4. IAEA/CS/Art.XII/Amend.3, rejected IAEA/CS/OR.38, pp.32-35.
- 193 Statute Article VI.E, which is based substantially on an amendment proposed at the Conference on the Statute and explained by a reference to UN Charter Article 18(3) (IAEA/CS/Art.VI/Amend.3).
- 194 IAEA/PC/W.72, para.13; IAEA/PC/OR.6, pp.20-22; /OR.63, pp.19-24; /OR.64, pp.5-6.
- 195 Procedural Rule 36(b).
- 196 Procedural Rules 33, 36(c)-(f), 59, 60.
- 197 In formulating the Revised Safeguards Document, the competent Working Group considered proposals that certain decisions (*i.e.*, those referred to in INFCIRC/66/Rev.2, paras.11 and 20) in implementation of safeguards should require a two-thirds majority, and informal understandings in that sense were indeed reached – but are not recorded either in the Rules of Procedure, the Safeguards Document, any decision of the Board, or even in any recommendation of the Working Group.
- 198 WLM Doc.1(Rev.1), Rule 6.
- 199 Statute Article VI.E, Procedural Rules 22, 36-38.

- 200 Procedural Rule 58. In fact, it has sometimes proven impossible to attain the required quorum in so-called "committees of the whole", and this was indeed reported in June 1966 by the Chairman of the Committee of the Whole on Emergency Assistance in the Event of Nuclear Radiation Accidents.
- 201 Cf. Procedural Rule 11.
- 202 Statute Article VI.C and D.
- 203 But this numbering is officially reflected only in the documents in which the decisions of the Board are published (Sections 8.4.8 and 34.2.4).
- 204 GC(II)/39, para.40. For the second year, see GC(III)/73, Annex 1.C.
- 205 GC(VI)/195, para.7.
- 206 The Chairman in most cases appears to have been elected genuinely on his personal merits - i.e., a Governor is chosen from among those in the eligible area(s) who is familiar with the Board and personally respected by its members. For the Vice-Chairmen, the choice appears to relate more to the country than to the person, and when such an officer has on occasion had to be replaced (e.g., because of the death of the incumbent) the Board has invariably chosen the new Governor from the same State, though he be a complete newcomer.
- 207 Procedural Rule 5. By established but legally somewhat unsatisfactory practice, the retiring Chairman, even if the State he represented was no longer a member of the Board, acted as Temporary Chairman of the new Board (on which he is not even a Governor), until the new Chairman was elected (e.g., at the 100th meeting, opening the second Board). However, at the 395th meeting, opening the eleventh Board, the Director General temporarily took the chair - for which there appears to be no authority in the Board's Rules of Procedure (but cf. those of the General Conference, GC(VII)/INF/60, Rule 33).
- 208 Though South Africa is clearly in "Africa and the Middle East" (it has been designated to each Board as the "most advanced" State from the "area"), for the purpose of these election patterns its attribution to that area seems to be disregarded. Thus the only violation of the empirical rule that the chairmanship moves in turn to all the areas is given by the election of a South African as Chairman of the third Board and of an Iraqi as Chairman of the fifth, and the only violation of the rule that the three officers should come from three different areas is given by the fact that the South African Chairman had a UAR Vice-Chairman.
- 209 For example, the reception in the Agency of the King and Queen of Thailand on 30 September 1964 (PR 64/55).
- 210 GC(VII)/INF/60, Rule 41.
- 211 Idem Rule 55.
- 212 Board Procedural Rule 6.
- 213 This uncertainty is one of the reasons why the Chairman of the old Board acts as Temporary Chairman of the new one, even if he is no longer a member of it (see note 207 above) - since if his right to act in that capacity were denied, he would equally not have the right to designate a Vice-Chairman to act in his stead.
- 214 Procedural Rule 7.
- 215 GC(IV)/114, Annex I.B, para.2. This Annex also states the membership, during the third Board, of eight committees.
- 216 Section 21.4.1.1.
- 217 A brief description of the composition and principal functions of the Administrative and Budgetary Committee is given in UN doc.A/7124, Annex XII, Recommendation 3.
- 218 INFCIRC/14, paras.3(e), 3(f), 10.
- 219 Section 25.2.4.2.3.
- 220 Procedural Rule 56.
- 221 For its first 82 meetings (through 1966), no records were published for the Administrative and Budgetary Committee. Since then short summary records have been issued.
- 222 By the Conference-approved Rules on the Consultative Status of Non-Governmental Organizations with the Agency (INFCIRC/14).
- 223 Section 21.4.1.1.4.
- 224 Section 21.4.1.1.5; GC(XI)/355, para.99.
- 225 Section 8.2.1.2.2; GC(XIII)/408, para.2 of the Report of the Ad Hoc Committee. 50 Members in all participated in the meetings of this group.
- 226 Section 17.5; GC(XIII)/410, para.3. 28 Members in all participated in the meeting of this group. It is not clear whether the slight difference in the wording of the invitations to this committee and to that

- mentioned immediately above (and in particular the reference to Procedural Rule 50 in one of the Board decisions) was meant to have any substantive significance. In April 1970 the Board established the Safeguards Committee (1970) "on which any Member State may be represented if it so desires".
- 227 Section 8.2.2.1.2.2(b).
- 228 For example, the Ad Hoc Drafting Committee charged with preparing a fresh draft of the general principles proposed for the Agency's initial safeguards system (Section 21.4.1.1.1). No account is taken here of the Scientific Advisory Committee (Section 11.1) nor of most of the special organs established to advance the formulation of certain multilateral conventions (Chapter 23) which, while created by the Board, have never strictly speaking been considered to be mere organs of it. Finally the Expert Panel on Argentine/Brazilian priority (Section 8.2.2.1.2.2(b)) is not counted among these committees.
- 229 INFCIRC/11, Part I.A (Agreement with UN), Article VIII.1 and, e.g., INFCIRC/20, Part I (Agreement with UNESCO), Article IV, Section 12.2.2.4.
- 230 Procedural Rule 15.
- 231 Procedural Rule 19.
- 232 Procedural Rule 20.
- 233 Procedural Rule 14. This Rule is evidently modeled on Procedural Rule 49 of the UN General Assembly (A/520/Rev.8), which reproduces verbatim Article 12(2) of the UN Charter - a provision which has no parallel in the IAEA Statute.
- 234 Section 8.4.10(a).
- 235 These are required by Procedural Rule 8(a) (GOV/INF/60/Mod.2). They are described in Section 9.3.2.3 and especially in Section 32.1.1.
- 236 The formal authority for which evidently stems from an early resolution of the Board requiring that "a monthly report on [the Board's] decisions... be circulated to all Members of the Agency for official use only".
- 237 Explained in Section 34.4.
- 238 Article VI.F.
- 239 IAEA/CS/OR.20, p.7. The American representative went on to say that this rule would apply to the representatives of States, but should the Board establish expert groups in which persons serve in their individual capacities, their expenses would be borne by the Agency; this indeed has been done (e.g., in respect of Dr. Randers, the ad personam Chairman of several safeguards panels (Sections 21.4.1.1.1-5)).
- 240 GC(III)/COM.1/29 and /Rev.1; GC(III)/COM.1/OR.21, paras.13-42 and /OR.22, paras.2-11; GC(III)/102, paras.12-13.
- 241 IAEA/PC/W.54(S), Rule 24; IAEA/PC/W.67, para.12; IAEA/PC/OR.57, pp.18-19; /OR.63, p.16; /OR.64, pp.3-4.
- 242 This was a portion of its 6th meeting, which was opened in order to permit representatives of the specialized agencies to participate with respect to the recommendations to be made to the General Conference on relationship agreements (Section 12.3.2.1.2). At later meetings participation of invited outsiders was accomplished under Procedural Rule 50 without opening up the proceedings entirely.
- 243 The original, tentative decision in this sense was made by the Preparatory Commission (IAEA/PC/OR.51, pp.8-9).
- 244 The consequences of these restrictions are discussed in Section 34.4.
- 245 GC(V)/151/Add.1, para.1.
- 246 GC.1(S)/COM.2/OR.7, paras.32-38.
- 247 Under Procedural Rule 50.
- 248 GC(VI)/195, para.8.
- 249 Under Procedural Rule 50.
- 250 Under Procedural Rules 16 and 49, which are based on Article VII.1 of the UN Relationship Agreement (INFCIRC/11, Part I.A). See also Section 12.2.2.3.
- 251 Under Procedural Rules 16 and 49, which are based on Article II.3 of the standard form of Relationship Agreement concluded with specialized agencies (see, e.g., that with UNESCO, INFCIRC/20, Part I.A). See also Section 12.3.3.1. During the past several years the resident representative of WHO has in fact routinely attended all meetings of the Board, regardless of the subject under consideration.
- 252 Under Procedural Rules 16 and 50. Ad hoc invitations may be arranged on the basis of Article II.3 of the standard form of Co-operation Agreement concluded with regional intergovernmental organizations (see, e.g., that relating to ENEA, INFCIRC/25, Part I.A).
- 253 Under Procedural Rule 50.

- 254 Under paras.3(c), 3(g) and 4(a) of the Rules on the Consultative Status of NGOs with the Agency (INFCIRC/14).
- 255 Under Procedural Rule 50.
- 256 Under Procedural Rule 50. For example, Dr.Randers has several times been invited to participate in meetings of the Board ad personam when the reports of the safeguards committees he had chaired (Section 8.4.5.2(B) and 21.4.1.1.1-5) were under consideration.
- 257 Procedural Rule 8(b). The Preparatory Commission saw fit to recommend to the Board the explicit inclusion of this obvious restriction (IAEA/PC/87, para.4; IAEA/PC/OR.57, pp.11-12).
- 258 Ibid.
- 259 Sections 9.3.3 and 24.1.4.1.

NOTES TO TABLE 8A

1. Statute Article VI.A.1 "Areas"

NA - North America; LA - Latin America; WE - Western Europe; EE - Eastern Europe; A&ME - Africa and the Middle East; SA - South Asia; SEA&P -- South East Asia and the Pacific; FE - Far East.

2. Basis of Attribution

P-1: Designated by the Preparatory Commission under Article VI.A.1 with respect to the indicated area; later these designations were repeated by the Board and thus the area attributions were by implication confirmed by it.

P-2: From the area designations made by the Preparatory Commission (see P-1 above), one can by combination and elimination deduce the area attributions of the five most advanced States designated by it under Article VI.A.1; these too were repeated and thus by implication confirmed by the Board.

B: Designated by the Board under Article VI.A.1, with respect to the indicated area.

GC: Election by the General Conference to a geographic seat under Article VI.A.3.

GEN: Conclusion by the General Committee of the General Conference that a State is in the indicated area, as implied from its recommendation pursuant to Procedural Rule 86 that no election with respect to that area is required; these recommendations of the General Committee have in no case been challenged in the Plenary and thus have by implication been confirmed by the Conference. GEN) indicates that a recommendation that no election need be held for a given area might have been due to the continuing presence on the Board of either of two elected States - so the attribution is ambiguous as to both.

V: Unchallenged vote cast in an election by the General Conference for the State with respect to the indicated area. Since under Procedural Rule 88 a vote is invalid if cast for a State that is not in the geographic area in respect of which the election is being held, an unchallenged vote implies that the State is considered to be in that area; however, this implication is not a strong one, as witnessed by the fact that for some States votes have been cast for three separate areas (sometimes for two areas at the same meeting of the Plenary), and in no case has any vote been challenged on this ground. Tellers are instructed to report as invalid any votes cast for States that are "manifestly" not in the area in question - but this does not cover border-line cases, which are reported without comment to the President who may of course issue a ruling, or invite a challenge from the floor or (as has always been the case) make no difficulties concerning a few votes scattered among miscellaneous candidates. Thus this test should not be taken into account if any more positive indication of attribution is available.

G: Assignment made on basis of geographic logic, taking into account any relevant political factors. This indicium is recorded only if no more positive indication of the attribution of a State is available.

3. Comments on particular areas or attributions

(a) Western Europe— Eastern Europe

Though expressed in geographic terminology, it is clear that the terms "Western Europe" and "Eastern Europe" have acquired an overriding political meaning. Otherwise Greece, which lies considerably to the east of several undoubtedly Eastern European countries (e.g., Hungary and Yugoslavia, both of which have been elected by the General Conference to represent Eastern Europe), could not have been implicitly classified as

a Western European country by the General Committee at the Sixth General Conference. In this connection it is interesting to recall that at the Working Level Meeting the Soviet representative officially recorded his understanding that the Eastern European area is composed of twelve States, among which he included Greece and Yugoslavia; however, the American and British representatives immediately reserved their positions as to this listing. Based on current geopolitics, Turkey has been and Cyprus is likely to be attributed to the West rather than to the East.

(b) North America - Latin America

This classification is incongruous, for it matches a geographic term (North) against an ethnic-linguistic one (Latin). Strictly speaking Mexico is both within North and within Latin America; the Tenth General Conference elected it to a Latin America seat, thus confirming decisions reached by the General Committee at the fourth and seventh regular sessions. It is also difficult to assign Jamaica, which is too far south to be considered in North America, but is not linguistically Latin.

(c) Far East - South Asia - South East Asia and the Pacific

There is no certainty as yet as to where the boundary should be drawn between these three artificially designated areas - as testified by the fact that Cambodia has received unchallenged votes for all three areas and Burma for two of them. At the Fifth General Conference, four undoubted members of the Far East area (China, Japan, Korea and the Philippines) objected that Viet-Nam was not in that area - but the Conference overruled them by electing that State to the area seat (Section 8.2.2.4.3.1).

NOTES TO TABLE 8B

Conclusions (Based on Table 8A): The reasonably unambiguous attributions are given immediately below the name of the "areas" specified in Article VI.A.1 of the Statute; however, if the attribution is in any way doubtful, it is followed by a question-mark.

The 5 States that are listed as "Unassigned" are tentatively attributed to the indicated areas below a broken line and are followed by a question-mark.

Possible alternative attributions of certain States (for which there are some, albeit weak indicia) are indicated by listing these States, for a second or third time, below a solid line and followed by an X.

CHAPTER 9. THE DIRECTOR GENERAL AND THE SECRETARIAT

PRINCIPAL INSTRUMENTS

IAEA Statute Articles VII, XII. B, XIV. A, XV. B and C
Provisional Staff Regulations (INFCIRC/6/Rev. 2)
Financial Regulations (INFCIRC/8/Rev. 1), mainly Regulations 5. 01, 10. 01-06, 13. 01
General Conference Rules of Procedure (GC(VII)/INF/60), mainly Rules 5, 11, 12(1), 37-38, 55
Board of Governors Rules of Procedure (GOV/INF/60 and /Mod. 2), mainly Rules 4, 8-10, 11(b), 15(f), 17, 36(b), 48
Administrative Manual, especially Part I (Organization and Headquarters)

9. 1. THE DIRECTOR GENERAL AS AN ORGAN OF THE AGENCY

The Statute does not explicitly name the organs of the Agency. However, if the General Conference and the Board of Governors are properly considered as such, then it seems that the Director General, though having far more restricted powers than either of the political bodies, should be accepted as constituting the last of a triad of statutory organs.

The term "Secretariat" is not used in the Statute itself, which only refers to the "staff", headed by the "Director General". However, Provisional Staff Regulations¹ 14. 02 and 14. 03 make it clear that the relationship in the Agency is analogous to that in the United Nations²: i. e., the Director General is not a member of the staff, but he and the staff together constitute the Secretariat.

In deciding to ascribe organic character to the Director General rather than to the Secretariat as a whole, it should be noted that throughout the Statute functions are assigned to the Director General and never to the staff — except that Articles XII. B and C assign certain responsibilities to the "staff of inspectors" or to individual inspectors, respectively³. This style has also been followed in most of the subsidiary instruments by which the political organs have fleshed out the authority of the administrative one.

9. 2. APPOINTMENT OF THE DIRECTOR GENERAL

9. 2. 1. Statutory provisions

The Negotiating Group draft of the Statute had provided:

"The staff of the Agency shall be headed by a General Manager, who shall be appointed for a fixed term by the Board." ⁴

The only change introduced by the Working Level Meeting was to specify that the appointment should be for a term of four years. It rejected a Soviet proposal that "in appointing persons to this office, the Board of Governors shall apply the principle of choosing persons representing different areas of the world on a rotation basis".⁵

The Conference on the Statute, in increasing the powers of the General Conference, altered this provision to read as follows:

"The Director General shall be appointed by the Board of Governors with the approval of the General Conference for a term of four years."⁶

In addition, it also included this authority among the scheduled functions of the Conference.⁷ However a proposed amendment, that would have shifted the power of appointment entirely to the General Conference, acting on the recommendation of the Board (which of course would not have made any effective change in the scheme actually adopted), was defeated,⁸ as was another proposal to increase the term of office to six years.⁹

Thus the Statute in effect assigns the appointing power jointly to the two political organs, with the initiative attributed to the Board.

9.2.2. Rules of Procedure

Rule 36(b) of the Provisional Rules of Procedure of the Board¹⁰ requires a two-thirds majority for the appointment of the Director General – the only use which the Board has made of its statutory authority to determine additional categories of questions to be decided by such a majority. Procedural Rule 48, which deals particularly with the "Appointment of the Director General", merely recites and refers to the above-quoted portion of Article VII. A of the Statute.

Procedural Rule 69 of the General Conference¹¹ does not list the approval of the appointment of the Director General as requiring a two-thirds vote, and no other decision having been taken on this point, such approval thus requires only a simple majority.¹²

9.2.3. Practice

On the basis of the above-cited statutory and procedural rules, the practices described in the Sections below were followed with respect to the appointment of the Director General, in the four instances in which such action has been taken up to now. The first designation was that of W. Sterling Cole, a member of the House of Representatives of the United States (and formerly Chairman of the Joint Congressional Committee on Atomic Energy), who was appointed and approved in 1957, without an opponent but against restrained objections from representatives who felt that the Director General should come from a neutral State and certainly not from one of the leading nuclear powers.¹³ The second designation was that of Dr. Sigvard Eklund, a Swedish reactor physicist (and Secretary-General of the Second UN (Geneva) Conference on the Peaceful Uses of Atomic Energy), who was appointed and approved in 1961, after winning in the Board over Dr. Tjondronegoro Sud-

jarwo of Indonesia; this appointment led to violent disputes in the Board and the General Conference – which later subsided so rapidly and completely that one cannot escape the suspicion that this controversy related less to the politics of the Agency than to the concurrent struggles in the United Nations over the functions of the Secretary-General, over the Soviet troika proposal and lastly tragically over the succession to Hammarskjöld. The third and fourth designations were the re-appointments of Dr. Eklund in 1965 and 1969, accomplished by acclamation in both the Board and the General Conference.

9.2.3.1. Consultations

The first step in the appointment of a Director General necessarily consists of informal consultations among the principal Governments, probably carried out in large part through their Missions in Vienna, in an attempt to find a generally acceptable candidate. Both in 1957 and 1961 the thought was expressed that these consultations should be aimed at identifying a candidate who would receive substantially unanimous support, and that they should be continued until this goal is achieved.¹⁴

9.2.3.2. Consideration and decision by the Board

On the basis of these consultations, one or more candidates are formally proposed to the Board. Except at the beginning of the Agency, this has been done at the June series of meetings, though there is no formal requirement as to when the appointment should be made or be submitted to the Conference. In 1957, 1965 and 1969 there was only one candidate, but in 1961 first Dr. Sudjarwo and then Dr. Eklund were nominated. The two nominations were considered together, but the choice between them was not treated as an election (which would, *inter alia*, require a secret ballot)¹⁵ but rather as decisions to be taken on two separate proposals: thus a roll-call vote was first taken on Dr. Sudjarwo, who failed to achieve even a simple majority; then Dr. Eklund was voted on by roll-call and received the required two-thirds.

The meetings at which the Board considered the appointment of the Director General were, as usual, closed – but until 1969 were not restricted any more strictly than other meetings of the Board;¹⁶ in that year the Board decided that this matter (which included a consideration of a proposed revision of the terms of service) should be discussed in an atmosphere more confidential than that in which the Board normally conducts its business, that therefore each delegation should be represented by only its senior member (normally the Governor) and that only the DDG for Administration and the Secretary of the Board should be present.¹⁷ Mr. Cole attended the debate on his candidature as a member of the American delegation. Dr. Eklund was absent each time – even though in 1965 and 1969 he ordinarily attended all Board meetings in his capacity as the incumbent Director General; his absence in 1961 caused additional controversy in the Board, and an unsuccessful attempt was made to invite him for at least a post mortem explanation of his cable of acceptance.

The Board's decision to appoint a Director General is in the form of a necessarily conditional offer to the candidate, which is communicated to him by the Chairman of the Board. If he accepts (and this has happened in each case the Board has made its offer — though the violent diatribes both before and after the 1961 votes in the Board were evidently intended less to influence other Board members than to cause Dr. Eklund to reject the tendered appointment), then the Board transmits its proposal to the General Conference.

The first appointment was communicated to the President of the General Conference (which was then already in session) in a letter by the Chairman of the Board.¹⁸ In 1961, 1965 and 1969 the Board transmitted its decision and request for approval by means of a regular General Conference document.¹⁹

9.2.3.3. Consideration and decision by the General Conference

The General Conference must consider whether or not to approve the appointment made by the Board. In 1957, 1965 and 1969 it gave its approval without a vote — in the latter two by acclamation.²⁰ However in 1961 a motion was first made and defeated (22:42:3) to ask the Board "to reconsider the nomination . . . immediately" and to place before the Conference one "which is acceptable without opposition";²¹ then the Conference decided (46:16:6), pursuant to the request of the Board, to approve the appointment of Dr. Eklund as Director General.²²

The consideration of the approval of the appointment has always taken place in the Plenary, which is open as all such meetings are. Mr. Cole attended the debate in 1957 as a member of the American delegation. Dr. Eklund was absent each time;²³ in 1961 the proposal was made, but later withdrawn, to instruct the President of the Conference to invite Dr. Eklund to attend the debate.²⁴

9.2.3.4. Oath of Office

After the approval of his appointment, the Director General Designate takes his oath of office in a public meeting of the General Conference,²⁵ as required by Provisional Staff Regulation 1.12. The text is a slightly paraphrased version of the oath prescribed for members of the Secretariat by Staff Regulation 1.11.²⁶

9.2.4. Term of Office

In the Working Level Meeting and at the Conference on the Statute various terms of office for the Director General were discussed, ranging from two to six years.²⁷ Four years was selected as a compromise at the Working Level Meeting,²⁸ and this is the term now provided for in Article VII, A of the Statute.

There is no statutory bar to re-appointment, and indeed Dr. Eklund received consecutive second and third terms. Those appointments were formally treated just like the initial one, and Dr. Eklund even took his oath of office anew both times.²⁹

Mr. Cole, on accepting his appointment, indicated that he could not assume the office for some weeks – and the Board subsequently agreed that his term of office should start on 1 December 1957 and extend until 30 November 1961. Consequently each term of office of Dr. Eklund also started on 1 December. Since the General Conference normally meets towards the end of September, this arrangement automatically results in a two-month lame-duck period for any not reappointed incumbent (which extends a similar three-month period following the decision taken by the Board in June). On the other hand, this period permits the new appointee, known in the interval as the "Director General Designate",³⁰ to prepare himself for his responsibilities.

The contracts of Mr. Cole and Dr. Eklund have in each case given them the right to resign by giving six months notice. Should this happen the Board would in principle have enough time to make a new appointment and, if necessary, to convene a special session of the General Conference to approve it; however, should the time prove insufficient, then the Board would presumably appoint an Acting Director General on its own authority, as it did in the case of Dr. Jolles, who held that post in the period before Mr. Cole assumed his office.³¹

There is no provision in the Statute or in any other instrument for the involuntary removal of the Director General, by dismissal, impeachment or otherwise.

9.2.5. Contract

In considering the contract to be offered to Mr. Cole (who at that time had already taken his oath of office) and which was later twice offered with only minor changes to Dr. Eklund, the Board based the terms it formulated on the following two principles:

- (a) The salary of the Director General should be comparable to that of the heads of similar-sized specialized agencies, and his allowances should be such as to enable him to maintain the status of an ambassador in Vienna (since the Headquarters Agreement formally entitles him to the privileges and immunities of an official of that rank³²);
- (b) The terms of the contract should otherwise generally resemble those of a fixed-term staff member of the Agency.

On these bases, the Director General's contract provided for a salary of \$20 000, and for non-accountable representation and housing allowances each amounting to up to \$10 000 a year.

In 1969 the Board decided, immediately before resolving to reappoint Dr. Eklund,³³ to offer him a salary of US \$30 100, a representation and entertainment allowance not exceeding the equivalent of US \$10 000, and a housing allowance not exceeding the equivalent of US \$8 000. It also recorded its understanding that the salary figure was related to the salaries which executive heads of other organizations in the UN family were receiving on 1 January 1969³⁴ and that consequently later post adjustments that became applicable in Vienna³⁵ would appropriately be applied to that salary, and

that the emoluments as a whole would be subject to adjustment by the Board (after consultation with the Director General) to bring them into conformity with any future revisions of the conditions of employment of the Agency's staff or with the emoluments that might in the future be agreed on for the executive heads of other organizations.

Each contract also specified that other emoluments provided for in the Staff Regulations are to be enjoyed to the extent that they are not otherwise covered by some provision of the contract. As for staff members, the payments from the Agency are considered to be tax-exempt, but if a national income tax is imposed then the Agency reimburses it.³⁶ The Director General may resign by giving six months notice.

The contract is formally approved by a resolution of the Board, and is communicated to the Director General for acceptance in a letter by the Chairman.

9.3. FUNCTIONS AND POWERS

As a consequence of the extensive role assigned to the Board, the functions and powers of the Director General were from the beginning conceived of as considerably restricted. In the first US Sketch of the Statute, the office is characterized as "administrative head or general manager".³⁷ The Negotiating Group draft used that latter title,³⁸ but this was changed by the Working Level Meeting to the present one of Director General³⁹ — not in an attempt to increase the significance of the office but merely to bring the terminology of the Statute into line with international practice.

Unlike the functions of the General Conference and of the Board, which are derived largely from the Statute and are only marginally affected by other instruments, those of the Director General depend largely on grants by the two political organs and in particular by the Board; even to the extent that the Statute specifically assigns functions to the Director General, these are subject to circumscription through regulations adopted by the Board.

9.3.1. Statutory grants

The Statute assigns two substantial functions to the Director General, which are listed in the first two paragraphs below. Four others are largely ministerial.

Article VII. A and B provides that:

"A. The staff of the Agency shall be headed by a Director General. . . . He shall be the chief administrative officer of the Agency.

"B. The Director General shall be responsible for the appointment, organization, and functioning of the staff and shall be under the authority of and subject to the control of the Board of Governors. He shall perform his duties in accordance with regulations adopted by the Board."

The second sentence of Article XIV. A provides:

"To facilitate the work of the Board in this regard [the submission to the General Conference of the annual budget estimates for the expenses of the Agency], the Director General shall initially prepare the budget estimates."

Though the statutory language appears to be deliberately off-handed, as if to minimize the importance of this function, it is still a significant one – as any share in the power of the purse is bound to be. While the presentation of the budget is ultimately the responsibility of the Board and it must also be approved by the General Conference, the opportunity to prepare the initial draft gives the Director General considerable scope to assert initiatives in shaping the programme of the Agency. This power is particularly effective when used negatively, since the Board and the Conference cannot conveniently add projects not included in the Director General's estimates; cutting out an over-ambitious proposal is simpler, but politically may evoke resistance from the likely beneficiaries.⁴⁰

Article XII. C requires the Director General to transmit to the Board any report he receives from Agency inspectors regarding non-compliance by a State with its safeguards obligations. The extent to which this function permits any scope for discretion is discussed in Sections 21.7.2.4 and 21.12.5.

Article V. A requires the Director General to convene a special session of the General Conference, at the request of the Board or of the majority of the Member States. The Conference on the Statute deliberately inserted the word "shall" in order to remove any discretionary element from this function.⁴¹ The merely ministerial nature of this function was confirmed by the decision that the first special session be convened by the Secretary-General of the Conference, the first Director General not yet having been appointed.⁴²

Article XV. C provides:

"C. The legal capacity, privileges, and immunities referred to in this article shall be defined in a separate agreement or agreements between the Agency, represented for this purpose by the Director General acting under instructions of the Board of Governors, and the members."

As this wording suggests, the Director General's principal function under this Article has been to act as the depositary of the Agreement on the Privileges and Immunities of the Agency promulgated by the Board.⁴³

Article XVIII. A requires the Director General to prepare certified copies of the text of any amendment proposed to the Statute and to communicate these to all Member States.⁴⁴

9.3.2. Grants flowing from instruments promulgated by the political organs

9.3.2.1. Staff Regulations

The Provisional Staff Regulations adopted by the Board pursuant to Article VII. E of the Statute⁴⁵ relate to the Director General's responsibility, under

Article VII. B, "for the appointment, organization, and functioning of the staff... under the authority of and subject to the control of the Board of Governors". In some ways these Regulations expand and in others they restrict the general statutory grant.

One significant power granted to the Director General by the Regulations is to promulgate Staff Rules.⁴⁶ This authority is stated in general terms in the Preamble, and other parts of the Regulations specify certain areas in which such Rules need to be drawn up.⁴⁷ However, certain Rules may only be promulgated with the concurrence of the Board.⁴⁸ The Director General is also required to make appropriate provision for the classification of posts and staff.⁴⁹

The Director General is of course granted extensive powers, within the limitations imposed by the Regulations, to take decisions in individual cases, e. g.: to appoint, promote and terminate staff members (Regulations 3. 01, 3. 06, 4. 01, 4. 04, 4. 05); to impose disciplinary measures (Regulation 4. 01), to grant special leave (Regulation 7. 03); to authorize the disclosure of confidential information (Regulation 1. 06); and to waive the privileges and immunities of staff members (Regulation 1. 10). However, even with respect to these individual cases he may be required to consult with the Board: if he wishes to terminate involuntarily a staff member with the rank of head of division or above (Regulation 4. 01(c));⁵⁰ or "where appropriate" in deciding on a waiver of immunity (Regulation 1. 10).⁵¹

The Regulations firmly establish the Director General as the predominant member of the Secretariat. Regulation 3. 01 restates the statutory provision that he "shall be the chief administrative officer of the Agency". Regulation 1. 02 provides:

"Staff members are subject to the authority of the Director General and to assignment by him to any of the activities or offices of the Agency. They are responsible to him in the performance of their duties and they shall undertake their duties at his direction. The whole time of staff members shall be at the disposal of the Director General...".

In a somewhat unrelated and broader context, Regulation 1. 03 provides:

"No working papers or other Secretariat documents shall be issued except on the responsibility of the Director General."

9. 3. 2. 2. Financial Regulations

Unlike the Staff Regulations, which in effect merely define and delimit the principal statutory function of the Director General, the Financial Regulations⁵² adopted by the Board made grants that cannot be directly derived from the Statute, except insofar as some may be implied from the Director General's role as chief administrative officer of the Agency.

The principal power is granted by Financial Regulation 5. 01:

"The appropriations approved by the General Conference shall constitute an authorization to the Director General to incur obligations and make payments, on behalf of the Agency, for the purposes for which the appropriations were voted and up to the amounts so voted."

Under Regulation 5.06, other expenses may be incurred by the Director General for defined purposes, but only to the extent authorized by the Board and within limits approved by the General Conference. Regulation 10.03 provides that no obligation shall be incurred except under the authority of the Director General.

Regulation 10.01(a) authorizes the Director General to establish the Financial Rules⁵³ – but unlike the Staff Rules, most of which he can issue on his own authority, the fiscal ones all require the approval of the Board. Under Regulation 10.02 and 7.07 he may also promulgate, again with the approval of the Board, other rules relating to the storage and custody of the Agency's property and of other items in its possession (evidently a reference to any nuclear material transferred by Member States under Article IX of the Statute) and for the administration of the Operating Fund. Finally, under Regulation 10.06 he may on his own authority establish rules for the invitation of competitive tenders for items or services purchased by the Agency (though in practice the Director General has also included these provisions within the Financial Rules that he submitted to the Board for approval⁵⁴).

Regulations 3.01 et seq. expand on the statutory requirement that the Director General prepare annually the estimates of the expenses of the Agency for the following fiscal year. Regulation 13.01, which is also confirmed by the Rules of Procedure of the General Conference (Rule 67) and of the Board (Rule 34),⁵⁵ provides:

"No decision involving expenditure shall be taken by the General Conference and no recommendation involving expenditure shall be made by any committee or subsidiary body thereof in the absence of a report from the Director General on the administrative and financial implications of the decision or recommendation and a report from the appropriate committee of the General Conference. No decision involving expenditure shall be taken by the Board of Governors and no recommendation involving expenditure shall be made by any committee or other subsidiary body thereof in the absence of a report from the Director General on the administrative and financial implications of the decision or recommendation."

Thus the Director General has an automatic opportunity of commenting on at least one facet of almost every significant proposal introduced in either political organ.

The Director General is also authorized by the Financial Regulations to make a number of particular decisions: thus he designates the depositaries of the funds of the Agency (Regulation 8.01) or he may invest such funds (though the approval of the Board is required for long-term commitments) (Regulations 9.01, 9.02);⁵⁶ he may make *ex gratia* payments up to limits set by the Board (none have yet been set) (Regulation 10.04); he may write off losses (Regulation 10.05); and he may accept, in consultation with the Board, assessed contributions in currencies other than US dollars (Regulation 6.04).⁵⁷

9.3.2.3. Rules of Procedure of the Board

Some of the principal functions and obligations of the Director General derive from the Rules of Procedure of the Board.⁵⁸ These relate in part to matters outside the mere mechanics of Board operation; thus Rule 8(a) provides:

"(a) The Director General shall, in accordance with Article VII. B of the Statute, be under the authority of and subject to the control of the Board. He shall perform his duties in accordance with regulations adopted by the Board and shall be guided by the policy of the Agency. He shall provide the Board with not less than two reports each year on developments in the Agency's work. He shall bring to the Board's notice as a matter of urgency any fact which may require its intervention, in order to enable it to take any necessary action within the scope of its functions."⁵⁹

With respect to the Board itself, Rule 9 obligates the Director General to provide and direct the staff required by the Board – i. e. , the Board does not have its own Secretariat subject solely to its own control.⁶⁰ The Director General examines the credentials of Governors and reports on them to the Board (Rule 4). He may request meetings of the Board (Rule 11(b)). In consultation with the Chairman, he prepares the provisional agendas of the Board and may on his own authority insert items that he considers necessary (Rule 15, 15(f)).⁶¹

Aside from the requirements that he comment on the financial and administrative implications of all proposals involving expenditures (Rule 34), he is required (and thus in effect authorized) to provide an explanatory memorandum, and if possible a draft resolution, for all items he proposes for inclusion in the Board's agenda (Rule 17) – at most series of meetings these are the majority of items. Finally, under Rule 8(b), he or his representative may, with the permission of the Chairman, at any time make oral or written statements at meetings of the Board and its committees.

9.3.2.4. Rules of Procedure of the General Conference

The Rules of Procedure of the General Conference⁶² do not add as substantially to the functions of the Director General.

In convening special sessions, his only discretionary function, which he must exercise in consultation with the Board, is to establish the date (Rule 5). He draws up the provisional agendas of both regular and special sessions (Rules 11 and 16) in consultation with the Board, and may add items to the provisional agendas or to the supplementary lists (Rules 12(1) and 13) – but only in agreement with the Board.⁶³

In the absence of the delegate from the delegations which provided the President at the previous session (a contingency which has not yet arisen), the Director General acts as Temporary President of the Conference until the new President has been elected for the session (Rule 33).

His duty under Rule 38 to provide and direct the staff servicing the Conference is analogous to this function in relation to the Board.

Aside from the Director General's obligation to comment on the financial and administrative aspects of proposals (Rule 67), he or his representative may, with the agreement of the presiding officer, at any time make oral or written statements to the Conference or its committees (Rule 37), and he may for this purpose be granted precedence over other speakers (Rule 55).

9.3.2.5. Rules regarding voluntary contributions

The Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities,⁶⁴ adopted by the Board, authorize the Director General to accept voluntary contributions in kind from Members of the Agency, of the United Nations or of any specialized agency, or from any organization with which the Agency has concluded a relationship agreement, "if in his opinion such services, equipment and facilities can readily be incorporated into a project, programme or activity which he has already been given authority to execute. . .".

The Rules regarding the Acceptance of Voluntary Contributions of Money to the Agency,⁶⁵ approved by the General Conference, authorize the Director General to accept unrestricted contributions in cash from any of the above-mentioned sources, and also up to the equivalent of US \$1000 annually from any non-governmental source.

9.3.2.6. Technical Assistance Rules

The Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency,⁶⁶ established by the Board and noted by the General Conference, explicitly assign certain functions to the Director General while others are assumed implicitly. The former are particularly extensive with respect to EPTA (now UNDP/TA) projects, where the Director General is authorized, subject only to the policy guidance of the Board, to evaluate the technical soundness of the requests submitted and to forward them to the United Nations directly (paragraph 9); similarly he may deal with governmental requests for the allocation of contingency funds to finance unforeseen projects of an urgent nature (paragraph 13), and he may exercise any right the Agency has to authorize adjustments to approved projects (paragraph 14).

With respect to the Agency's own programme, the Director General is only given explicit power to authorize minor adjustments in approved projects (paragraph 11). The appended "Time-table of actions to be taken" further indicates that the Secretariat is expected to "consolidate" the requests received from Governments, which in effect requires the evaluation of each project (and the possibility of exerting pressure for its modification or withdrawal) and the preparation of recommendations to the Board and its Technical Assistance Committee.

9.3.2.7. Safeguards and Health and Safety Documents

Although, in practice, major functions of the Secretariat are derived from the Safeguards,⁶⁷ the Health and Safety⁶⁸ and the Inspectors⁶⁹ Documents,

these instruments do not usually indicate which organ of the Agency is authorized to take particular decisions. This is so because these Documents are addressed to the relations of the Agency with its Members, and not to the relations of the organs inter se; the distribution of authority among these organs is thus to be regulated separately, though naturally most has gravitated to the Director General, except where certain important decisions have been explicitly reserved by the Board.

The Safeguards Document requires the Director General to hold consultations with States regarding the application of safeguards, and empowers him to designate the staff members who may receive confidential information.⁷⁰ However, only the Board may request a State to stop the construction or operation of a "principal nuclear facility", and only the Board can decide whether such a facility has been so "substantially supplied" by the Agency so as to justify the application of controls.⁷¹

The Health and Safety Document charges the Director General with making arrangements with States for carrying out inspections.⁷²

The Inspectors Document authorizes the Director General to propose inspectors to a State, and on receiving its approval to make the designations. If the designation is objected to, the Director General is authorized to propose alternative designations, or, if the objection is repeated and in his opinion impedes the carrying out of inspections, he may refer the matter to the Board.⁷³

9.3.2.8. Regulations for the Registration of Agreements

Under the Board approved Regulations for the Registration of Agreements,⁷⁴ the Director General is authorized to promulgate rules as to the form, content and accessibility of the Register to be kept (Article II). Registration with the Agency is to be effected by the Secretariat "under the responsibility of the Director General" (Article II). The Director General is also made responsible for registering certain agreements with the United Nations (Article V) and for providing periodic statements of the agreements registered (Article VI).

9.3.2.9. Rules on the Consultative Status of Non-Governmental Organizations

Under the Rules on the Consultative Status of Non-Governmental Organizations with the Agency,⁷⁵ approved by the General Conference, the Director General is assigned miscellaneous functions.

As part of the application procedure for consultative status, the Director General may request further information from applicant organizations (paragraph 10).

With respect to organizations to which consultative status has been granted, the Director General is authorized to provide facilities for the distribution of non-restricted documents, access to the library, etc. (paragraph 4). If such an organization wishes to circulate a written statement to any organ of the Agency, the Director General may suggest changes in it and then decide to circulate it if he considers it relevant to the work of the organ to which it is addressed (paragraph 3(d)). He may also invite such

organizations to meetings (other than to those of the political organs), such as technical conferences, panels, seminars (paragraph 5).

The Director General may request an approved NGO to hold consultations on matters of mutual interest and "to undertake specific studies or investigations or to prepare specific papers" (paragraphs 6 and 8).

9.3.3. Special regulations adopted by the Board

The final sentence of Statute Article VII. B requires the Director General to "perform his duties in accordance with regulations adopted by the Board".

During the first series of meetings of the Board, the question was raised whether this provision made it necessary for the Board to adopt regulations relating to every area in which the Director General was expected to take any action, i. e. , whether he could do anything without an appropriate regulation to guide him. The Secretariat, at the time still headed by the Acting Director General, prepared a paper in which it demonstrated the extent to which the recently adopted Provisional Rules of Procedure of the Board, the Provisional Staff Regulations and the Financial Regulations already governed the Director General in the principal areas; the study concluded that:

"The Board will no doubt wish from time to time, by resolutions or other means, to direct the Director General in a specific situation. At the moment, however, it is difficult to foresee general areas other than those covered by the documents referred to above in which further general regulations would be useful in the initial period. The Statute does not appear to require that the regulations governing the performance by the Director General of his duties should be codified in a specific and separate document."

In a later study the Secretariat suggested that the regulations referred to in Article VII. B were merely one of the means specifically provided by the Statute to ensure the application of the general principle that the Director General "shall be under the authority and subject to the control of the Board"; these regulations were meant to be general rules established in advance to govern subsequent action and the Board could not by "the exercise of this regulatory power, assume either directly or indirectly the authority given to the Director General by the Statute to take individual administrative decisions" – though admittedly the "dividing line between the power of the Board and the Director General's statutory authority cannot easily be drawn in every case". The Secretariat concluded by reassuring the Board that it would have full discretion as to the timing of any regulations – i. e. , that it need not rush to promulgate regulations merely in order to enable the Director General to take any action at all.

The South African Governor also prepared a study, in which he proposed that any regulations should: only be addressed to categories of questions rather than to individual matters; always relate to continuing problems; be formulated in the light of experience and not a priori; and take into account the Director General's position as head of the Secretariat and the normal discretion allowed to holders of such an office.

After studying and debating these papers at several meetings, the Board merely noted the South African proposals. The Chairman summarized the consensus of the Board to the effect that the Statute did not require the Board to adopt regulations specifically under Article VII. B, and thus the matter could be dealt with on a continuing basis as activities of the Agency developed. There this question has rested since.

However, before the Board had completed its discussion of this item it did adopt one "regulation" under it. This requires the Director General to hold informal consultations with all members of the Board for appointments of staff to posts of the rank of head of division or above⁷⁶— an isolated rule which was not included in the Provisional Staff Regulations because of the earlier thought that a whole body of regulations pursuant to Article VII. B would be promulgated.

9.3.4. Ad hoc decisions and resolutions of the Board and the Conference

Even more important than the functions granted in the standing regulations and rules, are the tasks assigned the Director General by the Board or the General Conference in special decisions or resolutions. Some of these grants relate to a particular action to be taken, others are more general but are temporally limited and require periodic renewal, while still others give a standing or at least a long-term authority. It is not possible to catalogue these grants completely; some of the most important or representative are:

- (a) The special requests to:
 - (i) Initiate studies of the Agency's role in the development of water desalination;⁷⁷
 - (ii) Study the possibility of the Agency's participation in the International Co-operation Year and to provide information and support for the Committee of Twelve established by the UN General Assembly for this project;⁷⁸
 - (iii) Collaborate with the Director General of UNESCO in co-ordinating abstracting services in the nuclear sciences;⁷⁹
 - (iv) Co-operate with the UN Secretary-General in advancing studies and activities relating to the economic and social problems of disarmament;⁸⁰
 - (v) Co-operate with the UN Secretary-General in organizing the Third Geneva Conference on the Peaceful Uses of Atomic Energy;⁸¹
 - (vi) Examine the social insurance of scientists engaged in the peaceful uses of atomic energy;⁸²
 - (vii) Organize the work at the Agency's Laboratory so that as many scientists as possible from developing countries might receive training there;⁸⁹
 - (viii) Prepare regulations, manuals and codes of practice relating to health and safety, and promote research to that end.⁸⁴
- (b) The special authority to:
 - (i) Arrange for the Agency to co-sponsor the Diplomatic Conference on Maritime Law with the Belgian Government;⁸⁵
 - (ii) Convene the International Conference on Civil Liability;⁸⁶

- (iii) Arrange for the construction and equipment of the Agency's Laboratory at Seibersdorf, and to conclude the necessary agreements with the Austrian authorities;⁸⁷
 - (iv) Take all preparatory steps for the establishment of the Theoretical Physics Centre at Trieste, and later to take all steps to establish and operate the Centre.⁸⁸
- (c) The annually repeated authority to:
- (i) Make, though only with the prior approval of the Board, transfers between sections of the administrative budget;⁸⁹
 - (ii) Employ staff and incur extra-budgetary expenditures for the Agency's Laboratory, provided that the resulting costs are met from revenues of the Laboratory or from other extra-budgetary resources;⁹⁰
 - (iii) Make advances from the Working Capital Fund, not exceeding \$25 000 at any time, to provide temporary financing for strictly self-liquidating projects;⁹¹
 - (iv) Make, though again only with the prior approval of the Board (except in an emergency), advances from the Working Capital Fund of up to \$50 000 to meet the costs incurred by the Agency in organizing and rendering emergency assistance in connection with a radiation accident.⁹²
- (d) The continuing authority to:
- (i) Apply to the Agency's own operations and to operations assisted by it the Agency's Basic Safety Standards, the Regulations for the Transport of Radioactive Materials, and other approved safety standards;⁹³
 - (ii) Undertake, at the request of Member States or certain intergovernmental organizations, the measurement and analysis of samples to determine the degree of environmental contamination by radioactivity;⁹⁴
 - (iii) Nominate to the Board the members of the Scientific Advisory Committee and to refer questions to the Committee;⁹⁵
 - (iv) Release, subject to prior consultation with the Governments concerned, technical assistance funds which had remained unobligated in respect of projects approved but not implemented for at least two years, and to make such funds available for other technical assistance projects;⁹⁶
 - (v) Secure all necessary protection for the Agency's name, seal and emblem.⁹⁷

9.3.5. Grants deriving from international agreements

For the most part the Agency's agreements with Member States and with intergovernmental organizations are formulated so as not to indicate which organ of the Agency is to take the decisions or carry out the activities assigned to the Agency – the distribution of functions within the Agency thus being left to the Board. However, frequently enough the Director General is specifically named – which in effect amounts to an a priori decision by the Agency organ approving the agreement that the function in question should be assigned to the Director General; these instances include:

- (a) By Article VII. 2 of the Relationship Agreement with the United Nations⁹⁸ the Director General is authorized to attend, and in certain cases to participate without a vote in the meetings of the various principal and subsidiary organs of the United Nations – or to designate a representative to attend in his stead. By Articles XII. 1 and XXII he may agree to further co-operative arrangements with the UN Secretary-General; by Article XIX. 1 the Director General is specifically authorized to conclude administrative arrangements for the use of the UN Laissez Passer by the Agency's staff.
- (b) Article III. 3 of the Relationship Agreement with UNESCO,⁹⁹ which is typical of the Agency's relationship agreements with the specialized agencies, provides for consultations between the Director General of the Agency and his opposite number regarding the exchange of information between the two organizations. Article V provides that the Directors General may agree to arrangements for the establishment of close working relations between the two Secretariats, and Article X authorizes them to enter into arrangements for the implementation of the Relationship Agreement. It is apparently on the basis of this authorization that the Director General concluded the Agreement with UNESCO concerning the Joint Operation of the Trieste Centre.¹⁰⁰
- (c) The provisions of the co-operation agreements with regional inter-governmental organizations¹⁰¹ are substantially similar, with respect to the authority granted the Director General, to those in the specialized agency relationship agreements.
- (d) Sections 20 and 32 of the Agreement on the Privileges and Immunities of the Agency¹⁰² accord to the Director General, to any official acting on his behalf, to the Deputy Directors General and to members of their families, the privileges and immunities of diplomatic envoys. Section 27(b) provides that the Director General is to be consulted before an expulsion order is granted against any member of the Agency's staff not enjoying diplomatic privileges, and that the Director General may appear in any expulsion proceeding. Sections 38 and 39 in effect make him the depositary of the Agreement.¹⁰³
- (e) Sections 10(b) and 12(a) of the Headquarters Agreement with Austria¹⁰⁴ authorize the Director General to request police protection and the necessary public services for the Headquarters seat. Section 27(e)(iii) gives the Director General substantially the same authority as does Section 27(b) of the Privileges and Immunities Agreement, in protecting members of the staff from expulsion. Section 39(a) accords to the Director General the privileges, immunities, exemptions and facilities accorded to Ambassadors who are heads of missions. Section 40(a) authorizes him to waive, "in consultation where appropriate with the Board", the privileges and immunities of officials of the Agency; his own can only be waived by the Board.¹⁰⁵ Section 48 requires the Director General to take every precaution to prevent abuses of the privileges and immunities conferred by the Agreement; should the Austrian Government consider that abuses have occurred, the Director General is to consult with it. Section 51 provides that in the case of a dispute an arbitral tribunal is to be established, one of whose members is to be chosen by the Director General.¹⁰⁶

- (f) Almost all agreements relating to the Agency's operations, such as Project Agreements, Supply Agreements and Safeguards Transfer Agreements, provide for entry into force upon signature by or on behalf of the Director General and by the authorized representatives of the other parties.¹⁰⁷
- (g) Article 9(b) of the 1969 Agreement relating to the Monaco Laboratory¹⁰⁸ provides for the Director General to appoint two of the four members of the Advisory Committee for the project.¹⁰⁹ Article 9(c) provides that arrangements for the implementation of the agreement be made "by mutual agreement between the Director General of the Agency, the Government and the Institute".
- (h) Section 6(c) of the Agreement for Establishing a Middle Eastern Radio-isotope Centre for the Arab Countries provides that the Director General or his representative shall be one of the five members of the Governing Committee of the Centre.¹¹⁰
- (i) Section 3 of the original Agreement with Italy Concerning the Establishment of an International Centre for Theoretical Physics at Trieste authorized the Director General to appoint the Director of the Centre, after consultation with the Government of Italy. Section 10 authorized the Director General to request the Italian authorities to arrange for the provision of the necessary public services. Section 21(d) specified that only the Director General may consent to the service of legal process, including the seizure of private property, within the Centre.¹¹¹
- (j) Article II. 2 of the Nordic Mutual Emergency Assistance Agreement¹¹² authorizes the Director General to designate an observer to enter the territory of a State which has notified him of the existence of a nuclear emergency. Under Article VI. 1, and as indicated in the Annex to the Agreement, the Director General has been designated as the "competent authority" to receive requests for assistance and other related communications. Article XI designates the Director General as depositary of the Agreement.¹¹³
- (k) Although the Agency is not a party to the Vienna Convention on Civil Liability for Nuclear Damage, Articles XXII et seq. make the Director General the depositary of the Convention. Similarly Articles VI et seq. of the related Optional Protocol Concerning the Compulsory Settlement of Disputes assign the depositary functions to him.¹¹⁴

9.3.6. Established practice

No enumeration of the sources of the functions and powers of the Director General would be complete without mentioning the numerous actions taken by him as a matter of established practice rather than on the basis of any explicit decision of the Board or the General Conference. These de facto functions are additional to those broadly authorized by the Agency's budget, which constitutes authority for the Director General to spend funds and thus to implement the Agency's programme. With respect to some functions it might be possible to establish a plausible authorization – perhaps one made explicitly for a restricted period during the initial years of the Agency and then renewed by silent consent. However, frequently the Director General

merely indicates to the Board that he proposes to take certain actions, and in the absence of a negative decision he proceeds along the indicated lines. In still other situations the Director General has tentatively taken certain actions and subsequently reported thereon to the Board; if no objection was raised he has continued doing so with respect to other, similar matters. Some of the principal functions thus performed de facto by the Director General are:

- (a) To receive requests for assistance from Member States, to evaluate them and to present them to the Board with recommendations (either for approval as separate projects or as part of the Agency's technical assistance programme);¹¹⁵
- (b) To negotiate (for subsequent submission to the Board) agreements with Member States regarding the granting of assistance or the imposition of safeguards, even before the Board has approved the project to which the assistance is to be granted or has considered and agreed to a request to impose safeguards;¹¹⁶
- (c) To implement the agreements entered into with Member States for the granting of assistance, for the imposition of safeguards or for the carrying out of joint projects. To do this the Director General ordinarily takes all steps necessary to fulfil the Agency's duties and to exercise its rights, whether or not he is specifically named in the agreement or is explicitly authorized to do so by the Board's resolution approving it. Thus he appoints the Agency's representatives to joint governing bodies or advisory panels (e. g., the Joint Scientific Programme Committee of the NORA Project); enters into subsidiary agreements and arrangements, and receives and pays out funds when the Agency acts as a broker in a transfer of nuclear materials;¹¹⁷
- (d) To implement the entire fellowship programme, including the granting of fellowships without referring individual awards to the Board – as must be done in granting other types of technical assistance from the Agency's resources;¹¹⁸
- (e) To make transfers within Regular Budget items, including changes within the manning tables in the approved budget document;¹¹⁹
- (f) To arrange for the representation of the Agency at various technical, political and administrative (co-ordinating) meetings;¹²⁰
- (g) To convene panels of experts to advise him on carrying out the various aspects of the Agency's programme;¹²¹
- (h) To address the UN General Assembly in presenting the Agency's written report prepared by the Board and approved by the General Conference.¹²²

9.3.7. Summary

Though the statutory role of the Director General is slight and vulnerable to considerable encroachment by the Board, his functions and powers have been substantially expanded through explicit decisions or the implicit consent of the two political organs. This development was necessary if the Agency was to function effectively. There is, however, no reason to suppose that the practices followed up to now have rigidly defined or delimited the actual

potential of the office. In fact, the real scope of the Director General's authority depends on two related factors: his own evaluation of the post and his relations with the Board¹²³ – which in the past has proven to be a jealous but not an unmanageable master.

9.4. ORGANIZATION OF THE SECRETARIAT

9.4.1. Structure

Article VII. B of the Statute makes the Director General responsible for the "organization. . . of the staff" but states that he "shall be under the authority and subject to the control of the Board of Governors". Using this lever, and the even more effective one deriving from its Article XIV. A power to propose the annual budget estimates, the Board made the initial decisions on the structure of the Secretariat and has only gradually relaxed its firm hold to permit the Director General to undertake necessary re-organizations.

The Preparatory Commission, in its report on the initial programme and staff of the Agency, did not deal with the overall structure of the Secretariat. It merely proposed the establishment of 17 divisions and offices, for each of which it suggested a statement of general responsibilities and a tentative staffing plan.¹²⁴ Nothing was said about how these units might be grouped so as to make them administratively manageable; the only indication given by the Commission of its conception as to how the Director General might exercise his control appears from the projected large "Executive Office of the Director General" – which included the core of what eventually became three separate divisions or offices.¹²⁵ It would thus seem that the Commission foresaw that the Director General would exercise considerable direct authority over the units of the Secretariat through the Executive Office attached to him, rather than by working indirectly through a departmental structure.

The first Board gave extensive consideration to the arrangement of the Secretariat, under an agenda item entitled "Organization Chart for Senior Staff Structure". These debates took place and most of the important decisions were reached in the absence of the first Director General, who had not yet assumed his office. After considering a draft calling for three operational (scientific and technical), two administrative and one safeguards Departments (each headed by an official of Deputy Director General (DDG) rank), as well as a Special Adviser, a Special Assistant (both of DDG rank) and a Legal Counsel attached directly to the Director General, the Board accepted the concept of a departmentally controlled Secretariat but simplified somewhat the proposed top-heavy structure. Specifically it decided:¹²⁶

- (a) That the two proposed administrative departments be merged – leaving five rather than six departments (of which the safeguards one was to remain rudimentary for some years);
- (b) To create the strictly temporary posts of Special Adviser and Special Consultant to the Director General, both of whom were to have only advisory roles and neither of whom was to "be in the chain of command between the Director General and the Deputy Directors General";

- (c) That the legal service be placed into the remaining administrative department, though the Legal Counsel was to "have direct access to the Director General".

Without doubt, the positions taken by various members of the Board, and consequently these decisions, reflected, in addition to different concepts of administration and diverging views as to the expected role and the likely rate of growth of the Agency, the jockeying of the leading powers for key positions in the Secretariat.¹²⁷

Though the Board took no formal action to adopt the structure it had thus defined, it was this organization that was actually introduced by the Director General and which was in effect formalized in the budget proposals submitted by the Board to the Conference for 1959.¹²⁸ This structure is shown in Chart 9A.

The first Director General soon made two attempts to introduce some substantial changes in this structure. Both of these were made in connection with his proposals relating to annual budgets, and both were turned down by the Board – though some minor changes, such as the placing of the Office of Internal Audit directly under the Office of the Director General, the establishment of a management staff in the Budget Unit of the Division of Budget and Finance, and the establishment of a Publication Sales Unit were approved in connection with the proposals for the 1959 budget.¹²⁹

The Director General's first unsuccessful attempt was a proposal to redivide the Department of Administration, Liaison and Secretariat (along the lines originally conceived) for the two administrative departments, and the more modest one to reorganize along functional lines the two Divisions of the Department of Research and Isotopes. After objections were raised in the Board and in the ad hoc Committee it had established to consider the budget for 1959, the Director General withdrew his proposals.

In connection with the 1961 budget the Director General drafted an introductory sub-section on the "Organizational Structure of the Secretariat", in which it was foreseen that the Board would re-examine the structure of the Secretariat in the light of the operational experience gained in the first several years. In particular it was proposed to group together certain operational activities (not defined in the draft but most probably referring to technical assistance) which were then being carried out by several units of the Secretariat scattered among different Departments; in addition the Director General suggested the weakening of the strictly departmental structure of the Secretariat and the establishment of a strong executive office of the Director General in which all policy making and co-ordinating functions would be united. The Board deleted this whole section of the draft budget on the recommendation of its Administrative and Budgetary Committee.¹³⁰

Before any further attempts at reorganizing the Secretariat were made, two studies were undertaken. At the behest of the first Director General, an ad hoc Secretariat Working Group¹³¹ headed by a consultant borrowed from the United Nations carried out a survey of all the professional staff of the Agency; the principal object was to determine the extent to which lines of authority were clear and whether any functions were being duplicated. The second study was carried out soon thereafter, at the request of the newly

CHART 9A. ORGANIZATIONAL CHART, 30 June 1958

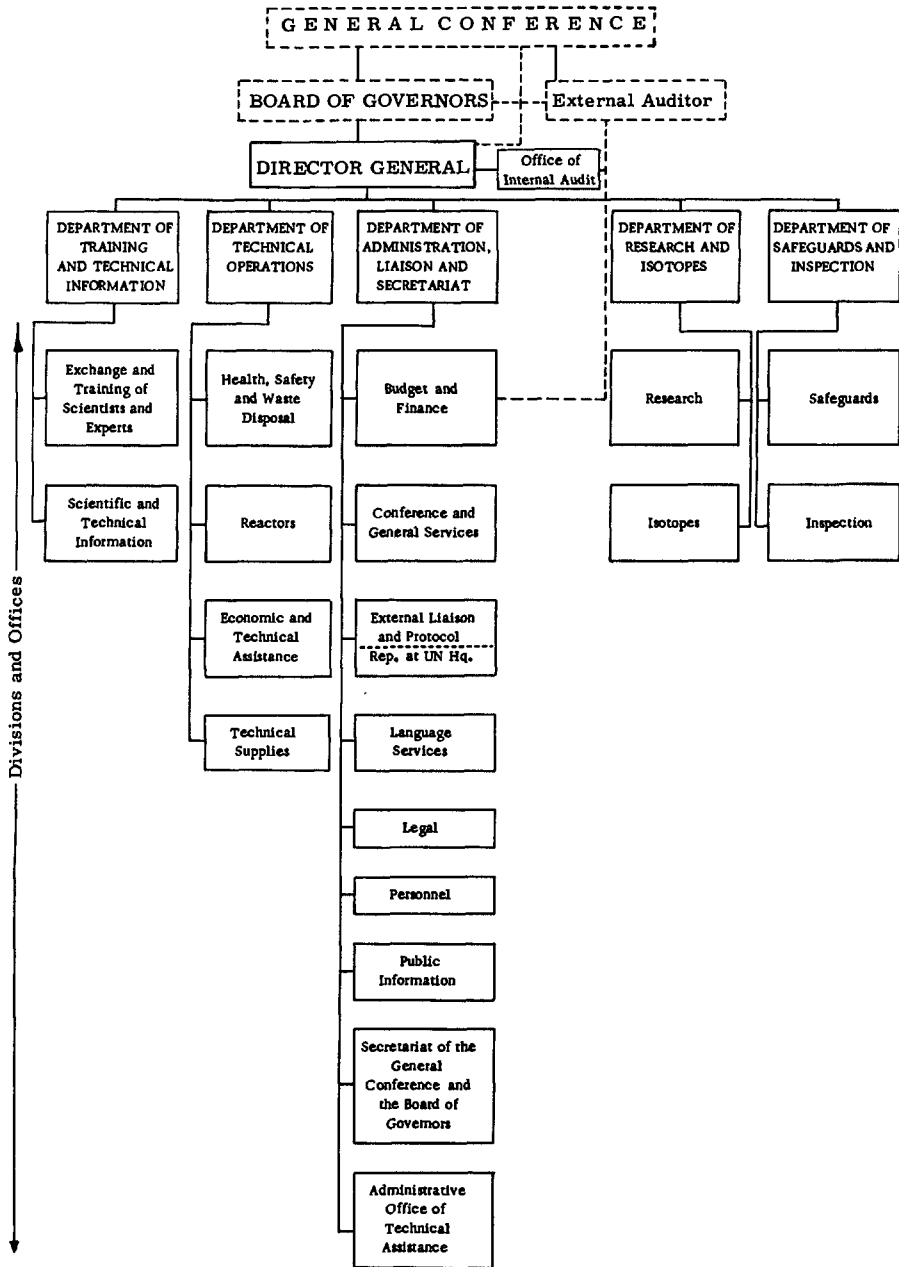
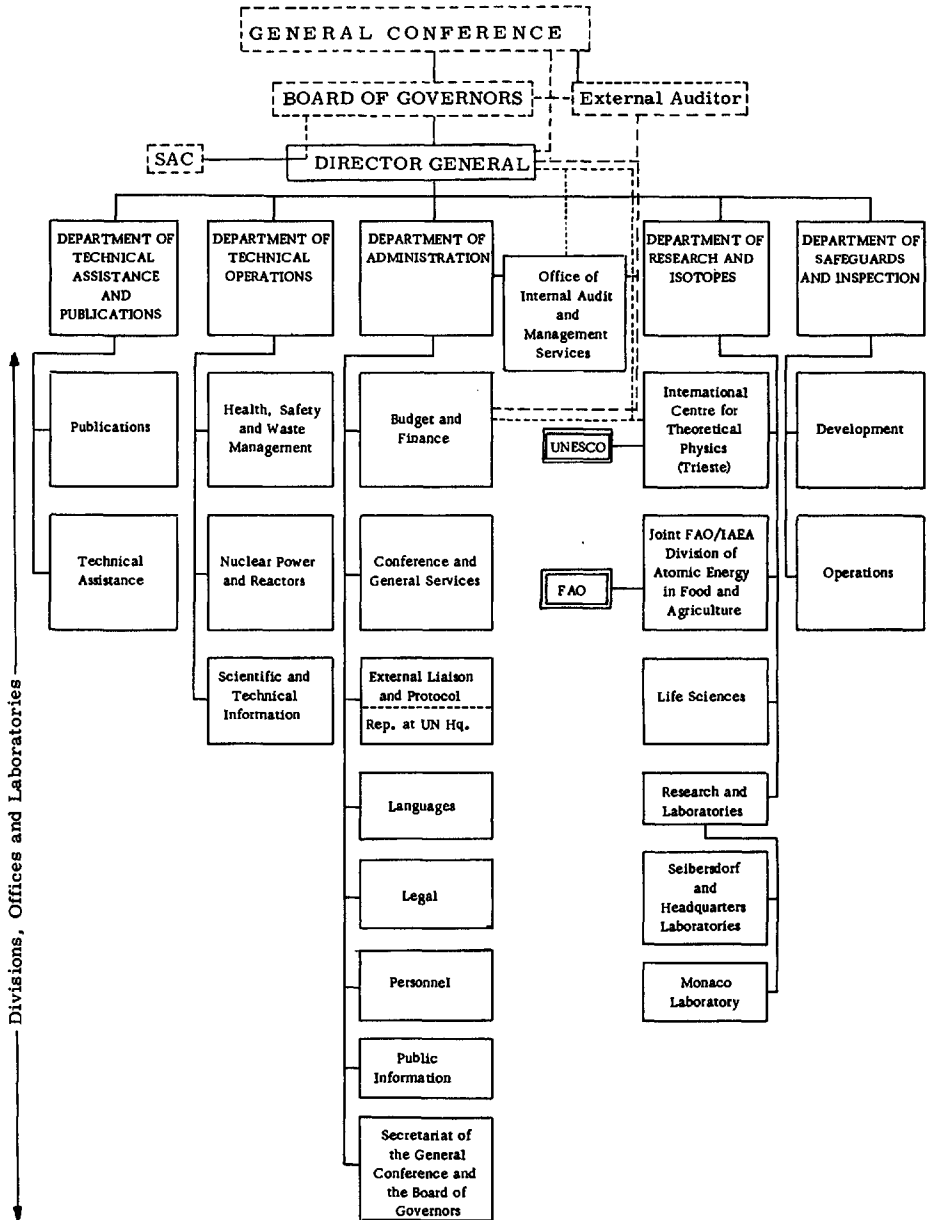


CHART 9 B. ORGANIZATIONAL CHART, 30 June 1969



appointed second Director General, by a committee consisting of the first five Chairmen of the Board – who also received the views of the first Director General and of the several Deputy Directors General; the conclusions of this group were then transmitted on a confidential basis to all Governors,¹³²

On the basis of this report and after extensive informal consultations, the Director General in September 1963 announced the changes he proposed to make in the Secretariat. In essence these amounted to the gathering and re-structuring in a single new Department of Technical Assistance of the various units which up to then had dealt with technical assistance in the Departments of Technical Operations, of Training and Technical Information and of Administration, Liaison and Secretariat; as a consequence the remaining units of the two stripped operational Departments were merged into one (Technical Operations) – thus leaving the total number of Departments and of DDGs unchanged.¹³³ The Director General merely requested the Board to provide him with advice and guidance regarding the proposed adjustments. The Board responded by endorsing the proposals.¹³⁴

In 1964 the Director General surprised the Board with the oral announcement that after careful consideration he had decided to merge the existing Safeguards Division with the still dormant Inspection Division, and to create a single Division of Safeguards and Inspection – which would constitute the sole unit within the Department of the same name. The Board accepted this proposal without comment.¹³⁵

After discussions between the Directors General of the Agency and of FAO, a joint FAO/IAEA Division of Atomic Energy in Agriculture was established and started work at the Agency's Headquarters in October 1964. For this innovation the Director General solicited only indirect Board approval, by means of the Board's Annual Report to the General Conference for 1963/64.¹³⁶

Further structural changes were promulgated by the Director General early in 1968 and are reflected in the Organizational Chart appearing in the Board's 1968/69 Annual Report:¹³⁷ a Division of Publications was created from the existing units and attached to the renamed Department of Technical Assistance and Publications;¹³⁸ the Department of Safeguards and Inspection was again divided into two Divisions, on "Operations" and "Development";¹³⁹ and the Office of Internal Audit was combined with the Management Unit and attached to the Office of the DDG for Administration.¹⁴⁰

As a result of the above changes and of the establishment of certain operations away from Headquarters, the Agency's Secretariat is now structured as indicated in Chart 9B.

9.4.2. Delegation of authority

With few exceptions, all functions and powers that are granted to a particular person by the Statute, by rules, regulations, resolutions and decisions adopted by the Board or the General Conference, by agreements entered into by the Agency and even by the Staff and Financial Rules promulgated by the Director General are ostensibly assigned to the Director General. While the right to delegate is explicitly specified only in the Financial Regulations¹⁴¹ and in certain of the Rules of Procedure,¹⁴² it is nowhere denied and is in

fact implied by the nature of the office of Director General and by the very multiplicity (and often triviality) of the tasks assigned to him.

Aside from numerous ad hoc and unpublished delegations, the Director General has promulgated certain general delegations which are now incorporated in the Administrative Manual. The principal ones are:

- (a) The authority to apply the Staff Rules in individual cases is largely delegated to the Director of the Division of Personnel. However, the appointment of all Professional and higher grade staff members, the imposition of disciplinary measures and the decisions on appeals, as well as the authorization of any exceptions to the Staff Rules and the waiver of privileges and immunities is reserved to the Director General. Certain other decisions are delegated only to the Deputy Director General of the Department of Administration (which contains the Division of Personnel), while others are delegated to all DDGs and the Inspector General with respect to the staff under their supervision.¹⁴³
- (b) The Director General has also made extensive delegations under the Financial Regulations and the Interim Financial Rules. Thus, all DDGs and the Inspector General are authorized to:

"Incur or authorize financial obligations on behalf of the Agency, within the limits of budgetary allotments issued to them or to other officials of their departments and subject to such regulations, rules and instructions as may be appropriate".

Similar authority is granted to Directors and Heads of Offices with respect to their Divisions and Offices. In addition the DDG for Administration is granted a number of specific powers with regard to special financial transactions (e. g., the writing-off of losses of property, the waiver of the requirement of competitive tendering), part of which he has re-delegated to the Directors of the Divisions of Personnel and of Budget and Finance.¹⁴⁴

- (c) In connection with the administration of the International Centre for Theoretical Physics in Trieste, certain limited powers that in Vienna would be exercised by the Director General or by particular officials under him are exceptionally delegated to the Director of the Centre.¹⁴⁵

Each of these general delegations specifies to what extent the delegated powers may be re-delegated.¹⁴⁶ In defining the powers of re-delegation of an "acting" officer a difference is made between those who hold office while there is no incumbent at all and thus exercise the full power appertaining to the office (including those of re-delegation), and those who only hold an ephemeral title during the temporary absence of the incumbent and can exercise practically all his powers except that of re-delegation.

Whenever the Director General is absent from Vienna he designates an Acting Director General: normally, in rotation, one of the DDGs. This officer presumably can exercise all the powers reserved by the Director General to himself in the general delegations, except to the extent that the Director General may by a private instruction reserve certain matters for his personal disposition.

The practice of designating an "acting" officer (rather than merely an officer-in-charge) when the incumbent is merely temporarily absent from his office, may of course lead to confusion since the latter also maintains his powers and may exercise them wherever he may be if a situation arises that is important enough to warrant contacting him.¹⁴⁷ However, apparently no serious embarrassment through such duplication of powers has yet arisen.¹⁴⁸

9.4.3. The Deputy Directors General

The five Deputy Directors General (including the Inspector General) occupy very particular and solitary positions in the hierarchy of the Agency.¹⁴⁹ To understand the structure and functioning of the Secretariat, account must be taken of the several roles played and functions exercised by these officials:

- (a) Each DDG is the head of a Department of the Secretariat, consisting of one or more Divisions and Offices. As such, he is in charge of the administration of his Department and, as indicated above, has substantial delegated authority to take independently most necessary decisions, particularly in the financial field within his budgetary allocation. As a consequence of the Board's adoption of a system of departmental administration for the Agency, the position of the department heads is quite firm;¹⁵⁰ in particular the Director General may not diminish their authority either by assigning tasks naturally falling within a certain Department to another or to officers under his direct control, or by interposing such officers between himself and the DDGs.
- (b) In the absence of the Director General from Vienna, he normally appoints one of the DDGs as Acting Director General. Though no rule requires him to choose only this rank of official,¹⁵¹ this implicit restriction has lately become fairly well-established, as has the practice that the assignment is rotated among the DDGs.
- (c) The DDGs form a type of cabinet for the Director General, called the Director General's Meeting or Round Table. Normally they meet weekly under the Director General's chairmanship and discuss all the significant pending business of the Agency. A junior official acts as secretary of the meeting, and besides the Director General's Special Adviser, other Secretariat officials may be asked to participate on an ad hoc basis. Strictly speaking the group has no power of disposition but merely advises the Director General, but actually its Minutes, which are circulated to the heads of Divisions and Offices, frequently call for action to be taken by various officers or units of the Secretariat and are accepted as directives by them.¹⁵²
- (d) The DDGs are ex officio members of the three most powerful Secretariat committees: the Preparatory Committee on Programme and Budget, the Technical Planning Committee (largely responsible for the preparation and implementation of the budget)¹⁵³ and the Joint Committee to Consider Promotions and Permanent Appointments of Professional Staff (which in effect holds in its hands the fate of all Agency officers – and in particular those in or wishing to enter the career service),¹⁵⁴

- (e) Particularly in connection with the last two functions it should be recognized that the DDGs may act as unofficial contacts with the Governments of the States of which they are nationals – and de facto emissaries.¹⁵⁵ Since the establishment of the Secretariat there has always been a Russian DDG, and an American either as Director General or as DDG for Administration; during the initial years both the British and the French had a DDG – but the French Government later yielded "its" post to an Indian – but evidently only on the understanding that on the retirement of the British DDG, his post would go to a Frenchman.¹⁵⁶ Thus the Director General can, by consulting his senior colleagues, obtain some idea of the probable reactions of the principal Governments to any proposal, and he can equally use these channels for informal communications.

Though formally all DDGs are equal, the DDG for Administration might be considered to be the first among them. His Department encompasses the largest number of Divisions and staff members (though many of these are in the lower grades). As noted above, many of the powers to administer the Staff and the Financial Regulations and Rules are delegated specifically to him or to Directors serving under him. However, the only explicit differentiation from his peers is indicated by the grant of a Representation Allowance of \$5000, twice that of the other DDGs; this amount recognizes his wider responsibilities, in particular in connection with the external contacts of the Agency.

The Inspector General, whose title stems from an explicit decision of the first Board,¹⁵⁷ heads the originally small but now rapidly growing and politically sensitive Department of Safeguards and Inspection. He is ranked as a DDG, both as a matter of personal status and emoluments and with respect to the various committees in which these officers personally participate or to which they may send representatives.

The DDG of the Department of Research and Isotopes enjoys a position of some tactical importance as Secretary of the Scientific Advisory Committee.¹⁵⁸

9.4.4. Secretariat Committees

9.4.4.1. Inter-departmental Committees

The Director General has established a number of "Standing Inter-departmental Committees" to ensure co-ordination among the Departments and to provide him with advice and recommendations that reflect, as far as possible, the jointly agreed opinions of the senior officials concerned. Generally these Committees have no authority to take decisions or to authorize actions. A set of "General Rules of Procedure" has been promulgated for them; these provide inter alia, that the Committees shall, unless otherwise provided in their terms of reference, report any minority views if a decision or recommendation is not unanimous.¹⁵⁹ The Committees, whose roles are detailed in the appropriate Chapters below, that existed in 1969 were:¹⁶⁰

- (a) Computer Steering Committee, consisting of the DDG for Technical Operations (Chairman), one member from each of the five Departments, one designated by the Director General and a Secretary appointed from the Division of Scientific and Technical Information, is responsible for advising the Director General on policy and actions to be taken with respect to the computer and for dealing with certain matters, including the determination of general priorities in allocation of computer time.¹⁶¹
- (b) Contract Review Committee, consisting of the Directors of the Division of Budget and Finance (Chairman), of the Division of Conference and General Services and of the Legal Division, plus the Director of any Division whose proposed purchases are under consideration, is charged with examining all proposals for the purchase of goods and services (other than research and personnel contracts) exceeding stated limits.¹⁶²
- (c) Committee for Contractual Scientific Services, consisting of the Directors or their nominated representatives of the seven scientific divisions most closely concerned with research and of the Division of Budget and Finance plus a member designated by the Director General (meeting alternately under the chairmanship of the DDG for Technical Operations and the DDG for Research and Isotopes), is principally responsible for recommending to the Director General research contracts to be financed by the Agency.¹⁶³
- (d) Preparatory Committee on Programme and Budget, consisting of the five DDGs and the Director of the Division of Budget and Finance, with the DDG for Administration acting as Chairman and the Chief Budget Officer as Secretary, is responsible for advising the Director General on all administrative and financial aspects of the Agency's programme, in particular in connection with the preparation of the Agency's budget.¹⁶⁴
- (e) Technical Planning Committee, consisting of the five DDGs (the chairmanship rotating among them) and the Director of the Division of Budget and Finance, is responsible for advising the Director General on all technical aspects of the Agency's programmes and especially on the location and agendas of meetings and for reviewing all technical programmes and their implementation.¹⁶⁵
- (f) Committee on Technical Assistance, consisting of the Directors of the Divisions directly or indirectly concerned with technical assistance under the chairmanship of the DDG for Technical Assistance and Publications, is responsible for advising the Director General on all aspects of the Agency's technical assistance programme and for the preparation of any necessary studies and reports.¹⁶⁶
- (g) Technical Committee on Safeguards Research and Development, consisting of two members each nominated by the Inspector General (one of whom is to act as Chairman) and by the DDGs for Technical Operations and for Research and Isotopes, is charged with discussing matters and proposals relevant to the technical development of safeguards.¹⁶⁷
- (h) Travel Co-ordination Committee, consisting of the Director of the Division of Budget and Finance (Chairman) and of one Director appointed by the Head of each Department, is charged with reviewing travel proposals and making recommendations thereon to the Director General.¹⁶⁸

The Director General's Meeting, mentioned in Section 9.4.3(c), was not established by any formal instrument (at least none was made public), and thus its exact composition and functions can be flexibly adjusted at the pleasure of the Director General.

In addition to the standing Inter-departmental committees, which may only be established under the authority of the Director General, ad hoc consultative groups spanning several Departments are convened from time to time, while DDGs, Directors and the heads of other units may and have established numerous intradepartmental or intradivisional committees, both permanent and temporary.¹⁶⁹ No general list of these exists.

9.4.4.2. Administration – Staff Joint Committees and Panels

A number of joint committees and advisory panels whose competence relates to questions of personnel administration and staff welfare, have been established by the Staff Regulations and Rules, by other instruments (such as the UNJSPF Regulations) or by separate decisions of the Director General. These committees generally consist of certain officials designated by the Director General ad personam or ex officio and of others selected by the staff (by election or through appointment by the Staff Council). The principal committees, whose composition and functions are described in Sections 24.10 and 24.13,¹⁷⁰ are:

- (a) Joint Advisory Committee
- (b) Joint Committee to consider Promotions and Permanent Appointments of Professional Staff
- (c) Joint Advisory Panel on Professional Staff in the Languages Division, the Interpretation Service and the Editing Section
- (d) Advisory Panel on General Services and Maintenance and Operative Service Staff
- (e) Joint Appeals Committee
- (f) Joint Disciplinary Committee
- (g) Joint Staff Pension Committee (this body is unique in that one third of its members and alternates are elected by the General Conference)
- (h) Advisory Board on Compensation Claims
- (i) Joint Commissary Advisory Board
- (j) Joint Restaurant Advisory Board
- (k) Joint Staff Welfare Committee
- (l) Joint Staff Assistance Fund Committee
- (m) Joint Housing Committee

Finally, mention should be made of the Staff Council, which properly speaking is not an organ of but merely within the Secretariat since it primarily constitutes an instrument of the staff and only indirectly of the administration. It is described in Section 24.12.3.4.

NOTES

- 1 INFCIRC/6/Rev.2.
- 2 UN Charter Article 97.
- 3 Section 21.7.2.4.
- 4 WLM Doc.2, Article VIII.A.
- 5 WLM Doc.2(Add.8) (USSR proposal, 15 March 1956); WLM Doc.18(Rev.1), para.2.A(a).
- 6 Statute Article VII.A.
- 7 Statute Article V.E.10.
- 8 IAEA/CS/Art.VII/Amend.1; IAEA/CS/OR.26, pp.2-5.
- 9 IAEA/CS/Art.VII/Amend.2; IAEA/CS/OR.26, pp.2-5 (amendment withdrawn).
- 10 GOV/INF/60.
- 11 GC(VII)/INF/60.
- 12 Section 7.3.6.
- 13 The considerable difficulties regarding Mr. Cole's candidacy are well described by Ambassador Wadsworth, op.cit., Annex 5, No.66, pp.61-65.
- 14 For example, GC(V)/OR.56, para.4, et seq. See also Wadsworth, Annex 5, No.66, p.64.
- 15 GOV/INF/60, Rule 39.
- 16 Section 8.4.10.
- 17 This restricted participation was deliberately patterned after the practice followed when the Director General consults the members of the Board about senior staff appointments (Section 24.7.4 (final sentence)); however, unlike for those consultations, a summary of the debate appeared in the usual form in the Official Record (OR.) of the meeting.
- 18 GC.1(S)/OR.5, para.17.
- 19 GC(V)/165; GC(IX)/304; GC(XIII)/402.
- 20 GC.1(S)/OR.6, para.9; GC.1(S)/DEC/7. GC(IX)/OR.98, para.2; GC(IX)/RES/185. GC(XIII)/OR.133, para.60; GC(XIII)/RES/250.
- 21 GC(V)/176; GC(V)/OR.57, paras.77-78.
- 22 GC(V)/174; GC(V)/OR.57, paras.93-94; GC(V)/RES/91.
- 23 GC(IX)/OR.98, following para.2; GC(XIII)/OR.133, para.60.
- 24 GC(V)/173; GC(V)/OR.57, paras.80-92.
- 25 GC.1(S)/OR.6, para.10; GC(V)/OR.62, para.28; GC(IX)/OR.98, para.4; GC(XIII)/OR.133, para.62.
- 26 INFCIRC/6/Rev.2. At the time when Mr. Cole took his oath at the first special session of the Conference, the Provisional Staff Regulations and thus the text of the oath had not yet been approved by the Board (Section 24.1.3.2.2). Objection to this irregularity was subsequently raised in the Board, which decided to give retroactive approval to the text of the oath that had been administered to Mr. Cole.
- 27 WLM Doc.2(Add.8) (USSR proposal, 15 March 1956); IAEA/CS/Art.VII/Amend.2.
- 28 WLM Doc.18(Rev.1), para.2.A(a).
- 29 GC(IX)/OR.98, para.4; GC(XIII)/OR.133, para.62.
- 30 This term was first used publicly in GC.1(S)/OR.6, paras.11 and 12, though it had been proposed some days earlier at the second meeting of the Board.
- 31 Section 4.3.
- 32 INFCIRC/15, Part I, Section 39(a) (specifically equivalent to "Ambassadors who are heads of mission").
- 33 It was proposed that in the future the conjunction of these two decisions should be avoided.
- 34 It was recognized, however, that the total emoluments package was, in view of the inclusion of the housing allowance, more generous than that received by other executive heads - but that this was justified by the special nature of the Agency.
- 35 Section 24.4.1.1.2.
- 36 Section 24.4.6.
- 37 Para.D of Memorandum 8, reproduced in UN doc.A/2738, reprinted in UNGA Off. Rec. (9th sess.), Annexes, Agenda Item No.67, p.6.
- 38 WLM Doc.2, Article VIII.A.
- 39 WLM Doc.2(Add.6) and (Add.8) (proposals by India); WLM Doc.8(Rev.1), para.5.F(i)(6); WLM Doc.12 (Rev.1), para.3.B(a).
- 40 The Director General's power to shape the initial budget draft may, however, have been considerably reduced by the practice recently introduced at the recommendation of the UN's Ad Hoc Committee of

- Experts to Examine the Finances of the United Nations and the Specialized Agencies, to require that rough budget estimates be presented to the Board and the General Conference as far as six years in advance (UN doc. A/7124, Annex XII, Recommendation 1); see Sections 25.2.2.1 and 25.2.2.2.
- 41 IAEA/CS/Art.V/Amend.7; IAEA/CS/OR.18, pp.42-43; /OR.22, p.38.
- 42 Sections 4.1 and 7.3.2.2. GC.1/9, Supplementary Rule B.
- 43 Section 28.3.2.
- 44 Section 5.3.3.2.
- 45 INFCIRC/6/Rev.2; Section 24.1.3.
- 46 Section 24.1.5.1.
- 47 For example, Regulations 1.02, 3.02, 5.01(b), 5.04, 7.01, 7.02, 7.04, 8.01, 9.02, 9.03, 10.02, 12.01.
- 48 For example, Regulation 5.01(a) – the establishment of the gross salary scales for General Service and Maintenance and Operative grades in Vienna (Section 24.4.1.2.1); 5.02(b) – the introduction of a staff assessment plan (Section 24.4.2); 8.03 and 8.04 – the establishment of medical insurance and accident compensation schemes (Sections 24.5.5, 24.5.6); 9.01 – the travel rules.
- 49 Regulation 2.01.
- 50 Sections 24.1.3.2.1 and 24.1.3.2.2.
- 51 Section 28.5.
- 52 INFCIRC/8/Rev.1; AM.V/2; Section 25.1.2.
- 53 Section 25.1.3.
- 54 AM.V/3, Article III.
- 55 Respectively GC(VII)/INF/60 and GOV/INF/60.
- 56 Section 25.7.5.
- 57 Section 25.3.4.2.
- 58 GOV/INF/60 and /Mod.2.
- 59 The first two sentences of this Rule were the subject of considerable controversy in the Preparatory Commission, where it was proposed to state that the Director General should also be responsible to the General Conference (Section 10.2). The third sentence has been amended twice (GOV/INF/60/Mod.1 and 2) to reduce the frequency of the required reports (Section 32.1.1).
- 60 As does the Council of Ministers of the European Communities (including the Common Market and EURATOM).
- 61 Section 8.4.6.
- 62 GC(VII)/INF/60.
- 63 Section 7.3.4.1.
- 64 INFCIRC/13, Part I; Section 16.8.
- 65 INFCIRC/13, Part II; Section 25.5.1.2.
- 66 GC(IV)/RES/65, Annex; Section 18.1.2.
- 67 INFCIRC/66/Rev.2; Section 21.4.1.
- 68 INFCIRC/18; Section 22.1.2.
- 69 GC(V)/INF/39, Annex; Sections 21.4.2 and 22.1.3.
- 70 INFCIRC/66/Rev.2, paras.12 and 13.
- 71 Idem, paras.11 and 20. See also Section 21.12.
- 72 INFCIRC/18, para.33, Section 22.4.
- 73 GC(V)/INF/39, Annex, paras.1 and 2, Sections 21.8.1.2 and 22.4.2.
- 74 INFCIRC/12; Section 26.6.1.1.2.
- 75 INFCIRC/14; Section 12.6.2.1.
- 76 Section 24.1.4.1, and also 24.7.4.
- 77 GC(IX)/RES/197.
- 78 GC(VIII)/RES/185; Section 12.2.4.3.
- 79 GC(VII)/RES/150; Section 12.3.4.3.
- 80 GC(VI)/RES/130 and GC(VII)/RES/160.
- 81 GC(VI)/RES/129; Section 12.2.4.1.
- 82 GC(V)/RES/97; Section 23.5.1.
- 83 GC(V)/RES/108; Section 19.1.1.4.
- 84 GC(III)/RES/54 and GC(IV)/RES/74, para.4; Section 27.2.2.2.1.
- 85 Section 23.2.8 and 23.2.10.
- 86 Section 23.1.4.

- 87 Section 19.1.1.2 and 19.1.1.3.
- 88 Section 19.1.3.1.
- 89 Section 25.2.4.1.2.
- 90 For example, GC(XI)/RES/227, para.4; Section 19.1.1.5.
- 91 For example, GC(XI)/RES/228, para.2(a); Section 25.4.4.1.
- 92 For example, GC(XI)/RES/278, para.2(b); Section 25.4.4.1.
- 93 Sections 22.2.4.1-3.
- 94 Sections 12.2.3.2 and 19.1.1.4.
- 95 Sections 11.1.2 and 11.1.3.
- 96 Sections 18.2.1 and 25.2.4.2.3.
- 97 Section 30.3.
- 98 INFCIRC/11, Part I.A; Section 12.2.1.2.
- 99 INFCIRC/20, Part I.A; Section 12.3.2.4.
- 100 INFCIRC/132; Section 19.1.3.3.
- 101 INFCIRC/25; Section 12.5.2.
- 102 INFCIRC/9/Rev.2; Section 28.3.2.
- 103 Section 26.5.3.
- 104 INFCIRC/15, Part I; Section 28.2.3.
- 105 Section 28.5.
- 106 Cf. Section 27.2.2.4.2.
- 107 Section 26.5.2.2.
- 108 Section 19.1.2.2; INFCIRC/129. This corresponds exactly to paragraph 10 (a) of the original Agreement (INFCIRC/27).
- 109 Section 11.2.4.
- 110 INFCIRC/38; Sections 11.2.6 and 19.3.1.2.
- 111 INFCIRC/51, which expired in 1968 and was superseded by a new Agreement Concerning the Seat of the International Centre for Theoretical Physics (INFCIRC/114); the new Agreement no longer contains Sections 3 and 10 referred to in the text, and former Section 21(d) has become Section 10(d). See also Section 19.1.3.2, *infra*.
- 112 INFCIRC/49; Section 23.4.1.
- 113 Section 26.5.3.
- 114 Sections 23.1.4, 26.2.5.1, 26.5.3.
- 115 Sections 17.2.1.1 and 18.2.1.
- 116 Sections 17.2.1.2 and 21.5.6.
- 117 Sections 11.2, 17.2.1.3, 19.3.2, 21.12.3, 22.3.1.3.
- 118 Section 18.3.4.
- 119 Section 25.2.4.1.2, and e.g., GC(IV)/116, para.423 and GC(X)/333, paras.66 and 68. This authority does not extend to the making of transfers between budget items (Section 9.3.4(c)(i)).
- 120 For example, the Director General himself represents the Agency on ACC and IACB. Though at one time the suggestion was made that the Board approve in advance the attendance by staff members of any non-Agency meeting (as it might do under Statute Article VI.1), the only requirement actually imposed was that such attendance should subsequently be reported to the Board in the Director General's periodic report (Section 32.1.1). It should also be noted that it is the Director General who appoints a representative (called the Director General's Representative) at UN Headquarters in New York (Section 12.2.2.2).
- 121 For example, Sections 22.2.3.2 (health and safety standards), 23.1.1 and 23.2.2-4 (Civil liability), and 25.2.2.1 (programme and budget).
- 122 Sections 12.2.2.7.1 and 32.1.4.
- 123 Section 10.3.
- 124 GC.1/1, paras.116-159.
- 125 GC.1/1, paras.117-118; GC(II)/36, para.35.
- 126 GC(II)/36, paras.33-35; GC(II)/39, paras.74-77.
- 127 It is likely that one of the reasons for the switch from the centralized administration foreseen by the Preparatory Commission to the decentralized, departmental structure designed by the Board of Governors a few months later was the election, after the last-minute submission of his candidature, of the American Cole to the post of Director General, instead of the Swede (Dr. H. Brynielsson) on whom tentative agreement had previously been reached by the members of the Commission.

- 128 GC(II)/36, paras.33-36 and Annex II. The Board, however, explicitly decided not to include an organizational chart in its budget proposals; later this peculiar prohibition was dropped (e.g., GC(IX)/299, para.224).
- 129 GC(II)/36, para.37.
- 130 The first Director General, in his valedictory, complained of his inability to reorganize the Secretariat (GC(V)/OR.48, paras.88 and 90).
- 131 Informally called the Hausner Committee. The survey was referred to briefly in GC(V)/OR,48, para.89 and in GC(V)/COM,1/OR,37, para.82.
- 132 This report is very briefly alluded to in GC(VII)/OR,73, para.49.
- 133 However, in a major political change, the leadership of the new Technical Assistance Department was promised to a Deputy Director General "from a developing country" and was eventually assigned to an Indian. Since the former operational Departments were headed respectively by a Russian and a French DDG and the new Technical Operations Department had a Russian head, the French temporarily lost "their" DDG; however, on the retirement of the British DDG (Research and Isotopes) his place was taken by a Frenchman - and the apparent understanding is that these countries will henceforth share this post by alternately nominating officials to it.
- 134 The reorganization was then promulgated by the Director General in SEC/NOT/87 and /93. The new organization is reflected in the Agency's Budget for 1965 (GC(VIII)/276, Annex I).
- 135 This change too is reflected in the Agency's Budget for 1965 (GC(VIII)/276, Annex 1).
- 136 GC(VIII)/270, para.152. See also AM.1/3 and Section 12.3.4.1.
- 137 GC(XIII)/404, para.134.
- 138 SEC/NOT/147, para.2.
- 139 SEC/NOT/152. When the Director General had earlier mentioned the probable need to reorganize the Department, the Soviet Governor suggested in June 1967 that this be considered by an ad hoc Board Committee (to consist of those Board members that were also represented on the Eighteen Nation Committee on Disarmament); however, nothing came of this proposal.
- 140 SEC/NOT/147, para.3.
- 141 INFCIRC/8/Rev.1, Regulation 14.01.
- 142 GC(VII)/INF/60, Rule 37; GOV/INF/60, Rule 8(b).
- 143 AM.II/2.
- 144 AM.V/4.
- 145 AM.1/4, Annex II, paras.4-12.
- 146 For example, AM.II/2, para.7; AM.V/4, Annex, para.1(b).
- 147 In addition to the 5 Department Heads to which this Section refers, when almost all senior officers (including the Director General) of the Agency were in Tokyo conducting the business of the Agency there - while in Vienna a number of substitutes were "acting" for them.
- 148 A recent instruction (SEC/NOT/178) addressed itself to the form of these temporary delegations, but did not clarify the potential problems mentioned in the text.
- 149 In addition to the 5 Department Heads to which this Section refers, the Director of the International Centre for Theoretical Physics (Section 19.1.3.2) enjoys the personal rank and emoluments of a DDG, but exercises none of the functions listed below.
- 150 Provisional Staff Regulation (INFCIRC/6/Rev.2) 4.01(c) even requires that the appropriate DDG, as well as the head of the Secretariat unit concerned, must be consulted before the permanent appointment of a staff member is terminated.
- 151 In fact, the second clause of the first sentence of Section 20 of the Agreement on Privileges and Immunities (INFCIRC/9/Rev.2) implies that delegation may take place below the DDG level, for otherwise the matter would be entirely covered by the second sentence of the Section.
- 152 Though the Committee was not established by any publicly promulgated instrument and its functions and procedures thus remain entirely flexible at the discretion of the Director General, it was mentioned by ACABQ in its 2nd report to the 14th UN General Assembly (UN doc. A/4135, para.16).
- 153 AM.1/7, Appendices D and E; Section 9.4.4.1(d) and (e).
- 154 AM.II/13, no.1.
- 155 By virtue of Provisional Staff Regulation (INFCIRC/6/Rev.2) 3.03(b), the DDGs are the only staff members who cannot receive permanent contracts at that level (Section 24.3.1.2.1), and are thus not apt to be career international civil servants. However, of the five persons holding the rank of DDG on 30 June 1968, one had a permanent contract with the Agency at the D-2 level, and another had received a series of

- fixed-term contracts extending his service from the foundation of the Secretariat into its second decade (Annex 3.3).
- 156 Supra note 133.
- 157 GC(II)/39, para.75.
- 158 Section 11.1.5.2.
- 159 AM.1/7, paras.5-13.
- 160 Though these Committees are relatively stable, from time to time existing ones disappear or are fundamentally changed.
- 161 AM.1/7, Appendix A.
- 162 AM.1/7, Appendix B; Section 25.8.4.1. This group formerly had authority to approve proposals up to \$10 000, the writing off of losses and the disposal of Agency property, thus being the first such Committee with any actual operational authority (PM/Pt.0/1, Appendix E).
- 163 AM.1/7, Appendix C; Section 19.2.4.
- 164 AM.1/7, Appendix D; Sections 9.4.3(d) and 25.2.2.1.
- 165 AM.1/7, Appendix E; Section 25.2.2.1.
- 166 AM.1/7, Appendix F. This Committee is one of the few that has achieved official recognition by the Board, in the recommendations made by the latter in June 1963 concerning the administration of the Agency's fellowship programme (Section 18.3.4(c)).
- 167 AM.1/7, Appendix G.
- 168 AM.1/7, Appendix H; Section 25.8.4.2.
- 169 AM.1/7, paras.2-3.
- 170 See also AM.11/13.

CHAPTER 10. RELATIONSHIP AMONG THE STATUTORY ORGANS

Though the Statute does not explicitly list or specifically identify the organs of the Agency, there can be no doubt that functionally that term fits the three bodies established by and named in Articles V, VI and VII: the General Conference, the Board of Governors and the Staff - or rather the Director General.¹ Their individual functions have been examined in Chapters 7 - 9; the purpose of this Chapter is to summarize their interrelationships.

Before doing so one might consider briefly whether there may not be a fourth statutory organ implicitly created by but concealed in the Statute: i. e., the collective of the Members of the Agency, acting individually (i. e., not through the General Conference) to achieve a joint purpose.² Two functions are assigned to the "membership" by the Statute:

- (a) The convening, pursuant to Article V.A, of special sessions of the General Conference "at the request ... of a majority of members";³ and
- (b) The acceptance, pursuant to Article XVIII.C(ii), of amendments to the Statute, by "two-thirds of all the members".

In both provisions the fractions are specified as applying to the membership as a whole and not, as in the case of votes taken in the General Conference, to members "present and voting".⁴ However, these two diverse and isolated functions do not suffice to make it sensible to ascribe even quasi-organ status to the "membership" of the Agency.

In considering the formal interactions among the three statutory organs, sight should not be lost of the fact that these have, fortunately, never yet been tested in a serious dispute and consequently the actual legal limits of their respective powers have not been proven. In fact, the several organs have achieved a high degree of sensitivity towards each other. Thus overt clashes are rare and the ultimate distribution of powers among the organs remains academically a question for speculation and practically a matter for gradual evolution.

10.1. THE CONFERENCE AND THE BOARD

Even the polite deference always shown by the Board to the General Conference cannot conceal that in reality the former is, and was by most of the active founders of the Agency⁵ intended to be, the most powerful organ of the Agency.⁶ This predominance stems from several factors:

- (a) The plenary authority granted to the Board by Statute Article VII.F to "carry out the functions of the Agency"⁷ - a grant unmatched in any provision relating to the Conference;
- (b) The fact that in all decisions that must be taken by the two political organs jointly: (e.g., the approval of Members, the appointment of the Director General, the adoption of the budget) the Board has the power of initiative to which the Conference can only respond;⁸
- (c) The control of the Board over the Director General and the staff;⁹
- (d) The ability of the Board to intervene in and to shape to some extent the proceedings of the Conference, in which respect almost no reciprocity exists between these organs.¹⁰

The General Conference has few powers that it can exercise independently of the Board. It can approve amendments to the Statute, even if the Board's comments thereon are negative.¹¹ It establishes the scale of compulsory contributions to the administrative budget, without any intervention by the Board.¹² It elects 12 members of the Board - and though the Board itself designates 13, it is subject to significantly more constraints in its selection than is the Conference.¹³ The Conference is also the only organ explicitly authorized to make recommendations to the membership¹⁴ - but such recommendations carry no binding force and the Board itself has never felt precluded from making recommendations in various areas.¹⁵

However, the Board's predominance is by no means unlimited. This is emphasized by Statute Article VII.F, which subjects the Board's authority "to the General Conference as provided in this Statute". Though this provision does not state, as is sometimes carelessly claimed, that the Board is subject to the General Conference - which would only be so if the Conference's recommendations made under Article V.D were binding on the Board - it is a reminder that many significant actions in the Agency require the concurrence of both political organs: e.g., the Agency's annual budget cannot be adopted, the Director General appointed, relationship agreements with other organizations concluded or even routine reports submitted to the United Nations without the concurring votes of both bodies.¹⁶

Thus, even though no veto exists within the Agency and therefore paralysis through the inability of either political organ to act is unlikely, the potential of a deadlock between the Board and the Conference is always present; this is particularly so where either must take its decision by a qualified majority and is thus in principle less able to maneuver towards a flexible accommodation with the other.¹⁷ The possibility of disagreement is explicitly foreseen in three provisions of the Statute, which provide that the Conference may return to the Board with its recommendations: the annual budget, the draft of reports to be submitted to the United Nations and relationship agreements negotiated with other organizations;¹⁸ however, even where the possibility of return is not explicitly mentioned, as in the appointment of the Director General, it is still obviously present.¹⁹ The Statute provides no automatic mechanism for breaking or circumventing any deadlock that might develop and paralyze the Agency.²⁰ Whether or not such a mechanism could conveniently have been devised, in fact none has proven to be necessary in the first decade of the Agency's operation. Not only have no deadlocks developed, there have been no cases of overt disagreement.

Though occasionally differences of mood or emphasis between the Board and the Conference are detectable, at no time has the latter rejected or returned any proposal of the former on an operational matter.²¹

This harmony has been achieved by the considerable caution that the Board has exercised in avoiding proposals unacceptable to the Conference (thus illustrating the implicit, moral power that the General Conference shares with all "popular" legislative bodies, regardless of their formal competence). It also suggests that, in spite of early and still continuing criticisms, the Board's membership is sufficiently representative of that of the Conference. Finally note should be taken of the hard work performed by the Permanent Missions of the leading Members, in sounding out influential States not currently on the Board about potential proposals to be formulated in the Board, and in smoothing the way for those that the Board actually advances.²²

Reference has already been made to the special powers of the Board under Statute Article V.F.1, to expand the competence of the General Conference by referring to it matters for decision as to which the Conference could otherwise only make recommendations.²³ The Board has used this power sparingly and apparently never explicitly — though the nature and the form of referral of a particular matter to the Conference may imply that it could only have been done under Article V.F.1. Though a negative decision by the Conference on a recommendation so referred to it by the Board might lead to a deadlock on that issue, no such situations have developed since here too the Board has taken care to formulate only acceptable proposals.

The Conference has no corresponding power to expand the authority of the Board — which, indeed is not susceptible of significant extension.²⁴ It may make recommendations to the Board, it may propose matters for its consideration and it may request it to submit reports.²⁵ These several powers have frequently and routinely been exercised by the Conference, though without specifying which it is invoking — but since none allow it to command or bind the Board, the distinction is academic.²⁶ Only in a few fiscal areas (contracting of loans; acceptance of voluntary contributions; use of the General Fund)²⁷ and in connection with the Staff Regulations,²⁸ can the Conference limit the authority of the Board — and even in these areas it has always acted on the initiative of the Board, and may indeed be bound to do so.²⁹

In this connection it is useful to revert to the various ways in which the Board can intervene in the proceedings of the General Conference, since these constitute part of the mechanism by which the two organs are kept in accord. The principal means of such intervention are contained in the Rules of Procedure of the Conference³⁰ itself: the Board must be consulted on the provisional agenda of the Conference (Rules 11 and 16) and has the right to propose the inclusion of items (Rules 12, 13, 17, 17 and 19); it may convene special sessions of the Conference (Statute Article V.A; Rule 3) and must in any case be consulted as to their dates (Rule 5); its Chairman may participate (without vote) in the meetings of the General Committee (Rule 41) and may be granted precedence in the Plenary or in any committee for the purpose of explaining a report or recommendation of the Board (Rule 55). Before the Second Conference the Board considered a proposal that it appoint two of its members to represent it formally in the Conference or its Com-

mittees; this, however, was not accepted on the grounds of a number of practical political difficulties. Without any explicit decision of the Conference, the practice has been established whereby the Board can propose draft resolutions directly to the Conference (i. e., without the necessity of these being formally introduced by a Member).³¹

The General Conference in turn has few means of influencing the work of the Board directly. Under Statute Article V.D it may address recommendations to it. If the Conference should refer a matter back to the Board, as it is explicitly authorized to do by Articles V.E. 5, 6 and 7 of the Statute, then by Procedural Rule 11(a) of the Board³² it must meet thereon "without delay and in any case within forty-eight hours".

Finally, it remains to establish which organ is competent to determine the "policies" of the Agency. On this the Statute is silent. Article VII.G of the Negotiating Group draft charged the Board, *inter alia*, "with complete authority to . . . determine the policies of the Agency. . .", but this provision was excised by the Working Level Meeting without transferring this power to the General Conference.³³ At the Conference on the Statute an amendment was introduced to empower the General Conference "to determine the general policy of the Agency"; this proposal was rejected and a similar one was withdrawn.³⁴ This issue was once more considered explicitly in the Preparatory Commission, as the Commission was attempting to define, in drafting the Rules of Procedure of the Board, what the sources of guidance for the Director General should be: It was proposed that he "be guided by the policies of the Agency as formulated by the General Conference and the Board", or alternatively "by policies approved by the Board and by the General Conference pursuant to their respective functions and responsibilities under the Statute";³⁵ however, no agreement could be reached on either of these formulations and Rule 8(a) consequently refers merely to guidance "by the policy of the Agency".³⁶ In fact, of course, most significant "policies" have budgetary implications, and thus require the concurrence of both representative organs.

Statute Article XVII. B "separately" empowers the General Conference and the Board of Governors "to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the Agency's activities".^{36A} This authority, which each political organ can exercise independently of the other, could *inter alia* be used to resolve disputes or deadlocks between them.

10.2. THE CONFERENCE AND THE DIRECTOR GENERAL

Though the Conference on the Statute agreed that the General Conference should share responsibility for appointing the Director General,³⁷ it turned down an additional proposal that Article VII. B be amended by making the Director General subject to both the Board and the General Conference.³⁸ A second attempt to achieve a similar result was made in the Preparatory Commission, when the draft Rules of Procedure of the Board were under consideration; as recalled above, several proposals were introduced with reference to the provision that became Procedural Rule 8(a), to the effect

that the Director General should accept directives from or at least be guided by the General Conference as well as by the Board. Had the Board adopted such a rule, this would in effect have amounted to a delegation to the Conference of part of the Board's statutory authority over the Director General. These proposals were resisted, and eventually withdrawn, on the ground that the Director General could not serve two masters and that only confusion would result from instructing him to be guided by two organs.

The General Conference thus has no formal powers to require the Director General to take any particular action. In fact, practically all resolutions addressed in whole or in part to the Director General merely "request" him to take action — requests which he naturally normally interprets as commands. This voluntary compliance makes it academic to examine the exact legal status of these requests: whether they are merely formal expressions of a desire of the Conference or whether they are a shorthand way of recommending to the Board, under Statute Article V. D, that it instruct the Director General, pursuant to Article VII. B, to take the indicated action.

Only in its Rules of Procedure does the Conference purport to instruct the Director General to take certain actions: e. g., to draw up the provisional agenda, to circulate certain reports and to provide and direct the staff required by the Conference.³⁹ Presumably these apparent directives can formally be interpreted in the same way as the above-mentioned requests: as expressions of the Conference's desires which are voluntarily complied with by the Director General, or as recommendations for the Board to issue the necessary directives. Whatever theoretical merits the second alternative may have, the Board has in fact never issued such directives.

Some resolutions of the General Conference "authorize" the Director General to take certain action: in particular, to make transfers between Sections of the Regular Budget, to spend extra-budgetary funds in the Operational Budget, and to make advances from the Working Capital Fund.⁴⁰ Since these authorizations are contained in resolutions proposed by the Board in connection with the approval of the budget estimates, in a sense they merely amount to an approval by the Conference of a delegation by the two political organs of minor parts of their joint budgetary authority to the Director General.

Though not provided for in the Statute or in the Rules of Procedure of the Conference, the agenda of each session (after the first) has included the presentation by the Director General of a "Statement" to the Conference.⁴¹ This item originated from a proposal, made during the Board's consideration of the Director General's draft of the agenda for the second regular session of the Conference, that the Director General should make a "Report" to the General Conference. This was objected to on the grounds that the Director General's responsibility was exclusively vis-à-vis the Board, and that separate reports by the Board (required by Statute Article VI. J) and the Director General would be confusing since they might overlap or even contradict each other. After considering the suggestion that the Director General merely make an "Address" (which some Governors considered too weak an exercise) or that his communication to the Conference should be previewed by the Board, it was agreed that the Director General should deliver a "Statement" whose form and content would be left to him. These have in

fact varied in significance⁴² and potential controversy; for instance Mr. Cole, in his last such appearance before the Conference, in effect appealed to it for support against the Board on several issues – such as the re-organization of the Secretariat – on which the Board had not given him satisfaction, or had, in his view, unduly interfered in his prerogatives.⁴³

Aside from the statement referred to above, the Director General has two other traditional opportunities to communicate his views to the Conference orally. Each time a Director General Designate has taken his oath before the Conference, he has been invited to follow it by an address into which he was of course free to introduce a programmatic note at a psychologically favourable moment.⁴⁴ In addition, at the recent sessions of the Conference the Director General has intervened at the end of the general debate to answer some of the points that had been raised.⁴⁵ Occasionally, he also makes written proposals to the Conference⁴⁶ – sometimes in connection with minor administrative matters and sometimes in response to a request for a report,⁴⁷ though almost always those are first cleared with the Board.

10.3. THE BOARD AND THE DIRECTOR GENERAL

There is no doubt concerning the general subjection of the Director General to the authority of the Board by virtue of Article VII.B of the Statute.⁴⁸ Equally there is no doubt that the functions and powers of the Director General, except for the few that can be derived from the Statute, for the most part stem directly or indirectly from the Board;⁴⁹ it is a significant fact about the Agency that the scope of these delegated or assigned functions is constantly increasing.

One of the principal mechanisms by which the Board implements its control over the Secretariat is the requirement, stated in Rule 8(a) of its Provisional Rules of Procedure, that the Director General submit periodic reports to the Board.⁵⁰ Originally a report was required "at least every two months on all major developments in the Agency's work";⁵¹ in 1964 this was eased to require merely "not less than four reports each year on developments in the Agency's work"⁵² and this minimum was reduced to two each year in 1968.⁵³ Consideration of these periodic reports is a regular feature of each major series of meetings of the Board and, though decisions are rarely taken under this agenda item, this discussion offers a prime opportunity for Governors to express themselves on the work of the Secretariat and for the Director General to gauge the mood of the Board on questions not otherwise on its agenda. Indeed, he may use the report to advance proposals or tentatively to announce an intended course of action, which he may then feel free to follow if no unfavourable views are expressed in the Board.

The Director General has several ways of influencing the work of the Board. Aside from informal contacts with its members, he controls the Secretariat which originates most of the business to come before that body and in any case has substantial ability to advance or retard items through appropriate documentation. In the important area of the budget, the Statute itself requires that the initiative come from the Director General.⁵⁴

10.4. ANALOGIES RELATING TO THE AGENCY'S ORGANS

Because of the close relationship between the Agency and the United Nations it is tempting to analogize from the organs of the senior organization to those of the junior. Thus the General Conference is compared to the General Assembly, the Board to the Security Council, and the Director General to the Secretary-General. Though such comparisons are made frequently, often to support some argument about how the Agency's organs should function,⁵⁵ it should be recognized that they are largely misleading. As to the General Conference and the Director General, it need merely be pointed out that their statutory and traditional positions are much weaker than those of the corresponding organs of the United Nations. The major difference, however, exists between the Board and the Security Council; though some of the powers of the two organs are roughly similar (e.g., in recommending the approval or suspension of Members and in connection with the appointment of the chief administrative officer), their basic purposes and functions are entirely different: the Security Council has particular responsibility for only one aspect of the UN's operations (the maintenance of international peace and security) while the Board has general responsibility with respect to all IAEA functions; in particular the Security Council has no role in the budgetary process of the United Nations, while the Board has a crucial one in that of the Agency.

A comparison between the organs of the Agency and those of some of the specialized agencies is somewhat more to the point, since most of these have executive bodies whose functions are similar in scope to those of the Board — though in general these are not as dominant as the Board, while the powers of the other organs are correspondingly more substantial.

A second set of comparisons occasionally made, with no better justification, is between the organs of the Agency and those of a State. The Director General is compared to the head of government, and the General Conference and Board either to the two chambers of a legislature or to a single chamber with a powerful executive committee. These analogies would of course only be appropriate with respect to a state having a weak executive and a strong legislature, whose smaller chamber (or executive committee) is considerably more powerful than the other. On the other hand, it has also been suggested that the role of the Board is similar to that of a Prime Minister ⁵⁶ (*sic*), or rather of a cabinet collectively responsible to a legislature — but this is at best a far-fetched analogy.

In fact the most useful analogy that can be drawn, and one which undoubtedly inspired the American originators of the Statute, is with the organs of a corporation. The General Conference can be compared to the shareholders' meeting, the Board of Governors to the Board of Directors, and the Director General to the President or General Manager (which indeed was the title initially proposed for that office).⁵⁷ The founders of the Agency indeed conceived of it as performing primarily a quasi-commercial function, i.e., trading in or acting as a broker of nuclear materials. For these functions the corporate structure would indeed have been logical and convenient. In the event, the Agency's activities developed in other directions: at present primarily the distribution of technical assistance, and potentially the implementation of safeguards.⁵⁸ Though both of these are politically

sensitive fields, the peculiar structure of the Agency and the special balance achieved in the Board for an entirely different purpose (i. e., the operation of a nuclear materials supply organization) probably accord as well with the actual functions of the Agency as any that could have been specially devised had the founders been more prescient.

NOTES

- 1 Section 9.1.
- 2 In EURATOM, as well as in the related European Common Market, the "Governments of Member States acting in common agreement" form such a quasi-organ whose functions are primarily, under Articles 127 and 139 of the Treaty Establishing the Community (298 U.N.T.S. 167), to appoint the members of certain other organs, and in slightly different form to deal with amendments to the Treaty pursuant to Articles 204 and 205. The fact that this is an organ is in effect recognized by the form in which the Official Journal of the Communities announces its decisions.
- 3 The General Conference at its first regular session usurped this function, by convening the first special session on its own authority (GC.1/DEC/8) — see Sections 4.1 and 7.3.2.2.
- 4 Statute Article V.C; GC(VII)/INF/60, Rule 71.
- 5 This term is here meant to refer in particular to the members of the Negotiating Group whose draft provoked numerous objections regarding the imbalance in favour of the Board (WLM Doc.3 (passim), WLM Doc.2 (Add.8) and WLM Doc.12 (Rev.1), Attachment 2). Two of the four States that joined the original Group to form the Working Level Meeting had reservations on this point even with respect to the modified draft produced by the Meeting (WLM Doc.31, Annex IV, paras. 2(c) and 4(c)), and of course many amendments proposed at the Conference on the Statute were addressed to this point (Sections 7.1 and 8.1).
- 6 The special status of the Board in the structure of the Agency was commented on by ACABQ in its first full report (to the 14th session of the UN General Assembly) about the Agency (UN doc.A/4135, paras.7-12).
- 7 Section 8.3.1.
- 8 Section 8.3.2.2.
- 9 Section 9.3.1.
- 10 Sections 8.3.4.1 and 8.3.5.
- 11 Statute Article XVIII.C(i); Section 5.3.3.3.
- 12 Statute Article XIV.D; Section 25.3.
- 13 Statute Article VI.A.1-3; Section 8.2.2.
- 14 Statute Article V.D.
- 15 For example, Sections 22.2.2.2.2, 22.2.2.3.4, 23.1.4.
- 16 Statute Article V.E.5, 6, 7, 10.
- 17 On the amount of the Agency's budget both organs must decide by two-thirds majority (Statute Article XIV.H).
- 18 Statute Article V.E.5, 6, 7.
- 19 When the General Conference was considering the Board's request to approve the first appointment of Dr. Eklund, a proposal was introduced to return the nomination to the Board and to request it to come up with one more generally acceptable (GC(V)/176); no legal objection was, or could be, raised against this proposal, which in the event was defeated on political grounds (GC(V)/OR.57, paras. 77-78; Section 9.2.3.3.).
- 20 Thus there is no provision for a tentative emergency budget should the Board and the Conference be unable to agree on one before the beginning of a new fiscal year. But cf., Article 178 of the EURATOM Treaty (298 U.N.T.S. 167), which in a similar contingency allows limited expenditures on a monthly basis — a provision which has already been used.
- 21 The General Conference did decide to take no action on the proposed amendment to Article XIV, B of the Statute submitted to it by the Board in 1963 (GC(VII)/RES/143; Section 5.3.2.2), but in this field the Board's competence is solely advisory.
- 22 Section 13.2.1.4.
- 23 Sections 7.2.2 and 8.3.3(b).
- 24 Thus the "authorization" granted by the First General Conference to the Board to negotiate relationship agreements with the specialized agencies (GC.1(S)/RES/11, para.1; Section 12.3.2.2) was without legal

- effect. However, though Statute Article XVI.A only requires Conference approval for the conclusion of such agreements, the Board accepted the Conference's superfluous charge with good grace (GC(II)/39, para. 66).
- 25 Statute Article V.D and F.2.
- 26 This point was once briefly touched on in the Administrative and Legal Committee of the General Conference (GC(III)/COM.2/OR.14, paras.75-79).
- 27 Statute Articles V.E.8 and XIV.F and G; Sections 25.2.4.2.2, 25.5.1, 25.6.1.
- 28 Statute Article VII.E; Section 24.1.2.
- 29 With respect to the "general rules" governing the Staff Regulations, Statute Article VII.E provides specifically that the Conference must act on the recommendation of the Board, and when the "General Principles to be Observed in the Staff Regulations" (Section 24.1.2) were under consideration by the General Conference it was ruled that if the Conference wished to amend them they would have to be returned to the Board for reconsideration (GC.1(S)/COM.2/OR.7, paras.27-30). As to the several fiscal rules (Sections 25.1.4.1-3), Statute Article V.E.8 merely provides for "approval" — which suggests that the Conference should act on Board-proposed drafts (otherwise the word "adopt" should have been used — cf. Article V.C).
- 30 GC(VII)/INF/60.
- 31 Though this procedure was challenged at the Fourth General Conference, the Administrative and Legal Committee upheld (44:8:1) its Chairman's ruling that under Procedural Rule 20 the Board could, but need not, propose draft resolutions (GC(IV)/COM.2/OR.17, paras. 55 et seq.; /OR.18, paras. 3-17); a later suggestion that the Board or the Legal Division study this question (GC(IV)/COM.2/OR.18, paras. 34-36) was never implemented. Unanswered remains the question of who can withdraw a Board-initiated proposal pursuant to Procedural Rule 65 — but in practice the Conference can decide under Rule 77 not to vote on such a proposal without having to defeat it.
- 32 GOV/INF/60.
- 33 WLM Doc.2; Section 8.3.1.
- 34 IAEA/CS/Art.V/Amend.1;/Amend.6 and /Corr.1; IAEA/CS/OR.18, p.35; /OR.22, p.42.
- 35 IAEA/PC/W.67, para.15; IAEA/PC/OR.59, pp.21-23; IAEA/PC/W.69; /W.70; IAEA/PC/OR.60, pp.3-4; /OR.63, pp.24-25; /OR.64, pp.6-8. See also the first paragraph of Section 10.2.
- 36 GOV/INF/60/Mod.2.
- 36A Section 27.1.2.
- 37 Section 9.2.1.
- 38 IAEA/CS/Art.VII/Amend.1; IAEA/CS/OR.26, p.6. Apparently no attempt was made to amend Article V.D to allow the Conference to address recommendations to the Director General, as it may to the Board and to the membership.
- 39 GC(VII)/INF/60, Rules 10, 11, 16, 37-39.
- 40 For example, GC(XII)/RES/226, para.5; /RES/227, para.4; /RES/228, para.2. Sections 25.2.4.1.2; 25.2.4.2.1; 25.4.4.
- 41 For example, GC(XI)/354, Item 7; Section 32.1.3.
- 42 Thus GC(X)/RES/217, preambular para. (b), explicitly refers to the "significance of the Director General's opening address".
- 43 GC(V)/OR.48, paras.88-90.
- 44 GC.1(S)/OR.5, paras.12-15; GC(V)/OR.62, paras.29-32; GC(IX)/OR.98, paras.5-26. The Soviet representative apparently considered the Director General's remarks important enough to take the trouble to contradict some of his points immediately (GC(IX)/OR.98, paras.27-32).
- 45 The decision to do so was first announced by Dr. Eklund in his opening address to the Sixth Conference (GC(VI)/OR.63, para.36), though he apparently did not follow through that year. See, however, GC(XI)/OR.117, paras.29-33.
- 46 For example, GC(II)/60 and GC(VII)/251, both relating to the composition of the Staff Pension Committee (Section 24.10.2.4).
- 47 For example, GC(VII)/240 and 241, as well as the joint reports with the Board in GC(VII)/227 and 229.
- 48 The first Director General, Mr. Cole, was never able to reconcile himself to this fact. He raised it for the last time officially at his valedictory to the General Conference (GC(V)/OR.48, para.90), but even five years later he called for a "Clarification and expansion of the authority of Director General to make him, without question, the executive force in formulating and executing the Agency's activities (Cole, op. cit. Annex 5, No.10, proposal 13).
- 49 Sections 9.3.2-5.

- 50 Section 32.1.1.
- 51 GOV/INF/5; GOV/INF/32; GOV/INF/60. At that time these reports were known as the "bimonthly reports".
- 52 GOV/INF/60/Mod.1.
- 53 GOV/INF/60/Mod.2.
- 54 Statute Article XIV.A; Sections 9.3.1 and 25.2.2.1.
- 55 Thus it was argued that the Board's Rules of Procedure relating to credentials should be similar to those of the Security Council (IAEA/PC/OR.57, pp.8 et seq.).
- 56 At the 92nd meeting of the Board, as part of an unsuccessful argument for arranging for formal Board representation at the General Conference.
- 57 WLM Doc.2, Article VIII.A; Section 9.3.
- 58 Section 15.2.

CHAPTER 11. NON-STATUTORY ORGANS

PRINCIPAL INSTRUMENTS

Board Decisions of 19 September 1958 (Resolution establishing SAC), 29 June 1961 (method of reporting SAC conclusions) and 16 June 1966 (amending the 1958 Resolution).
General Conference Resolution of 30 September 1960 (GC(IV)/RES/77 -- encouraging the utilization of SAC).
NORA Project Agreement (INFCIRC/29, Part II), Sections 4, 22
NPY Agreement (INFCIRC/55, superseded by 1970 version), Sections 5-7
IPA Agreement (INFCIRC/56), Section 6
Monaco Laboratory Agreement (INFCIRC/129), Article 9(b)
Fruit Irradiation Project Agreement (INFCIRC/64), Articles 4, 5, 8(c)
Middle Eastern Radioisotope Centre Agreement (INFCIRC/38), Sections 6-10, 12, 16, 19, 22, 26
Agreement for the Joint Operation of the International Centre for Theoretical Physics (INFCIRC/132), Sections 5-6.

Aside from the three statutory organs and their subordinate bodies, a small confusion of other committees, councils, panels and miscellaneous groups or fora has been created in and around the Agency, in part by one of the principal organs and in part by the joint action of the Agency with some of its treaty partners. These special bodies or organs have been established, continued or terminated on a pragmatic basis, as the need for them arose or waned. Since they were not created in response to or in accordance with any general plan, all attempts at rigid classification must fail. Nevertheless they deserve description or at least mention, and for this purpose some general groupings are useful.

11.1. THE SCIENTIFIC ADVISORY COMMITTEE (SAC)

11.1.1. Establishment

The Statute does not provide the Agency with a technical advisory body. During the Conference on the Statute, the UN Secretary-General suggested that the Agency might wish to use UNSAC¹ — of which he was the Chairman and which had originally been established by the same Resolution by which the Ninth General Assembly had first welcomed the proposed establishment of the Agency;² a provision for this to be done was consequently inserted into the UN/IAEA Relationship Agreement.³

The Report of the Preparatory Commission on the Initial Programme of the Agency suggested:

"In addition to securing the services of individual consultants to carry out specific tasks, the Preparatory Commission considers that the Agency may require from time to time scientific advice on its plans and work. Such assistance could be secured, for instance, by the establishment of a standing scientific advisory council composed of nuclear scientists of international eminence serving in their individual capacity and not as representatives of their governments, and meeting periodically to provide advice on the Agency's technical programme. Another arrangement would be to convene, whenever the need arose, ad hoc panels of specialists to provide scientific advice on particular aspects of the Agency's programme."⁴

The implementation of this proposal was debated from the third to the seventh series of meetings of the first Board, and was one of the most persistent and troublesome items considered by it. The principal issues were:

- (a) What should be the relationship between the Board and the proposed body, so that the latter should in no way encroach on the functions of the former - a point that concerned those that had helped establish the delicately balanced composition of the Board and did not wish to see it supplanted by an inner "directorate" relying on the claims of scientific authority to compensate for lack of statutory standing;
- (b) What should be the relationship between the Director General and the proposed body - i. e., should the Director General name its members, and should he have the right to consult it on his own initiative or perhaps even have the sole right of consultation;
- (c) Should the Agency accept the invitation of the Secretary-General and rely on UNSAC (as foreseen in the Relationship Agreement with the United Nations)⁵ at the risk that such consultation, which would have to take place through the Secretary-General, might imply subservience to the United Nations;
- (d) Would top-ranking scientists be too busy to devote enough time to advise the Agency effectively, so that it might be preferable merely to convene ad hoc advisory panels as necessary.

By the last series of meetings of the first Board these several difficulties had been solved or compromised, and on 19 September 1958 it resolved that it:

"1. Approves the establishment of a Scientific Advisory Committee to be organized as follows:

(a) The Committee shall consist of seven eminent scientists to be nominated by the Director General with the concurrence of their respective Governments, and appointed by the Board. Nomination is to be made primarily on grounds of broad experience in, and responsibility for, the development of atomic energy for peaceful purposes, with due regard to area of specialty and the desirability of selecting members from a number of different countries. Members are to serve in their individual capacities, however, and not as national representatives; and

(b) The term of appointment shall be one year. Members shall be eligible for re-appointment;

"2. Decides that the Committee's terms of reference shall be to provide advice to the Director General, and through him to the Board, on such specific scientific and technical questions arising out of the Agency's programme as may be referred to it by the Director General on his own behalf or on that of the Board".

Although the new Committee was established and convened promptly (the first meeting took place on 14 November 1958), during the initial years some dissatisfaction persisted about the use being made of it, and this was reflected in a Resolution passed by the Fourth General Conference, by which it:

"1. Recommends the Board of Governors to continue to avail itself of the opportunity to consult the Scientific Advisory Committee for advice on important matters of scientific and technical policy arising out of the Agency's program and considered by the Board; and

"2. Requests the Director General to review the procedure for keeping the Board informed of the decisions of the Scientific Advisory Committee on all questions submitted to it by the Board under the terms of paragraph 1 of this resolution, and on all other questions submitted to it by the Director General on his own behalf."⁶

11.1.2. Membership

The appointment of the members of SAC nominally requires the following steps:

- (a) Contacts by the Director General with prospective candidates;
- (b) Securing the agreement of their Governments;
- (c) Submission of the nominations to the Board;
- (d) Appointment by the Board.

The actual procedure, depending as it does on the understandings referred to below, preserves this appearance but is in fact quite different.

The Board initially fixed the membership of SAC at 7. This happened to be exactly the size of UNSAC, and though not stated explicitly in the Board's resolution or in the debates preceding it, it was understood that IAEA-SAC would consist of the same persons as were serving on UNSAC, except that in the latter organ they served by appointment and as representatives of their Governments⁷ while in the IAEA body they would "serve in their individual capacities... and not as national representatives"⁸. From the establishment of the Committee until the summer of 1966 its members always came from the following countries: Brazil, Canada, France, India, Soviet Union, United Kingdom and United States - and were the same persons as served on UNSAC;⁹ indeed, each time the membership of the latter organ changed, this was faithfully mirrored by IAEA-SAC (in which changes could be made conveniently since each appointment had in any case to be renewed each year).¹⁰

In June 1966, after having previously consulted informally with Governors and the UN Secretary-General, the Director General proposed an expansion of SAC, both to reflect the increased size of the Agency's membership but mostly to secure representation on the Committee of some disciplines (particularly the life sciences) in which none of the UNSAC members was an expert; at the same time he proposed that the term of service of members be increased to three years. The Board accepted these proposals and the new membership of the Committee was thereupon drawn from the following States: Brazil, Canada, Czechoslovakia, France, India, Japan, Soviet Union, United Arab Republic, United Kingdom and United States. The membership of IAEA-SAC was thereby expanded beyond that of UNSAC, but it should be noted that almost all these States are permanent members of the Board. The personal union between the two Committees has now almost ceased, and in 1969 they had only three common members.¹¹

Though the Committee has met infrequently, its membership has been stable and thus the participants have had time to gain experience and the special authority that derives from longevity. In addition, the members of SAC from France, India and the Soviet Union were for years the Governors of these States on the Board - a dual role which lent them special weight in both bodies.

11.1.3. Submission of questions

In accordance with the Board's resolution establishing SAC and by accepted practice, questions are submitted to the Committee as follows:

- (a) By the Director General on his own behalf, for which he need not consult the Board. Though initially he informed the Board of and solicited its comments on the list of items he was submitting, he discontinued this practice after the first two years.
- (b) By the Board, acting through the Director General.
- (c) Not by individual members of the Board or by other Members of the Agency, who can only have items submitted by either persuading the Director General or the Board to do so.
- (d) Not by the General Conference, which cannot itself submit or require the submission of questions. However, in several resolutions it has called on the Board or the Director General to consult the Committee on certain questions,¹² and these recommendations have generally been complied with.
- (e) Not by SAC itself, which does not have the right to propose questions on its own initiative. At an early session some members of the Committee requested to hear at each session a summary of the Agency's work because "the Committee might have new ideas to contribute on the Agency's activities and plans as a whole"; though the Director General agreed to present such reports (and indeed at the next three sessions these were given by the Director General and the technical Deputy Directors General), he explained that according to the terms of reference established by the Board, the Committee could offer general comments

regarding the Agency's programme but should not concern itself with the specific details of programmes on which its advice had not been sought. However, more recently the Director General has sometimes invited comments on aspects of the programme not formally submitted to SAC.

11.1.4. Reports to the Board

Initially, after each session of SAC, the Director General would summarize its conclusions and communicate this account to the Board, either as part of his periodic report or in separate documents relating to particular subjects (e. g., the budget). From the beginning this method of reporting led to complaints that the Secretariat was not reflecting the debates fairly or the conclusions accurately; for example, when the Director General reported on the Committee's discussion of the initial drafts of the first Safeguards Document, the Board required him to revise the report and also to indicate precisely what questions had been put to SAC - and even after this was done some Governors proposed that the report be withdrawn from consideration by the Board.¹³

To improve this situation, and on the urging of both the Board and the General Conference,¹⁴ the Director General consulted SAC itself at its seventh series of meetings in May 1961 about the method by which its conclusions should be communicated to the Board. The Committee decided that:

"In addition to the official Summary Record, the conclusions reached would be separately recorded by the Scientific Chairman. The text of this record in English and Russian would be agreed by the participants as far as it is available before the conclusion of the series of meetings. It would later be circulated to members of the Committee in its finally agreed form."¹⁵

It also agreed that this summary would be the form in which its recommendations would be transmitted to the Board.

When the Board learned of this decision, its members noted it with satisfaction. However, on finding that in communicating the first such summary to the Board the Secretariat had made some minor editorial changes, the Board requested "that the conclusions of SAC which its Scientific Chairman would prepare in the future should be transmitted to the Board in full and without change". At the same time the Board also requested the Director General to study the suggestion that certain documents prepared for SAC should also be communicated to the Board.

As these SAC and Board decisions have since been faithfully implemented, no further complaints have been raised about the method of reporting the conclusions of the former organ to the latter. Though recently consideration was given to abolishing the Chairman's summary (which largely duplicates the official records of the meeting),¹⁶ for the present no change has been made.

11.1.5. Procedures

SAC has no formal rules of procedure. Nevertheless, through several general and ad hoc decisions and through established custom, the following practices have evolved:

11.1.5.1. Participation

From the beginning the principle was observed that SAC meetings should not only be closed, but that participation and attendance should be limited as jealously as possible. This explains the following decisions and practices relating to the indicated groups:

- (a) Alternates of or observers for SAC members. At its first meeting SAC decided that "in exceptional circumstances and pending instructions on the subject from the Board of Governors, a member unable to attend personally might, with the Director General's concurrence, appoint a representative to serve in his stead"; this decision was reported to and was not objected to by the Board. At the seventh series of meetings, an observer sent by an absent member of the Committee was permitted to attend the meeting.
- (b) Advisers to SAC members. At its first meeting SAC also decided that "any member might... be accompanied by an adviser". Though this right has not often been utilized (and not at all by most SAC members) the principle has been criticized in the Board on the ground that SAC members are appointed in an individual capacity and should therefore not be chaperoned by political advisers.
- (c) Director General and the Secretariat. Though the Director General may attend all SAC meetings, it was recommended at the second series of meetings that Secretariat representation "should be limited to the necessary minimum".
- (d) United Nations. The UN Secretary-General (who for years presided over the same members when they met as UNSAC) was issued a standing invitation at the first meeting to attend or to be represented at all SAC meetings.¹⁷ No advantage has yet been taken of this invitation.
- (e) Specialized Agencies. At its first meeting SAC also decided that representatives of specialized agencies might attend only when invited in connection with a specific matter;¹⁸ since the provisional SAC agendas were to be circulated to these organizations, they would always be in a position to raise a matter with the Committee or to solicit an invitation. At its twelfth series of meetings SAC was informed that WHO wished to be automatically represented whenever medical questions were discussed - but SAC shared the Director General's feeling that this was administratively awkward, and that co-operation should be achieved through Secretariat contacts and through the efforts of Members common to both organizations who should co-ordinate the instructions given to their respective representatives. However, since soon after his appointment in 1964, WHO's new standing representative to the Agency has, at the Director General's invitation, attended all the meetings of SAC;¹⁹ in addition, a FAO member of the Joint FAO/IAEA Division also regularly attends.²⁰

11.1.5.2. Officers

At its first meeting, SAC decided that the Director General should act as its Chairman for non-scientific meetings. He has thus presided over the usually short, non-technical (i. e., procedural) discussions of the Committee; when the Director General was unable to attend, the Acting Director General became Acting Chairman.

It was also decided that the technical discussions were to be presided over by one of the members of the Committee, to be selected at the beginning of each series of meetings. This officer was originally called "Vice-Chairman" and later "Scientific Chairman". In addition to presiding over the main part of the meetings, he was later also assigned the task of preparing a draft summary of the Committee's conclusions. Mr. Lewis, of Canada, has been elected to this post at each series of meetings, excepting one he was unable to attend.

The Deputy Director General for Research and Isotopes acts as Secretary of SAC, a position enabling him to exert some influence over the deliberations of that body.

11.1.5.3. Meetings

The Committee itself determines the date and place of its sessions. Each series usually consists of three to six meetings.

At its first meeting SAC decided that it would normally meet twice yearly, generally in conjunction with UNSAC meetings. "In exceptionally urgent circumstances, the Director General would consult the members between meetings by correspondence."

This frequency was maintained from 1959 to 1963, while subsequently the Committee has met about once a year. About half the sessions took place at UN headquarters in New York or Geneva (where UNSAC usually meets), and most of the rest (including all the recent ones) in Vienna.

11.1.5.4. Agenda

Although SAC is constrained to give formal consideration only to the items submitted to it by the Director General, at the beginning of each of its series of meetings it considers and adopts its agenda. It has occasionally decided to defer certain of the items submitted to it and sometimes it has added items (presumably by agreement with the Director General).

11.1.5.5. Records

For each series of meetings a single official record is issued. This summary is prepared by the Secretariat. At its seventh series of meetings SAC decided:

"That it should continue to have summary records which would, however, give somewhat more extended treatment than in the past to the subjects discussed. While arguments would, as a rule, not be attributed to specific speakers this could be done so upon special request of

any Committee member. So far as possible a summary of conclusions would be distributed in English and Russian, perhaps before the meeting ended, for approval, and, if necessary, correction."

Recently, however, apparently by informal understanding, the records have more frequently attributed views stated to specific Committee members.

In addition, as mentioned in Section 11.1.4, the Committee at the same time decided that its conclusions should be summarized in a separate document by its Scientific Chairman and approved by the Committee itself before they were transmitted by the Director General to the Board.

11.1.6. Accomplishments

SAC has become neither the super-directorate that some of its opponents had initially feared (and some of its proponents had perhaps once desired), nor on the other hand has it been ineffective because of its legal impotence and the numerous restrictions and early controversy surrounding it. However, it would be idle to accept the disingenuous protestations that the Committee's discussions or the effect of its recommendations has always been fully scientific, untainted by administrative, legal, policy or political considerations; this would be too much to expect from a panel of high-level governmental science advisers, who represent (in fact though not in theory) a carefully balanced group of States whose collective influence if jointly exercised is likely to be decisive in the Board, and thus in the Agency. Thus skirmishes relating to every major internal battle in the Agency (e.g., safeguards; establishment of the Theoretical Physics Centre in Trieste; establishment of the Monaco Laboratory on Radioactivity in the Sea) were fought in the Committee, and though no major campaigns have been won or lost there, its influence on the Board has ranged from negligible to almost decisive.

With one exception, that relating to the establishment of the Monaco Laboratory,²¹ SAC has never been assigned and has not attempted to assume any role beyond a purely advisory one. Nevertheless from time to time proposals have been introduced for the Committee to exercise certain directive functions, for example in connection with the research contracts programme or the operation of the Seibersdorf Laboratory.²²

In addition to considering special (and thus often controversial) issues, the Committee participates routinely in the planning or evaluation of several Agency programmes (e.g., the granting of research contracts; the work of the Laboratory), and critically examines special reports prepared for the Board or the Director General by other bodies with respect to certain activities. Though the impact of SAC's recommendations is mentioned on a subject-by-subject basis in numerous Chapters below, a slightly systematized and considerably shortened list of the topics it considered during its first decade may be useful at this point:

(a) Agency activities and facilities

Establishment of the Agency's functional laboratories²³

Work of the Agency's Laboratory (present and planned)²³

The Agency's long-term need for technical facilities
 Scientific collaboration with Monaco on research on disposal of radioactive wastes into the sea²⁴
 Medical isotope training and research centre
 International Centre for Theoretical Physics²⁵
 The Agency's role in respect of peaceful nuclear explosions²⁶

(b) Nuclear power and reactors

Assistance to less developed countries in regard to production of nuclear power
 The use of highly enriched uranium in reactors
 Utilization of plutonium as reactor fuel

(c) Research

Estimation of the world-wide distribution of hydrogen and oxygen isotopes in water
 Research contracts and studies²⁷
 Correlation of research carried out with nuclear reactors
 High-energy accelerators

(d) Health and Safety

Safety of land and ship reactors
 Maximum permissible dose of strontium deposits in humans and animals as a result of reactor and waste disposal incidents
 Programme of research on the toxicity of ingested radionuclides

(e) Information

Programme of scientific conferences and meetings for the coming year²⁸
 Scientific and technical publications²⁹
 Exchange of knowledge on controlled fusion
 Basic manuscript on atomic energy and its peaceful uses
 Languages of Agency publications³⁰
 Evaluation of the Second Geneva Conference³¹
 Planning the Third Geneva Conference³¹

(f) Co-ordination

Division of work on radioactive metrology between the International Bureau of Weights and Measures and the IAEA³²
 Possible joint activities on the development of advanced reactor types
 Co-ordination with specialized agencies³³

(g) Miscellaneous

Principles and regulations for the application of Agency safeguards³⁴
 The Agency's approach to safeguards – review of the system³⁴
 Plan for mutual emergency assistance³⁵

It will be noted that not all of these items are strictly scientific (e.g., languages of Agency publications), and indeed the Committee's recommendations have often shown particular awareness of political factors and have also, in spite of protestations to the contrary, sometimes related to administrative, legal or general policy questions.

11.2. CONTROL OR ADVISORY ORGANS FOR SPECIAL ACTIVITIES

As described primarily in Chapter 19, some important activities of the Agency, particularly in the area of research, are carried out by means of special institutions or projects set up jointly or in co-operation with Member States or with other international organizations. The agreements establishing these institutions or some related instruments promulgated by the Agency often create a special organ to govern the project or to give advice on its conduct.

Some of these bodies are organized more formally than others, some are active and others less so, some take action directly while others merely report to the Director General and to the other co-operating parties. Few generalizations are possible, except that it is the Director General who selects all the members for whose appointment the Agency is responsible and who casts the Agency's vote in the case of joint appointments; except as explicitly indicated, the persons in the former category are always selected from among the staff of the Agency.

11.2.1. NORA Committee

The Joint Scientific Program Committee for the NORA Project³⁶ was composed of five members, of whom two each were appointed by the Agency and by the Norwegian Government, with a jointly appointed Chairman.³⁷ The NORA Project Agreement also provided for the application of the Agency's Privileges and Immunities Agreement to the non-Norwegian members of the Committee.³⁸

The terms of reference of the Committee were set out in Section 4 (b) of the NORA Agreement. Principally it was to select or approve the persons who were to implement the project, to evaluate and adopt detailed annual research plans, and to consider certain reports to be submitted to it. The Agreement provided that the Committee should meet at least twice a year and take decisions with a majority vote.³⁹ The Committee adopted formal rules of procedure,⁴⁰ inter alia calling for closed meetings and providing that certain decisions of lesser importance may be taken by correspondence.

11.2.2. NPY Joint Committee

The Joint Committee for the Co-operative Programme [of research in reactor science agreed to among the Agency, and the Governments of Norway, Poland and Yugoslavia]⁴¹ is composed of two representatives of the Agency and of each of the three Governments, with a Chairman elected by the Committee from among its members.⁴²

The terms of reference of the Committee are set out in Section 6 of the NPY Agreement, and principally require it to provide scientific guidance for

the Co-operative Programme. Specifically, the Committee annually establishes a detailed overall research plan and assigns appropriate portions of it to the co-operating national research institutions. It also approves the exchange of personnel and materials under the Programme, and may make recommendations on various related subjects. The Agreement requires the Committee to meet at least once a year and to determine its own rules of procedure, which must provide for unanimity for its most important decisions,⁴³ The rules of procedure it actually adopted⁴⁴ are modelled on those of the NORA Committee, with which it shared several members and sometimes held concurrent meetings.⁴⁵ The Agreement also provides for the appointment of subcommittees for tasks requiring specialized scientific competence.

11.2.3. IPA Joint Committee

The Committee for the Joint Programme [of training and research using a neutron crystal spectrometer agreed to among the Agency and the Governments of India and the Philippines]⁴⁶ is composed of one representative of the Agency and of each of the two Governments, while other Governments becoming parties to the Agreement may appoint advisory members.⁴⁷

The terms of reference of the Committee are set out in Section 6(a)-(c) of the IPA Agreement, and state as its principal task the annual establishment of a programme for training and research in implementation of the Joint Programme. It also considers the reports of the Director of the Programme and makes recommendations concerning the recruitment of experts and fellows. Its rules of procedure,⁴⁸ largely patterned after those of the NPY Committee though subject to fewer constraints specified in the basic Agreement, call for meetings at least once a year, the election of a Chairman from among the members, and decisions by a majority vote — except that unanimity is required on the establishment of the annual programme.

11.2.4. Monaco Laboratory Advisory Committee

The Advisory Committee for the International Laboratory of Marine Radioactivity of the IAEA⁴⁹ (established by the Agreement between the Agency, the Government of Monaco and the Oceanographic Institute of Monaco Concerning Research on the Effects of Radioactivity in the Sea) consists of two members appointed by the Director General and of one each appointed by the Monegasque Government and by the Institute.⁵⁰

Since the research project is conducted by the Agency itself, subject to the terms of the Agreement, the Committee is merely designed as a means through which the three parties "will consult to ensure the effective and coordinated use of the facilities and equipment at the disposal of the research project". It is authorized to determine its own procedure but has not adopted any formal rules. At least in the early years of the project it met only most infrequently.

11.2.5. Project Committee for the Fruit Irradiation Programme

The Project Committee for the International Programme on Irradiation of Fruit and Fruit Juices⁵¹ (established by the Österreichische Studiengesellschaft für Atomenergie (SGAE), the OECD and the Agency) consisted of one member designated by each "Participating Country", one by ENEA of OECD, one by the Agency, and "not more than four" designated by SGAE.⁵²

The terms of reference of the Committee were principally set forth in Article 4(a)(i)-(iv) of the Agreement establishing the Programme. It had annually to approve a Programme, and give advice on the use to be made of any financial contributions and on health and safety measures; it also had to deal with any other matters brought before it by the "Project Leader", who was appointed after consultation with the Committee and carried out his tasks in consultation with it and submitted quarterly reports to it. SGAE had to consult the Committee on any agreement for collaboration entered into in furtherance of the Programme. The Agreement provided that the Committee should meet at least twice a year, designate a Chairman and Vice-Chairman and settle its own rules of procedure.⁵³

11.2.6. Governing Body of the Middle Eastern Radioisotope Centre

The Governing Body of the Middle Eastern Regional Radioisotope Centre for the Arab Countries⁵⁴ consists of: one representative of the "Host State" (United Arab Republic); three representatives elected by the "Participating States" (the other Arab States parties to the Agreement); and the Director General or his representative.⁵⁵ The Agreement establishing the Centre grants to the members of the Governing Body "the privileges and immunities necessary for the exercise of their functions" in the Host State.⁵⁶

The principal task of the Governing Body is to approve the annual budget and programme of work of the Centre, and generally to supervise its activities. It must be consulted on the appointment of the Director and of the Technical Adviser of the Centre, and largely determines the conditions of service of the Director and the staff; it gives guidance also on the selection of fellows. By unanimous agreement it may alter the scale of contributions of the Participating States and may accept contributions to the Centre. The Governing Body is charged with selecting its own Chairman and adopting its own rules of procedure.⁵⁷ These were in fact adopted at its first meeting, along with Staff and Financial Regulations for the Centre.

11.2.7. Scientific Council of the Theoretical Physics Centre

Though the Agency and the Government of Italy concluded an Agreement Concerning the Establishment of an International Centre for Theoretical Physics at Trieste,⁵⁸ it was provided therein that the Centre would be "part of the Agency".⁵⁹ Thus, subject to minor limitations, its management is the responsibility of the Director General.

Pursuant to the rules promulgated by the Director General on the organization and operation of the Centre, a Scientific Council was established "composed of eminent theoretical physicists" appointed by him "in their

personal capacities, one of whom was designated by the Director General of UNESCO".⁶⁰ As of 1 January 1970, the members of the Council are "jointly selected and appointed by the Directors General of the Agency and UNESCO"⁶¹

The terms of reference of the Council, as set forth in these rules, are to consider the proposals of the Director of the Centre on the Centre's activities and to submit recommendations thereon to the Director General, to evaluate these activities, to advise the Director General on the appointment of the Director and the scientific staff of the Centre, and to recommend institutes of theoretical physics for affiliation with and leading physicists as associates of the Centre.⁶² The Council is authorized to designate its own Chairman, and is required to meet in an ordinary session once a year at the Centre and at special sessions convened by the Director General.⁶³ At its first meeting it decided to "follow the rules of procedure ordinarily used by parliamentary bodies" and that "its meetings would be conducted on an informal basis and no votes would be taken"; dissenting opinions would be recorded in the minutes of the meeting.

11.2.8. Study Group on a Nuclear Electric Power and Desalting Plant

Pursuant to the Agreement between the Agency and the Governments of Mexico and the United States of America for a Preliminary Study of a Nuclear Electric Power and Desalting Plant,⁶⁴ a Study Group was established to carry out the Agreement. The Group was composed of a Chairman (who could have been an official of the Agency) appointed by the Agency after consultation with the Governments,⁶⁵ four members each appointed by the two Governments from experts in four specified fields, and an Agency official to act as Scientific Secretary.⁶⁶

The Study Group differed from the other bodies described in this Section in that its establishment was the sole object of the Agreement and its terms of reference constituted the only substantive subject matter of that instrument.

11.3. SPECIAL BODIES RELATED TO MULTILATERAL CONVENTIONS

To assist it in formulating multilateral conventions or other appropriate legal instruments relating to several matters within its field of competence, the Agency (in some instances jointly with other entities) has convened a succession of ad hoc organs and other bodies, ranging from Board committees and panels of experts to intergovernmental conferences. In connection with the two Conventions which up to now have been definitively formulated, the Agency subsequently established (or assisted) Standing Committees charged with implementing or with keeping up to date certain provisions of these instruments.

These several bodies are described fully in Chapter 23. However, it seems useful to list here those that were more than mere subsidiary organs of the Board or the Secretariat.

11.3.1. Civil liability for land-based activities and transport

- (a) Panel of Experts on Civil Liability and State Responsibility for Nuclear Hazards, consisting of experts from 9 States convened by the Director General for three series of meetings in 1959.⁶⁷
- (b) Intergovernmental Committee on Civil Liability for Nuclear Damage, established by the Board and consisting of the representatives of 14 States who met for two series of meetings in 1961 and 1962.⁶⁸
- (c) Vienna International Conference on Civil Liability for Nuclear Damage, of all interested Members of the Agency convened by the Director General on the instructions of the Board in 1963.⁶⁹
- (d) Standing Committee on Civil Liability for Nuclear Damage, established by the Board in 1963 on the recommendation of the Vienna Conference and consisting of the representatives of 15 States. Though created by the Agency and largely dependent on its Secretariat, it probably should not be considered an organ of the Agency but rather of the parties and potential parties to the Vienna Convention on Civil Liability for Nuclear Damage.⁷⁰

11.3.2. Civil liability of operators of nuclear ships

- (a) Panel of Legal Experts on Liability for Nuclear Propelled Ships, consisting of legal experts from 23 States convened by the Director General for two series of meetings in 1960.⁷¹
- (b) Group of Scientific Advisers, convened by the Director General on the recommendation of the Panel of Legal Experts between its two series of meetings.⁷²
- (c) Diplomatic Conference on Maritime Law, part of whose regular 11th session in 1960 and all of whose resumed 11th session in 1962 the Agency co-sponsored with the Belgian Government for the purpose of formulating a convention regulating the liability of the operators of nuclear ships.⁷³ This Conference, at the end of each of these sessions established Standing Committees.⁷⁴

11.3.3. Waste disposal into the sea

- (a) Ad hoc Scientific Panel on Radioactive Waste Disposal into the Sea, consisting of scientists from 10 States and 4 international organizations convened by the Director General for two series of meetings in 1958 and 1959.⁷⁵
- (b) Panel on the Legal Implications on Disposal of Radioactive Waste into the Sea, consisting of legal experts from 10 States (with observers from 5 international organizations) convened by the Director General for four series of meetings in 1960, 1962 and 1963 pursuant to a recommendation of the earlier Scientific Panel.⁷⁶
- (c) Joint Scientific/Legal Panel on the Disposal of Radioactive Waste into the Sea, consisting of 6 scientific and 4 legal experts from 7 States (and observers from 4 organizations) convened by the Director General in 1961 at the request of the Legal Panel.⁷⁷

11.3.4. Emergency assistance

- (a) Expert Committee on Emergency Assistance in the Event of Radiation Accidents, consisting of 35 experts from 16 States convened by the Chairman of the Board in 1965 to prepare a draft multilateral agreement on emergency assistance in the event of radiation accidents.⁷⁸

11.4. MISCELLANEOUS PANELS

From the beginning, following the advice of the Preparatory Commission, the Agency has made use of panels, study groups and other advisory committees of outside experts convened by the Director General, generally for the purpose of supplying him with advice on various subjects.⁷⁹ Many of these bodies are referred to in the Chapters below, in particular in Sections 22.2.2.3.2 and 22.2.2.4 in which the formulation of several of the Agency's safety standards is described.

11.5. INTER-SECRETARIAT WORKING GROUPS

As a means of furthering collaboration with some of the international organizations with which relationship agreements have been concluded and whose activities impinge appreciably on those of the Agency (or vice versa), inter-secretariat working groups have been established with three specialized agencies (FAO, UNESCO and WHO - see Section 12.3.4) and with one regional organization (ENEA - see Section 12.5.3.1).

NOTES

- 1 IAEA/CS/OR.13, p.53; this suggestion was also taken up by India, IAEA/CS/OR.39, p.17.
- 2 Respectively paras. B.4 and A.1 of UNGA/RES/810(IX); see also paras. I.7 and II.1 of UNGA/RES/912(X).
- 3 INFCIRC/11, Part I.A, Article XI, footnote; Section 12.2.3.1.
- 4 GC.1/1, para.115.
- 5 INFCIRC/11, Part I.A, Article XI, footnote. This suggestion was still under consideration when the Board formulated its Annual Report to the General Conference (GC(II)/39, para.13).
- 6 GC(IV)/RES/77; Section 11.1.4.
- 7 UNGA/RES/810(IX), Part B, para.5.
- 8 Members of SAC therefore receive a per diem honorarium from the Agency (in addition to a subsistence allowance and reimbursement for travel costs).
- 9 The original composition of SAC is set forth in GC(III)/75, para.3, fn.2.
- 10 Thus, in effect, the Director General merely waited until the Government concerned (i.e., one of those listed in the General Assembly Resolution) filled a vacancy on UNSAC, and then arranged to nominate the new UN incumbent to IAEA-SAC. Incidentally, because of the one-year limitation on the length of appointments, gaps occasionally occurred between the terms of the entire membership when renewal at or before the end of the expiring term was not practicable because of the infrequent meetings of the Board; however, since no sessions of the Committee were ever scheduled during these gaps, no harm was done.
- 11 The representatives of Canada, France and the United States, all of whom had served on both Committees from the beginning. Nine of the members of SAC were reappointed for a further term of three years in June 1969, and the member for the United Kingdom was replaced by another expert from that State; at the same time the Director General announced he was considering a further expansion of the Committee, an initiative welcomed by several members of the Board of Governors (GC (XIII)/OR.127, para.44).

- 12 For example, GC(II)/RES/28 (programme of scientific conferences and symposia); GC(V)/RES/105 (long-term programme); GC(VI)/RES/129 (third Geneva Conference on Peaceful Uses of Atomic Energy).
- 13 Section 21.4.1.1.1.
- 14 Para. 2 of Conference Resolution GC(IV)/RES/77, quoted at the end of Section 11.1.1.
- 15 As a result of this mistrustful requirement of approval during the then current series of meetings, the matters discussed at the end may not appear in the summary at all.
- 16 Section 11.1.5.5.
- 17 An invitation that goes somewhat beyond the Agency's obligation under Article VII.1 of its Relationship Agreement with the United Nations (INFCIRC/11, Part I.A); Section 12.2.2.3.
- 18 This is in accordance with Article II.5 of the Agency's standard relationship agreement with specialized agencies (e.g., that with UNESCO, INFCIRC/20, Part I.A); Section 12.3.3.1.
- 19 Section 12.3.4.4.
- 20 Section 12.3.4.1.
- 21 The Board authorized the Director General to sign the agreement for establishing the Laboratory "on the understanding that before signature the research program in Annex A would be submitted to SAC and would be drafted in a form which was acceptable to a majority of SAC"; the Committee subsequently required a complete recasting of the Annex in question (INFCIRC/27, Annex A). Section 19.1.2.1.
- 22 Proposal by Pakistan (GC(VII)/241, memorandum paras. 3, 13 and draft resolution, operative para.(a)).
- 23 Section 19.1.1.
- 24 Section 19.1.2.
- 25 Section 19.1.3.
- 26 Section 17.5.
- 27 Section 19.2.3.
- 28 Section 20.1.1. This annual consideration was requested by the General Conference (GC(II)/RES/28).
- 29 Section 20.2.
- 30 Section 33.6
- 31 Section 12.2.4.1.
- 32 Section 12.4.3.6.
- 33 Sections 12.3.3. and 12.4.1.
- 34 Section 21.4.1.
- 35 Section 23.4.
- 36 Section 19.3.2.1.
- 37 INFCIRC/29, Part II, Section 4(a).
- 38 *Idem*, Section 22.
- 39 *Idem*, Section 4(b), (c).
- 40 Document NC-4 (revised).
- 41 Section 19.3.2.2.
- 42 Section 5 of the new NPY Agreement approved by the Board of Governors on 24 February 1970, which replaced the corresponding Section of the original 1964 Agreement (INFCIRC/55) under which each Government could appoint only one Committee member.
- 43 *Idem*, Section 7. Under the original Agreement the Committee had to meet at least twice a year - but there had been no provision for the appointment of sub-committees.
- 44 Document NPY-C-2(Revised).
- 45 In accordance with the NORA Project Extension Agreement (INFCIRC/29/Add.2, Part III, Section 3).
- 46 Section 19.3.2.3.
- 47 INFCIRC/56, Section 6.
- 48 Document IPA-C-2.
- 49 Section 19.1.2.
- 50 INFCIRC/27, para.10(a); superseded by INFCIRC/129, Article 9(b).
- 51 Section 19.3.2.4.
- 52 INFCIRC/64, Article 4(a).
- 53 *Idem*, Articles 4(b), 5(a)-(c), 8(c).
- 54 Section 19.3.1.
- 55 INFCIRC/38, Section 6.
- 56 *Idem*, Section 26.
- 57 *Idem*, Sections 7-10, 12, 16, 19, 22.

- 58 Section 19.1.3.
- 59 INFCIRC/51, Section 1. This provision no longer appears in the instrument extending that Agreement, since the new treaty (INFCIRC/114) is clearly based on the assumption that the Centre is an activity of the Agency and thus provision need only be made with its host "Concerning the Seat of the ... Centre...".
- 60 AM.I/4, para.5. These rules supersede the earlier ones on the "Scientific Organization and Operation" of the Centre (document ICTD/500/1 - 3 June 1964), which first provided in similar terms for the creation of the Council; though the appointment by UNESCO was not mentioned in the earlier rules, one such nominee was indeed included from the beginning among the seven members of the original Council - only one of whom was an Agency staff member (the Director of the Centre).
- 61 INFCIRC/132, Section 5.
- 62 AM.I/4, para.6, superseded on 1 January 1970 by INFCIRC/132, Section 6. The terms of reference under the original rules were similar, but also included the authority to designate Senior Associate Members of the Centre on the Council's own authority (ICTP/500/1, para.15).
- 63 AM.I/4, Annex, paras.4-5.
- 64 INFCIRC/75.
- 65 In fact, the Agency appointed an ex-official, a former Deputy Director General for Technical Operations.
- 66 INFCIRC/75, para.6.
- 67 Section 23.1.2.
- 68 Section 23.1.3.
- 69 Section 23.1.4. In fact, as pointed out there, the Conference should not really be considered as an organ of the Agency.
- 70 Section 23.1.5. As pointed out there, the Standing Committee is really an organ of the Vienna Conference, or of the parties to the Vienna Convention.
- 71 Sections 23.2.2. and 23.2.4.
- 72 Section 23.2.3.
- 73 Sections 23.2.8. and 23.2.10. The Conference of course was not at all an organ of the Agency.
- 74 Sections 23.2.9. and 23.2.11. Though the Agency participated in the first Standing Committee and collaborated in the establishment of both, neither can in any sense be considered as an organ of the Agency.
- 75 Section 23.3.1.
- 76 Section 23.3.2.
- 77 Section 23.3.3.
- 78 Section 23.4.3.
- 79 The Director General has from the beginning assumed the right to convene such advisory panels on his own authority, within available budgetary resources. The early budgets actually allowed greater scope for the exercise of discretion, since they only included a "temporary and preliminary", largely illustrative list (e.g., the Budget for 1960 (GC(III)/75, paras. 431-432)), while more recently lengthy specific lists are included from which the Director General can merely choose by establishing priorities (e.g., the Budget for 1969 (GC(XII)/385, para.647)).

PART C.
RELATIONSHIPS

CHAPTER 12. RELATIONSHIP WITH INTERNATIONAL ORGANIZATIONS

PRINCIPAL INSTRUMENTS:

UN Charter, Articles 57 and 63

IAEA Statute, Articles III. B. 4 and 5, V. E. 6 and 7, VI. J, XVI

Relationship Agreement with the United Nations (INFCIRC/11, Part I)

Relationship Agreements with Specialized Agencies (e. g. , UNESCO, INFCIRC/20, Part I)

Co-operation Agreements with Regional Organizations (e. g. , ENEA, INFCIRC/25, Part I)

Rules on the Consultative Status of Non-Governmental Organizations (INFCIRC/14)

General Conference Rules of Procedure (GC(VII)/INF/60), mainly 31-32, but also 2, 6, 11.12(d, e), 13, 15, 16, 19

General Conference Resolutions on the Representation of IGOs (e. g. , GC(X)/RES/204)

Board of Governors Rules of Procedure (GOV/INF/60), mainly 49-50, but also 15(d), 16, 17

Arrangements with respect to the Establishment of a Joint FAO/IAEA Division of Atomic Energy in Agriculture (in part in AM, I/3)

Agreement [with UNESCO] for the Joint Operation of the International Centre for Theoretical Physics (INFCIRC/132)

12. 1. SPECIAL STATUS IN THE UNITED NATIONS SYSTEM

The organizations associated with the United Nations in its "system" or "family" can generally be classified as UN organs (if established by one of the principal organs and not by an independent international treaty), or as specialized agencies (defined below); but, though the IAEA is now a fully accepted member of the family (see in particular Section 12. 4), it cannot be considered as falling into either of these categories and it enjoys — or rather is characterized by — a unique status. What has been aimed at and largely achieved is an organization whose relationship to the United Nations is in some ways slightly more intimate and in others more independent than that of the specialized agencies. Still, its differentiation from these organizations is at best somewhat artificial and thus it may be useful to commence by recalling their characteristics and the nature of their relations with the principal UN organs.

Article 57 of the UN Charter provides:

"1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

"2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies."

Thus the second paragraph in effect provides a definition of the term "specialized agencies", which must fulfil dual criteria:

- (a) Responsibilities of a particular scope and type;
- (b) A relationship with the United Nations established in a particular way: Charter Article 63, to which reference is made, provides that this shall be created through an agreement entered into with ECOSOC and approved by the General Assembly.

A number of provisions of the Charter specify the consequences of specialized agency status:

- (i) Recommendations to be made to these organizations by various UN organs (Articles 17(3), 58, 62(1), 63(2));
- (ii) Recommendations to be made by UN organs to the members of the United Nations with regard to these organizations (Articles 59, 63(2));
- (iii) For these organizations to provide assistance to the United Nations (Article 91);
- (vi) The receipt of reports and other information from these organizations (Articles 17(3), 64(1)).

Some of these Charter provisions are compulsory or automatic in their application, but most appear to be permissive. However, in practice the degree of freedom of the specialized agencies to conform or not to those Charter requirements is reduced by the use of two devices: by specifying in their constitutional instruments the obligation to comply with some of the "optional" Charter provisions, or by including such obligations in their relationship agreements with the United Nations¹ (which agreements form the hallmark of their status as specialized agencies); by these agreements the United Nations may itself assume as obligations certain of the permissive Charter provisions.

Chapters IX and X of the Charter foresee that the principal contacts of the specialized agencies with the United Nations are to be conducted through ECOSOC. Though (except for the requirement that the relationship agreements be entered into with that Council) these provisions are not compulsory or exclusive, and thus in principle a specialized agency could maintain extensive contacts with the other principal UN organs, by the 1950s the practice had developed and has since been maintained that these organizations should in fact have their prime UN contacts with ECOSOC and its subsidiary bodies.

12.1.1. Origin and reason

As soon as serious consideration was given to the establishment of an atomic energy agency to be charged with the distribution and control of materials potentially usable in nuclear weapons, it was recognized that such an organization would differ substantially from the specialized agencies, whose concerns, while important, fall squarely within the purview of ECOSOC. The new agency's tasks, while also significant for the field of economics, might

become pre-eminently political and as such would impinge on the special domain of the Security Council: the maintenance of peace and security, which equally constitutes a vital interest of the General Assembly. In the light of these proposed tasks a special relationship to the principal UN organs was indicated, and though views differed as to the significance of these differences and the desirability of emphasizing them, ultimately they resulted in the assignment to the new organization of a unique if somewhat ill-defined status in the UN system.

In the proposal President Eisenhower addressed to the General Assembly, he merely stated that the United States expected "that such an agency would be set up under the aegis of the United Nations",² without defining the proposed status of the organization further. In the US Sketch of the Statute,³ Part I merely repeated this Eisenhower phrase. However, Part II. A went on to say that the "agency would be created by and derive its authority under the terms of a treaty among the participating nations" — thus indicating that the Agency would not become an organ of the United Nations. Finally Part II. G stated that the Agency should submit reports to the "Security Council and the General Assembly when requested by either of these organs" — thus suggesting a departure from the pattern established for the specialized agencies, which would not, however, require a special status.

In its only detailed comment on any aspect of the Statute, the Soviet Union called attention to and subtly restated this final provision by advancing the thesis that the proposed organization "would report concerning its activity to the Security Council and the General Assembly. It goes without saying that when, in this connexion, questions arise having to do with the security of some of the other States, necessary decisions must be taken specifically by the Security Council. . . This was recognized as early as January 1946 when the first decision of the United Nations concerning atomic problems was taken."⁴ The Soviet Union thus explicitly reverted to its position on the veto which it had advanced almost a decade earlier in connection with the proposed IADA. It should, however, be noted that the American proposal also reflected the earlier debates in the explicit insistence that the Agency should be an autonomous organization — i. e., one not automatically subject to the Security Council veto.⁵

At the 9th Session of the General Assembly the Secretary-General, at the request of the First Committee, presented to it a study "of constitutional questions relating to agencies within the framework of the United Nations".⁶ The conclusions of this study were:

"From the foregoing, it is apparent that various forms of organization, degrees and types of relationship with the United Nations, and methods of establishing such a relationship, may be envisaged in the creation of any new international agency. In making a choice, certain interrelated objectives should be taken fully into account, namely, that the agency, while enjoying fullest autonomy in its operations if that is deemed essential, should have a sufficiently close relationship to the United Nations to ensure effective co-ordination of its programmes and activities with those of other bodies in the United Nations framework.

"There may be good reasons why the pattern provided by the specialized agencies will not adequately serve the desired objectives. Moreover it may appear that neither the form of a subsidiary organ, nor that of any special body so far devised, would be appropriate. It may, therefore, be found advisable, if not necessary, to chart a new course — to depart from precedent in an effort to find the form and relationship best adapted to new and unprecedented circumstances." [Footnotes omitted]

The original draft resolution "Concerning an international atomic energy agency" which the United States and six of its associates had introduced just before publication of this study, suggested that "once the Agency is established, it negotiate an appropriate form of agreement with the United Nations, similar to those of the specialized agencies".⁷ The Soviet Union strongly opposed this clause and its implication that the new organization would be subject primarily to ECOSOC and not to the Security Council. Yielding on this point after the Secretary-General's study had been published, the joint sponsors of the resolution deleted the final clause ("similar... agencies").⁸ Though a Soviet proposal that the paragraph in question be amended to read as follows:

"... the Agency should be established as an agency responsible to the General Assembly and, in the cases provided for by the Charter of the United Nations, to the Security Council"

was defeated,⁹ the issue of the Agency's future status in relation to the United Nations had practically been decided: the Agency would not become a specialized agency. This outcome was largely due to the then still unexorcised ghost of the IADA controversies.¹⁰

However, the subsequent Negotiating Group draft of the Statute still contained no definite commitment on this point. Though reports to the United Nations were provided for, there was no indication of the organ to which they would be addressed (except that safeguards non-compliance reports might be made to the Security Council and the General Assembly).¹¹ In the Working Level Meeting, the Soviet representative insisted that the Agency be "established as a component part of the United Nations more closely related to it than the specialized agencies".¹² Though the British representative referred to the Agency as one of the specialized agencies which might differ from the others in character and importance,¹³ his American colleague, who had initially referred to a "unique specialized agency", later proposed that the Agency have a special relationship to the United Nations.¹⁴ But the Meeting's draft did not settle the issue — though it emphasized that the Agency would report to the General Assembly and implicitly did not require the submission of the "regular reports" to ECOSOC foreseen by Article 61(1) of the UN Charter with respect to the specialized agencies.¹⁵

The definition of the Agency's status was actually settled largely by UNSAC during sessions coincident with but outside the Working Level Meeting. In consultation with that Committee, the UN Secretary-General prepared, at the request of the 10th General Assembly,¹⁶ a "Study on the

Question of the Relationship of the International Atomic Energy Agency to the United Nations", which did not explicitly state that the Agency would not be a specialized agency though it referred to "certain unusual features" in the proposed relationship.¹⁷ However, in paragraph 3 it assumed that the "Agreement bringing the Agency into relationship with the United Nations... will be entered into by the General Assembly on behalf of the United Nations"; since this is not the procedure foreseen in Article 63(1) of the Charter, the Agency would automatically fall outside the "specialized agencies" defined by Article 57(2). Implicitly accepting this consequence, paragraph 15 of the Study recommended that whenever the Agency desired an advisory opinion from the ICJ it would apply to the General Assembly - an awkward and indirect procedure not required for a specialized agency, since to these the General Assembly could grant a blanket power to request advisory opinions pursuant to Article 96(2) of the Charter.¹⁸

The Conference on the Statute did not take any action explicitly defining the status of the Agency, though the fact that it would not become a specialized agency was by then generally recognized.¹⁹ In particular the Main Committee of the Conference endorsed the Secretary-General's Study which was based on that assumption.²⁰

12.1.2. Method of achieving

The General Assembly at its 11th session (which immediately followed the Conference on the Statute) authorized UNSAC to negotiate with the Preparatory Commission of the Agency a draft relationship agreement based on the principles set forth in the Secretary-General's Study.²¹ Thus now the General Assembly, again without any explicit statement, initiated the final steps leading to the establishment of a special status for the Agency, since in the case of the specialized agencies these negotiations had always been conducted by ECOSOC's Committee on Negotiations with Intergovernmental Agencies.²² The Relationship Agreement itself was approved by the General Assembly at its 12th session, without any reference to ECOSOC.²³

Thus the requirement of Article 63(1) that in the case of a "specialized agency" the relationship agreement should be entered into by ECOSOC and approved by the General Assembly was not met and consequently the definition in Article 57(2) does not apply to the Agency. Though neither the Relationship Agreement nor any decision of any UN or IAEA organ stated so explicitly, a special status was thereby achieved by, or imposed on, the fledgling Agency.²⁴

12.1.3. Direct consequences

The Agency's special status had been sought mainly to achieve a limited subjection to the Security Council. In fact, all that the Statute and the UN Relationship Agreement provide are for the Agency to make reports to the Security Council in certain contingencies,²⁵ a requirement which though unusual for a specialized agency would not have been inconsistent with such status and could conveniently have been provided for in an agreement entered into with ECOSOC.

The fact of this special status, developed because of the expected "political" aspects of the work of the Agency and deriving formally from the method of negotiating and concluding the Relationship Agreement rather than from its contents, need not of itself have resulted in any substantive differences between the Agency and the specialized agencies. Practically all provisions of the Charter relating to specialized agencies (except possibly Article 96(2) - see Section 12.1.4.1) could conveniently have been included in the Relationship Agreement. However, once it had been decided that the Agency should for political reasons have a special status, some of the founders of the Agency wished to exploit this possibility in various administrative contexts - mainly in an attempt to give the Agency the additional prestige of an organization at once more closely related to but at the same time more independent of the United Nations than the specialized agencies. These contradictory strivings account for the particular contents of the Relationship Agreement, whose history and provisions are discussed in greater detail in Section 12.2.1. Here it is merely intended to show what differences between the Agency and the specialized agencies flow directly from the form and provisions of the Relationship Agreement by which this special status was at once established and in part defined.

In some ways the Agency is indeed more closely related to the United Nations than the specialized agencies are.²⁶ In particular it is required to submit reports to more of the principal UN organs, and its main, annual report is addressed directly to the centre of political power, the General Assembly. In addition the Board of Governors has the right to address the Security Council directly, while the latter may call on the Director General to provide it with information or other assistance.²⁷

In some ways the Agency's relations with the United Nations are more remote than those of a specialized agency. In particular, the General Assembly's supervisory control over the Agency's budget, which in the case of the specialized agencies is foreseen by UN Charter Article 17(3), is only preserved in a much weaker form in Article XVI.3 of the Relationship Agreement.²⁸

In still other ways the Agency's relations to the United Nations reflect some special features. Thus the co-ordination of its activities with the United Nations does not flow directly from either Articles 58 and 63(2) of the UN Charter or from any provision of the IAEA Statute, but is especially provided for in Article XI of the Relationship Agreement. In substance, however, as pointed out in Section 12.4, the Agency has now assumed positions in and in relation to the various co-ordinating organs of the UN system which do not differ substantially from those of a specialized agency.

12.1.4. Indirect consequences

Aside from the direct and thus presumably desired effects of the assignment of a special status to the Agency, there are a number of indirect and probably undesired consequences. These largely result from the fact that the term "specialized agency" has become a recognized word of art in a number of international legal instruments, including the UN Charter, other international agreements, resolutions by UN and other intergovernmental organs, and

even national legislation. To the extent that these instruments refer to "specialized agencies", the relevant provisions thus do not automatically apply to the Agency. The resulting lacunae have, in practice, been of greater importance to the Agency than the direct consequences of its special status related in Section 12. 1. 3.

A number of different solutions have been found for the problems arising out of these indirect consequences. In this Section these are only listed, while more complete descriptions of the applicable legal devices are given in the substantively relevant Chapters.

12. 1. 4. 1. Advisory opinions of the International Court of Justice

Though Article XVII. B of the Statute empowers both the General Conference and the Board to request advisory opinions from the International Court of Justice, the Conference on the Statute had been warned that if the Agency sought a special status it might be impossible for the General Assembly to give the blanket authorization to request such opinions foreseen in UN Charter Article 96(2) only for "organs of the United Nations and specialized agencies".²⁹ This doubt, which was felt particularly strongly by the UN Secretariat, was later reflected in the special formulation of Article X. 1 of the Relationship Agreement which provides that the "United Nations will take the necessary action to enable the General Conference or the Board of Governors of the Agency to seek an advisory opinion of the International Court of Justice. . .".³⁰ Even with this cautious formulation, UNSAC, at the instigation of the UN Secretariat, insisted on recording the understanding that this provision "was not intended to affect the constitutional powers of the General Assembly".³¹

The General Assembly cut through this Gordian knot by a resolution passed immediately after it approved the Relationship Agreement, by which it authorized the Agency to request advisory opinions of the Court.³² During the debate preceding the passage of this resolution at least one representative expressed the view that if the Court, which of course is the final judge of its own competence, should decline to accept a request from the Agency on the ground that the Assembly had exceeded its Charter-granted powers by giving this authority to the Agency, then the UN Charter might have to be amended to comply with the obligation that the United Nations had undertaken in the Relationship Agreement.³³ Up to now, the legality of this solution has not yet been tested.³⁴

12. 1. 4. 2. Resolutions of United Nations organs

In relation to provisions made or institutions established entirely by means of resolutions adopted in pre-IAEA days by one or more UN organs, it was relatively simple to assimilate the Agency to a specialized agency whenever such a course was desired. It was merely necessary for the competent organs to adopt amendments to their previous resolutions; in some cases, where only the internal procedures of that organ were affected, no amendment at all was necessary since a tacit interpretation in the appropriate sense sufficed.

The Regulations of the United Nations Joint Staff Pension Fund (UNJSPF) were adopted and can be amended by resolutions of the UN General Assembly. Article XXVIII of the Regulations provided for the admission to the Fund of the specialized agencies referred to in Article 57(2) of the Charter. In order to permit the IAEA to be admitted to the Fund, the General Assembly merely amended the Regulations by adding a supplementary Article stating that "For the purposes of these Regulations, the International Atomic Energy Agency shall be treated as if it were a specialized agency".³⁵

The Expanded Programme of Technical Assistance (EPTA) was established by resolutions of ECOSOC and the General Assembly, and admitted participation by the United Nations and the specialized agencies. In order to permit the Agency to participate in EPTA, ECOSOC on 23 October 1958 amended its Resolution 222(IX) of 14 and 15 August 1949 to enable the Agency to become a member of the Technical Assistance Board and to participate in EPTA "on the same conditions as the other participating organizations".³⁶

Rules 11 and 13(b) of the Rules of Procedure of the General Assembly³⁷ permit the specialized agencies to receive notice of each session of the Assembly and provide for the inclusion of certain of their reports on the provisional agenda of the session; these Rules have not been amended in order to make special reference to the Agency but they have in practice been interpreted as if the Agency were included. Though Procedural Rules 78-81 of ECOSOC have not been amended either to refer to the Agency, an explanatory footnote assimilates the latter to the specialized agencies.³⁸

Presumably the same has been done under UN Staff Regulation 4.4, which on a basis of reciprocity grants staff members of the specialized agencies the same preference as to UN staff in competing for vacant posts. Finally Article 10(a) of the UN's Regulations relating to the registration and to the filing and recording of international agreements, which also refers only to agreements by the UN or by one or more of the specialized agencies, has evidently been found flexible enough to accommodate the Agency's agreements.³⁹

Before the establishment of the Agency, UN organs had adopted a number of resolutions which routinely mentioned the specialized agencies. These resolutions were principally of two types: those in which the specialized agencies themselves were addressed and those in which it was merely desired to refer to all States that were members of any organization in the United Nations family. It would seem that after the establishment of the Agency it would be proper and sufficient to include a separate reference to the Agency in each such resolution passed subsequently. In principle this presents no problem, though in the initial years it was frequently necessary for the Agency's representative to remind the officials or delegates in the various UN organs to do so, since most resolutions are routinely patterned on those passed at previous sessions; once the habit of including the Agency was reasonably firmly established such reminders became less necessary, though even now the Agency is sometimes unintentionally omitted. However, sometimes a substantive question may arise: while it is possible to address a resolution to the "specialized agencies concerned" without deciding which those may be, if the Agency might be included then at least some decision must be made about whether it conceivably could be concerned with the subject of the reso-

lution. From time to time, therefore the Agency is mentioned in a resolution which cannot apply to it in any meaningful way, while its name is inexplicably (i. e., probably through carelessness) omitted from others.⁴⁰

One way of solving all difficulties with respect to all UN (or at least General Assembly) resolutions, past and future, would be by the passage of a general decision defining the IAEA as a specialized agency for the purpose of all such resolutions.⁴¹ While this solution commends itself through simplicity, and might even assist in alleviating some of the other complications to which this group of Sections refer, it is unlikely to be adopted soon for fear that by proposing it the old conflicts about the Agency's subjection to the Security Council would be re-opened.

12. 1. 4. 3. International agreements

In the case of international agreements, to which States are parties and which specifically refer to the "specialized agencies of the United Nations", it is more difficult to find a convenient and generally applicable method of including the Agency. Even though these agreements may have been formulated or inspired by the United Nations or a specialized agency, these organizations cannot subsequently, by any unilateral action, either formally amend the agreement or issue a binding interpretation assimilating the Agency to the specialized agencies.

Section 1(ii) of the Convention on the Privileges and Immunities of the Specialized Agencies⁴² defines the term "specialized agencies" to mean, aside from a number of organizations specifically listed, "any other agency in relationship with the United Nations in accordance with Articles 57 and 63 of the Charter"; Section 37 provides for the method by which any specialized agency can arrange to be covered by the Convention (subject of course to the consent of the States becoming parties to the Convention). Even though the Convention was originally promulgated by a General Assembly Resolution,⁴³ a number of States later became parties to it (while the United Nations itself is not a party) and thus, in the view of the UN Legal Counsel, the General Assembly could not amend it to include the Agency without securing the consent of all these States (not all of which were Members of the Agency). Consequently no convenient means could be found to include the Agency within the Convention, and thus it was obliged to formulate its own Agreement on Privileges and Immunities.⁴⁴

Protocol 2 annexed to the Universal Copyright Convention, which had been formulated under the auspices of UNESCO, extends the coverage of the Convention to works published for the first time by the United Nations or "by the specialized agencies in relation therewith".⁴⁵ In 1959 the Director General of the Agency asked the Director General of UNESCO for his views as to whether the Agency's publications were covered by the provisions of that Protocol. UNESCO referred this question to the 4th session of the Intergovernmental Copyright Committee, and communicated to it also the three courses of action which the Agency had suggested if the answer should be negative: the modification of the Protocol; the formulation of a new protocol; or the formulation of an independent agreement to be submitted only to the Members of the Agency.⁴⁶ UNESCO itself suggested that the speediest

and most efficient manner to solve these difficulties would be for the ICC to recommend to the contracting States of the Convention that they take the necessary measures, in accordance with their national legislation, to extend the protection provided for by Protocol 2 to the works first published by the Agency.⁴⁷ The Committee declined to accept any of the IAEA or the UNESCO suggestions, nor did it agree to issue an authoritative interpretation to the effect that the Agency was covered by Protocol 2; not considering the matter one of urgency, since it decided the publications of intergovernmental organizations were already adequately protected by national legislation, it merely recommended "that the possibility of adding the names of other intergovernmental organizations to those mentioned in the present Protocol to the Universal Copyright Convention be considered in connexion with the next revision of said instrument".⁴⁸

12.1.4.4. Other legislation

Even outside the United Nations, whose Charter originates, defines and uses the term "specialized agencies", the term has gained currency in legal instruments originated by other organizations and even by national governments. The solutions for including the Agency within the purview of such instruments are along the same lines as mentioned above with reference to instruments promulgated by the United Nations. Sometimes a mere informal interpretation or understanding suffices, to the effect that "specialized agencies" is not used in the strict technical sense and can therefore also apply to the Agency. In other instances formal amendments have had to be passed by intergovernmental organizations or by national legislatures. For example:

- (a) In 1965 the Plenipotentiary Conference of ITU amended the General Regulations 605, 610 and 619 annexed to the ITU Convention in order to place the Agency on the same footing as the specialized agencies regarding participation in ITU conferences and meetings.
- (b) In 1965 Canada amended its Act granting privileges and immunities to international organizations in order, *inter alia*, to include the Agency within its coverage, which previously had been restricted to the United Nations and the specialized agencies.⁴⁹

12.2. RELATIONS WITH THE UNITED NATIONS

12.2.1. Relationship Agreement

12.2.1.1. Formulation

The first definite step leading to the formulation of a relationship agreement between the United Nations and the proposed agency was taken by the General Assembly at its 10th session when it requested the Secretary-General, in consultation with UNSAC, "to study the question of the relationship of the International Atomic Energy Agency to the United Nations, and to transmit the result of their study to the Governments concerned".⁵⁰

The requested study⁵¹ was prepared during the spring of 1956, at the same time as the Working Level Meeting was convened in Washington. Though the results were first published two days after the Washington Meeting had completed its draft of the Statute, as the seven States represented on UNSAC were all included in the twelve-member Meeting, account could and was taken in that draft of the Secretary-General's conclusions, as far as this was necessary. The principal conclusions of the Study were:

- (a) The relationship agreement would, on behalf of the United Nations, be entered into by the General Assembly (rather than by ECOSOC); this automatically implied a special status for the Agency.⁵²
- (b) The United Nations would recognize the IAEA as the autonomous organization responsible, "under the aegis of the United Nations", for taking action under its Statute to accomplish the objectives set forth therein.⁵³
- (c) The IAEA should recognize the responsibility of the United Nations in the fields of international peace and security and economic and social development, and would consequently assume an obligation to keep the United Nations informed of the Agency's activities, by submitting periodic reports to the General Assembly and special reports to the Security Council, ECOSOC and to other UN organs.⁵⁴
- (d) The Agency should co-operate with the Security Council by furnishing information and assistance.⁵⁵
- (e) The Agency should co-operate in ensuring effective co-ordination of its activities with those of the United Nations and of the specialized agencies, in order to avoid overlapping and duplication of activities; this would be accomplished through participation in ACC and through close working relationships among the several Secretariats.⁵⁶
- (f) The General Assembly should take action in each case to enable a legal question arising within the scope of the activities of the Agency to be submitted, . . . to the ICJ for an advisory opinion; it was felt that this involved procedure was a necessary result of the rejection of specialized agency status.⁵⁷

The Secretary-General's Study was later re-issued as a document for the Conference on the Statute.⁵⁸ As he explained to the Conference, this was not done in order to introduce any changes in the draft Statute (which was already adequately in accord with the conclusions of the Study), but to secure endorsement of the principles contained in the Study.⁵⁹ This endorsement was indeed given by the Conference, though only informally through a decision taken by the Main Committee on the proposal of its Chairman at the conclusion of the consideration of Article XVI of the draft Statute;⁶⁰ the only question raised related to the point covered by sub-paragraph (f) above, since this appeared to be at variance with Article XVII, B of the Statute which foresaw that certain organs of the Agency might submit requests for advisory opinions directly to the ICJ rather than applying through the General Assembly in each case.⁶¹ The Conference also approved in substantially unchanged form all the Statute provisions relating to relationships with the United Nations (Articles III, B. 1, 3, 4, 5; E. 6, 7; VI, J; XII, C; XVI; XXII, B), and amended Annex I to empower the Preparatory Commission to:

"Enter into negotiations with the United Nations with a view to the preparation of a draft agreement in accordance with article XVI of this Statute, such draft agreement to be submitted to the first session of the General Conference and to the first meeting of the Board of Governors;. . .".⁶²

Soon thereafter the General Assembly at its 11th session noted this authority granted to the Commission, and in turn authorized UNSAC to negotiate with the Commission "a draft relationship agreement based on the principles set forth in the [Secretary-General's] study".⁶³

The Preparatory Commission, in one of its first decisions, requested its Executive Secretary "to draft, for consideration and approval by the Preparatory Commission. . . a relationship agreement with the United Nations".⁶⁴ Pursuant to this authority he prepared a draft jointly with the UN Secretariat, which was then presented to both the Preparatory Commission and the UNSAC.⁶⁵ Annotations to this draft showed the origin of most of the proposed provisions: the Secretary-General's Study (now called the "Agreed Principles", presumably on the basis of the Conference on the Statute's "endorsement"); the Agency's Statute; "standard specialized agency relationship agreements"; and (for one clause) the UN's relationship agreement with IBRD.⁶⁶ On four Articles⁶⁷ the two Secretariats disagreed and presented alternative drafts; these related to: the method of submitting requests to ICJ; the method of co-ordinating the Agency's functions with those of other organizations; the co-ordination of the Agency's technical assistance programme with that of the United Nations and the submission of the Agency's budget to the United Nations.

This draft and its successors were considered by the Preparatory Commission and by UNSAC. First these studies took place at separate meetings, always followed by Secretariat contacts.⁶⁸ Finally a joint meeting of the two bodies was held on 24 June 1957, at which all but one point was resolved.⁶⁹ The compromise solution on that final issue was reached by contacts between the President of the Commission and the UN Secretary-General.⁷⁰

The question naturally occurs: how can extended negotiations take place between two bodies when all the members of one (i. e. , UNSAC) are also members of the other? The answer lies in part in the asymmetry of the negotiation. On one side were ranged the 18-member Preparatory Commission, assisted by its Executive Secretary — on the other the UN Secretary-General, advised by the 7-member, scientific UNSAC of which he also was the Chairman.⁷¹ Even if the Governments had largely resolved the differences among themselves, certain disagreements persisted between the two Secretariats; though most of the Governments appeared to side more often with the Executive Secretary (who wished to emphasize the autonomy of the Agency and its predominance in the nuclear energy field), the position of the Secretary-General (who both personally and officially resented the Agency's potential intrusion into the political domain of the United Nations) proved to be stronger on certain points particularly when he could assert the backing of the specialized agencies. As to the differences among the Governments, an interesting development took place: those that had earlier fought most strongly for the Agency to have a status different from the specialized agencies and even closer than these to the United Nations, now

naturally supported most of those provisions of the draft agreement that were designed to fit the Agency smoothly into the United Nations framework — even if those provisions were such as generally pertained to the specialized agencies; on the other hand, those Governments that had originally considered specialized agency status good enough for the Agency, now wished to exploit the anticipated special status in order to reduce some of the UN's normal controls over the organizations related to it — and in this they were abetted by the Executive Secretary.⁷² The principal points at issue, both between the organizations (i. e., the Secretariats) and among the Governments, were the following:

- (i) Whether the agreement should provide that the United Nations recognizes the Agency as being "[primarily] responsible for international activities concerned with the peaceful uses of atomic energy". This proved to be the most stubborn issue and in effect was not really resolved. It was avoided by an exchange of letters between the President of the Commission and the UN Secretary-General in which the parties merely explained the basis on which the word "primarily" had finally been deleted from the text, and recorded the understanding that:

"With regard to paragraph 1 of Article I of the draft agreement, it is noted that the Agency, which is established for the specific purpose of dealing with the peaceful uses of atomic energy, will have the leading position in this field".⁷³

This exchange was later noted by both the General Conference and the General Assembly in approving the agreement⁷⁴ and was finally embalmed in the Protocol signed by the UN Secretary-General and the IAEA Director General.⁷⁵

- (ii) Whether the General Conference and the Board might submit requests for advisory opinions directly to the ICJ, as foreseen by Article XVII. B of the Statute, or whether they would need in each instance to make such a request through the UN General Assembly. The Secretary-General insisted on this circuitous route on the ground that Article 96(2) of the Charter applied only to UN organs and to specialized agencies — and the Agency admittedly was neither. This legal point was ultimately resolved by a formulation of Article X. 1 of the agreement that in effect bucked the question to the General Assembly — on the understanding that this provision "was not intended to affect the constitutional powers of the General Assembly".⁷⁶
- (iii) Whether and how the Agency should transmit its budget to the General Assembly. The United Nations originally proposed that the Agency should submit each proposed Administrative Budget to the Assembly at the same time as it transmitted it to its General Conference. The Executive Secretary resisted this on two grounds: that under Statute Article XIV. B. 1 the Agency's Budget of Administrative Expenses was considerably broader than the "administrative budgets" of the specialized agencies referred to in UN Charter Article 17(3) and was not separable from its Operational Budget, and that the Agency's budgetary

- procedure in any case required the concurrence of two political organs and would be complicated by the intervention of a third (the General Assembly). This issue was resolved by providing that the complete budget (i. e., Administrative and Operational) would be transmitted to the United Nations, but only after final approval in the Agency, and that the General Assembly might make "recommendations" (rather than only "observations") on just the "administrative aspects" thereof.⁷⁷
- (iv) Whether the Agency should undertake to submit regular reports to ECOSOC (in addition to those to the General Assembly). This was resolved by closely paraphrasing in Article III. 1(c) of the agreement the wording of Article III. B. 5 of the Statute.⁷⁸
- (v) Whether the Agency should co-ordinate its general activities through ACC, and its technical assistance programmes through the existing special machinery (then the Technical Assistance Committee and Board (TAC and TAB) of EPTA); both these points were resolved in favour of a co-operative approach.⁷⁹ In addition the question was raised whether special mention should be made of certain UN bodies with which the Agency might wish to consult; this was resolved by mentioning UNSCEAR and UNSAC in a footnote to Article XI of the agreement, a device chosen in the light of the supposedly temporary nature of these organs.⁸⁰

On the conclusion of the negotiations, the text of the draft agreement that had been adopted at the joint meeting was communicated by the Preparatory Commission to the Board of Governors and the General Conference, and by UNSAC to the General Assembly.⁸¹ The exchange of letters relating to the inclusion of the word "primarily" in Article I. 1 was concluded somewhat later and was then published as an addition to the reports of both the negotiating bodies.⁸²

The Board considered the draft agreement at its 5th meeting and decided to recommend that the General Conference approve it by means of a resolution whose preamble would refer to the exchange of letters. A suggestion that this exchange be referred to in the operative part of the resolution was withdrawn at the behest of the representative of the United Nations, who argued that if the General Assembly should not refer to these letters in the same way a question might arise about the entry into force of the agreement.⁸³ The Board's report⁸⁴ was transmitted directly to the Administrative and Legal Committee of the Conference which approved it unanimously.⁸⁵ On 23 October 1957 the General Conference unanimously added its approval.⁸⁶

After the Secretary-General had informed the General Assembly of the action that had been taken by the Agency's organs,⁸⁷ the agreement was taken up directly in the Plenary of the Assembly. A resolution to approve the agreement (with a similar preambular reference to the exchange of letters as had been used by the Agency) was introduced by the representatives of the 18 Governments that had served on the Preparatory Commission,⁸⁸ and was passed by the Assembly on 14 November 1957.⁸⁹ At the same meeting, the Assembly also approved a US-sponsored resolution⁹⁰ by which it implemented Article X. 1 of the Agreement by authorizing the Agency "to request advisory opinions of the International Court of Justice. . .",⁹¹ thus in effect disregarding the legal doubts of its Secretariat as to its powers under Charter Article 96(2).

According to Article XXIV, the Relationship Agreement⁹² automatically entered into force on receiving the Assembly's approval since the General Conference had already acted favourably. At this point certain administrative problems arose: the texts that had been submitted to the two legislative organs in two separate documents differed in minor ways; in addition there was some uncertainty about the languages in which the agreement should be considered as authentic, since on the Agency's side the text had been published and approved in the four working languages of the Board and the General Conference while in the United Nations it had been published in the five official languages of the General Assembly — though considered only in the three working ones. The IAEA Director General and the UN Secretary-General therefore concluded a "Protocol Concerning the Entry into Force of the Agreement Between the United Nations and the International Atomic Energy Agency"⁹³ which summarized the history of the negotiations and:

- (A) Established that the Agreement was equally authentic in English and French;
- (B) Established the authentic texts in those two languages (in fact exactly in the form in which they had been submitted to the General Assembly);
- (C) Recalled once more the substance of the exchange of letters between the Secretary-General and the President of the Preparatory Commission, and in particular recited the understanding recorded in them;
- (D) Recorded the date of entry into force of the Agreement.

This Protocol was signed by the Director-General on 18 June 1959 and by the Secretary-General on 10 August 1959, pursuant to the authority given to these officials by Article XXII of the Agreement to enter into arrangements for its implementation.

12.2.1.2. Provisions

In spite of the lengthy negotiations leading to the conclusion of the Relationship Agreement, its structure does not differ greatly from those concluded between the United Nations and the specialized agencies. The Agency's special status is thus primarily a consequence of the method by which the Agreement was brought into force on the part of the United Nations and does not result from its terms — whose variations from any "norm" appear no greater than is true for some of the specialized agencies themselves (e. g., IBRD, IMF) and whose special features are at least in part designed to impose with respect to the IAEA the regime automatically established for the specialized agencies by the UN Charter or which had gradually developed in the first decade of the operation of the UN system (e. g., in the field of technical assistance). The principal provisions of the Agreement are:⁹⁴

- (a) Article I contains the mutual recognition by the United Nations of the IAEA's role under its Statute, and by the latter of the UN's responsibilities in the fields of international peace and security and of economic and social development. The Agency's obligation under Statute Article III. B. 1 is also repeated here.

- (b) Article III provides for the reports that the Agency is to submit to the various organs of the United Nations. Article IV requires the UN Secretary-General to report to the United Nations on the common activities of the two organizations, and the transmission of such reports to the Agency.
- (c) Article V requires the Agency to consider resolutions relating to it adopted by a principal organ of the United Nations.
- (d) Article VI provides for the mutual exchange of information and documents, and for furnishing special studies. This is subject to Article II, which permits both organizations to apply certain limitations "for the safeguarding of confidential material furnished to them by their Members or others" and is based on a similar provision in the agreement between the United Nations and IBRD.
- (e) Article VII provides for the representation of the United Nations, through its Secretary-General, at meetings of the General Conference, of the Board of Governors and of other bodies convened by the Agency, as well as of the Agency, through its Director General, at meetings of certain principal organs of the United Nations and of subsidiary bodies. Provision is also made for the distribution by each organization to its Members of written statements presented by the other. Article VIII enables each organization to propose items to be included in the agendas of the organs of the other.
- (f) Article IX requires the Agency to co-operate with the Security Council.
- (g) Article X requires the United Nations to take the necessary action to enable the Agency to seek advisory opinions from ICJ, but its formulation reflects the doubts that had been entertained by the UN Secretariat as to the applicability to the Agency of Article 96(2) of the Charter. The Agency in turn agrees to furnish information to the Court.
- (h) Article XI, on "co-ordination", is not based on similar articles in the agreements with the specialized agencies, but rather derives from paragraph 9 of the Secretary-General's 1956 "Study". It requires the Agency to co-operate with the efforts of the United Nations to co-ordinate their activities and those of the specialized agencies, and in particular to participate in the work of ACC.⁹⁵ The Agency is also authorized to consult with appropriate UN bodies — and a footnote indicates that this refers in particular to UNSAC and UNSCEAR.
- (i) Article XII provides for co-operation between the Secretariats of the two organizations, and also expresses the hope that similar close relationships would be established between the Secretariats of the Agency and those of the specialized agencies. Article XIII provides for administrative co-operation, and for that purpose foresees special consultations. As an example of such administrative co-operation, Article XIV provides for the two organizations to reduce the burdens placed on national governments and other organizations by avoiding undesirable duplication in the collection, compilation and publication of statistics.⁹⁶ Article XVII provides for co-operation in the field of public information.
- (j) Article XV provides for co-operation in the provision of technical assistance, in particular through the use of the existing (i. e., the UN's) machinery for this purpose. The Agency is to use the common services

- as far as practicable, and the United Nations is to make available its field administrative services.
- (k) In Article XVI the Agency recognizes the desirability of establishing close budgetary and financial relationships with the United Nations, and agrees to conform, "as far as may be practicable and appropriate", to standard practices and forms recommended by the United Nations. The Agency also agrees to transmit its budget to the United Nations for recommendations by the General Assembly on its administrative aspects.
 - (l) Article XVIII provides for the two organizations to develop common personnel standards and arrangements to avoid unjustified differences in terms of employment and competition in the recruitment of personnel. For this purpose special consultations are provided for, as well as the conclusion of subsidiary agreements.
 - (m) Article XIX provides for the extension to the Agency of administrative rights and facilities enjoyed by organizations within the United Nations system. In particular it foresees the conclusion of arrangements for the use of the UN laissez-passer by staff members of the Agency.
 - (n) Article XX requires the Agency to inform the United Nations, before concluding any formal agreement with any intergovernmental organization, of the nature and scope of such agreement, and later to inform the United Nations of its conclusion.
 - (o) Article XXI provides for consultations regarding the registration of agreements with the United Nations.
 - (p) Article XXII authorizes the Secretary-General and the Director General to enter into arrangements for the implementation of the Agreement.

12.2.1.3. Subsidiary applications

The primary purpose of the Relationship Agreement between the Agency and the United Nations is to define the status of the Agency within the UN system and to establish the modalities and mechanisms for the interaction of the two organizations. As such, most of its provisions are more in the nature of a memorandum of understanding with minimal legal force since co-operation can be achieved only through mutual understanding and goodwill. However, in certain contexts provisions of the Agreement have been cited within the Agency itself, in order to sustain the propriety or the necessity for certain lines of action. The following examples may be cited:

In June 1963, when the Board was considering an instruction to the Director General to restrict the award of Type I fellowships (i. e. , those paid for from the Agency's own monetary resources secured from voluntary contributions) to candidates from those Member States receiving assistance in the form of country programmes under EPTA, some members of the Board objected that this would violate Statute Article IV. C, which proclaims "the principle of the sovereign equality of all . . . Members", and also Article III. C, which prohibits the Agency from making its assistance subject to political, economic or other conditions incompatible with the Statute. However, the proposed restriction was adopted after the Legal Adviser had pointed out that several Articles of the Statute (in particular, Article III. B. 3) required the Agency to allocate its resources "bearing in mind the special

needs of the under-developed areas of the world", and that in view of Article XV of the UN Relationship Agreement ("Technical assistance") it would be entirely appropriate for the Board to adopt the standards of EPTA in deciding which these areas were.⁹⁷

As pointed out in Section 24. 2, the pay and allowances of staff members of the Agency have always conformed to the UN "common system" - i. e. , that adopted by the General Assembly on the basis of previous inter-organization consultations. Whenever the General Assembly changes the rates or conditions of these emoluments with respect to UN staff, the Director General proposes that the Board take analogous action, with the same effective date as in the United Nations (even if this requires retroactivity). Though these changes have several times been resisted on the ground that the Agency's budget for the year in question could not absorb these increases immediately, the argument for continued conformity has always succeeded, in part by reliance on Article XVIII. 1 of the Relationship Agreement, which provides for the development of common personnel standards and the avoidance of unjustified differences in terms and conditions of employment.⁹⁸

In the early days of the Agency, before the Director General had had an opportunity to promulgate all the Staff Rules necessary to implement the Provisional Staff Regulations, he decided on an ad hoc basis to apply the maternity leave provisions of the United Nations to a staff member, who thereupon appealed to the ILO Administrative Tribunal on the ground that such application of these relatively strict rules was inequitable in her case. The Tribunal held that, in view of Article XVIII of the Relationship Agreement, it was not an unreasonable exercise of the Director General's discretion to apply the UN Staff Rules in situations where the Agency had not yet adopted its own.⁹⁹

12. 2. 2. Relations with the principal United Nations organs

12. 2. 2. 1. Subsidiary agreements on administrative facilities

In June 1958, the Secretary-General and the Director General concluded, by means of an exchange of letters, the "Administrative Arrangements Concerning the Use of the United Nations Laissez-Passer by Officials of the International Atomic Energy Agency" foreseen by Article XIX. 1 of the Relationship Agreement.¹⁰⁰

In September 1958, the Secretary-General and the Director General concluded an "Agreement for the Admission of the International Atomic Energy Agency into the United Nations Joint Staff Pension Fund", as foreseen by Article XVIII. 2(c) and 3 of the Relationship Agreement.¹⁰¹ In October 1963, a further "Special Agreement Extending the Jurisdiction of the Administrative Tribunal of the United Nations to the International Atomic Energy Agency, with Respect to Applications by Staff Members of the International Atomic Energy Agency Alleging Non-Observance of the Regulations of the United Nations Joint Staff Pension Fund" was concluded pursuant to Article XLI of the UNJSPF Regulations and to Article XVIII. 2(d) of the Relationship Agreement.¹⁰²

On an informal basis and evidently pursuant to Article XIX. 2 of the Relationship Agreement, the Agency has from the beginning enjoyed the use of the world-wide telecommunications system maintained by the United Nations.

12. 2. 2. 2. Exchange of representatives

Immediately after the entry into force of the Relationship Agreement, a "Permanent Representative of the Secretary-General of the United Nations to the International Atomic Energy Agency" was appointed who took up residence in Vienna.¹⁰³ In April 1960 the original Representative was replaced by another UN official. This unique arrangement, whereby the United Nations was directly represented at the Headquarters of another organization, was discontinued in 1962, having by that time served its explicit purpose of assisting and its unexpressed one of monitoring the Agency during its initial years; however, a UN official stationed in Geneva is still "accredited" to the Agency and regularly attends important meetings.

In February 1958 the first Representative of the Director General¹⁰⁴ at United Nations Headquarters was appointed, and this post has been maintained ever since. As a matter of fact, the office of the Agency's Representative in New York has at all times consisted of two or three professional officers plus supporting General Service Staff. This office is similar to and as large as those maintained by the principal specialized agencies at UN Headquarters.¹⁰⁵

12. 2. 2. 3. Participation in meetings

Article VII. 1 of the Relationship Agreement authorizes the UN Secretary-General, or his representative, to attend and to participate without vote on matters of common interest in sessions of the General Conference and of the Board, and entitles him to be invited, as appropriate, to attend or be represented at other Agency meetings of interest to the United Nations. This provision is implemented primarily through Procedural Rule 31 of the General Conference¹⁰⁶ and 49 of the Board of Governors;¹⁰⁷ a UN representative (in the early years usually the Secretary-General's Permanent Representative) has attended most meetings of these organs. In addition, SAC at its first meeting issued a standing invitation to the Secretary-General to attend or be represented at its meetings,¹⁰⁸ and he is routinely invited to be represented at panels and other scientific meetings convened by the Agency that are thought to be of interest to the United Nations;¹⁰⁹ that organization accepts these invitations when its interest is sufficiently engaged in the subjects to be considered.

Article VII. 2 of the Relationship Agreement entitles the Director General or his representative to attend plenary meetings of the General Assembly "for the purposes of consultation" and to attend and participate without vote in meetings of Committees of the General Assembly, of ECOSOC and of other organs and subsidiary bodies; at the invitation of the Security Council the Director General may attend its meetings. These provisions have been

implemented by the General Assembly and ECOSOC, without any change in their Rules of Procedure; in effect, Procedural Rules 11 and 13(b) of the General Assembly have implicitly and Rules 78-81 of ECOSOC have explicitly been interpreted as if the Agency were a specialized agency.¹¹⁰ The Agency regularly takes advantage of the opportunity to attend and participate in the meetings of interest to it.¹¹¹ There has been no occasion for the Director General to be invited to attend any meeting of the Security Council.

12.2.2.4. United Nations resolutions and recommendations

As the Agency is not a specialized agency, the provisions in the UN Charter relating to recommendations by that organization (e. g., Articles 58, 62(1) and 63) do not automatically apply to it. However, Statute Article XVI. B. 2 specifies that the UN Relationship Agreement is to provide for consideration by the Agency of resolutions relating to it adopted by the General Assembly or any of the UN Councils, and for the Agency to submit reports on the results of such consideration; Article V of the Agreement closely paraphrases that statutory provision. In addition, Article VIII. 1 permits the United Nations to propose items for consideration by the Agency, which are to be notified to the Director General for inclusion in the provisional agenda of the Conference, Board or other appropriate organ.

These provisions are implemented through the rules of procedure of the representative organs. Board Rule 15(b) provides for the inclusion in its provisional agenda of all items referred to the Board by the United Nations through the Director General, and Rule 17 provides that all such items shall be accompanied by an explanatory memorandum and, if possible, by basic documents or a draft resolution. With respect to the General Conference, Rule 12(d) provides for the placing on its provisional agenda of items proposed by the United Nations to the Agency and forwarded by the Board to the Conference; Rules 13, 15 and 19 permit the United Nations to request the inclusion of supplementary and additional items on the agenda - apparently without requiring transmission through the Board.

Up to now the United Nations has not made use of its right to have items placed directly on the agenda of the Agency's organs. However, a number of resolutions addressed to or relating to the Agency have been passed by the General Assembly, by ECOSOC and occasionally by regional commissions. These the Director General routinely communicates to, or otherwise brings to the attention of the Board of Governors, which in turn may transmit them to the Conference for information or action as appropriate.¹¹²

12.2.2.5. Agency proposals to the United Nations

Article VIII. 2 of the Relationship Agreement authorizes the Agency to propose items for consideration by the United Nations; these are to be notified to the Secretary-General, who is to bring them to the attention of the principal UN organ concerned, as appropriate. The asymmetry in this provision as compared to the UN's authority under Article VIII. 1 was remarked on at the time the Agreement was being negotiated, but the Secretary-General successfully insisted that he must retain his political discretion in deciding whether to place items on the agenda of any of the representative organs.¹¹³

Up to now the Agency has never requested the inclusion of an item on the agenda of any principal UN organ. The Board and the General Conference have, however, from time to time, instructed the Director General to communicate certain of their decisions or resolutions to the United Nations for information.¹¹⁴

12.2.2.6. Distribution of Agency documents

Article VI.1 of the Relationship Agreement provides for the fullest and promptest exchange of information and documents between the organizations. Procedural Rules 2 and 6 of the General Conference require the United Nations to be notified of the date and place of regular and special sessions of the Conference and Rules 11 and 16 provide for the communication of the provisional agendas. Even though almost all Board documents are marked for "Restricted" distribution and in general are made available only to Member States for their official use,¹¹⁵ Procedural Rule 16 of the Board provides for the transmission to the United Nations of the provisional agenda and all supporting documents.

12.2.2.7. Reports by the Agency

12.2.2.7.1. To the General Assembly

Article III. B. 4 of the Statute provides for the Agency to "Submit reports on its activities annually to the General Assembly of the United Nations. . ."; Article XVI. B. 1 specifies that the UN Relationship Agreement is to include this obligation; Article VI. J requires that these reports be prepared by the Board of Governors and Article V. E. 6 provides for their approval by the General Conference. Pursuant to these statutory provisions, Article III. 1(a) of the Relationship Agreement provides that the Agency shall "Submit reports covering its activities to the General Assembly at each regular session".¹¹⁶

As described in Section 32.1.4, the practice has developed for the Agency's report to the General Assembly to consist of the Board's Annual Report to the General Conference (covering a period from 1 July to 30 June), together with a supplement covering major developments occurring after the date of that report (i. e., from 1 July of the year of the report through the General Conference and the convening of the first session of the new Board).¹¹⁷

The Agency's report has always been included as item 14 of the agenda of each regular session of the General Assembly, and is considered in plenary meeting without prior reference to a committee. The report is introduced by an oral statement of the Director General.¹¹⁸ After the debate, which recently has lengthened as the Agency's safeguards have attracted greater interest, a usually routine resolution¹¹⁹ is adopted by the Assembly noting the Agency's report.¹²⁰

12.2.2.7.2. To ECOSOC

Article III. B. 5 of the Statute requires the Agency to "Submit reports to the Economic and Social Council and other organs of the United Nations on matters within the competence of these organs"; Article XVI. B. 1 requires the in-

clusion of this obligation in the UN Relationship Agreement; the possible applicability of the requirement of General Conference approval to these reports (pursuant to Articles VI, J and V. E. 6) is discussed in Section 32.1.5. The Relationship Agreement in Articles III. 1(c) closely paraphrases Statute Article III. B. 5.

In July 1958 ECOSOC passed a resolution which, *inter alia*,

"Expresse [d] the hope that, in order to assist the Council in the discharge of its functions in the field of co-ordination, the International Atomic Energy Agency, in accordance with paragraph 1(c) of article III of the Agreement governing the relationship between the United Nations and the Agency will find it appropriate to submit annually for the use of the Council, at its second session each year, a report on matters within the competence of the Council".¹²¹

This resolution was referred by the Board to the General Conference,¹²² which in spite of some misgivings relating to the Agency's special status and right to submit its report to the General Assembly decided "that a report shall be submitted to the Economic and Social Council each year at its second session on matters within the Council's competence".¹²³ As recounted in Section 32.1.5, the Conference has also annually delegated to the Board the preparation and submission of this report during the spring, without Conference consideration of its text.¹²⁴

12.2.2.7.3. Security Council

Article III. B. 4 of the Statute provides for the Agency to submit reports on its activities, when appropriate, to the Security Council, and to notify the Council should questions within the competence of the Council arise in connection with the Agency's activities. Article XII. C further obliges the Board to report any non-compliance by a State with its safeguards obligations to the Security Council and the General Assembly. While Article V. E. 6 requires the approval of the General Conference for most reports required to be submitted to the United Nations, it specifically exempts any reports made pursuant to Article XII. C from this requirement. Article XVI. B. 1 specifies the inclusion in the UN Relationship Agreement of the reporting obligation in Article III. B. 4, but does not refer to Article XII. C.

Article III. 1(b) of the Relationship Agreement paraphrases the obligation contained in Statute Article III. B. 4. Article III. 2 of the Agreement obliges the Agency to make the reports specified by Statute Article XII. C.

The Agency has as yet had no occasion to make any report to the Security Council under Statute Article III. B. 4, or under Article XII. C to the Council and the General Assembly.¹²⁵

12.2.2.7.4. List of registered agreements

Part VI of the Board's Regulations for the Registration of Agreements requires the Director General to supply periodically to the UN Secretary-

General a statement of the agreements registered by the Agency under Article XXII, B of the Statute. The practice with respect to this requirement is described in Sections 26.6.1.2.4 and 32.2.3.

12.2.2.7.5. Special reports

In addition to the reports that, though not necessarily due or made at regular intervals, are part of the regular framework of the Agency's activities, the United Nations is requesting an ever-increasing number of special reports, primarily for co-ordination purposes. Thus during 1967 the Agency prepared over two dozen such reports, which were received by various UN organs either as separate documents or incorporated into comprehensive studies on the activities of all the organizations in the UN system.¹²⁶

Consequent on the 1968 Conference of Non-Nuclear-Weapon States and the UN General Assembly's request for a report on the actions taken on the CNNWS Resolutions,¹²⁷ the Agency in July 1969 submitted to the UN Secretary-General a detailed paper.¹²⁸ The Agency also co-operated with the Group of Experts appointed by the latter to prepare a full report on the possible contributions of nuclear energy to the economic and scientific advancement of the developing countries.¹²⁹

12.2.3. Relationship with subsidiary United Nations organs

12.2.3.1. United Nations Scientific Advisory Committee (UNSAC)

At the Conference on the Statute the UN Secretary-General had suggested that the Agency might from time to time wish to consult his Advisory Committee on the Peaceful Uses of Atomic Energy (which later became the UN's Scientific Advisory Committee-UNSAC).¹³⁰ A footnote to Article XI of the UN Relationship Agreement consequently lists that Committee as one of the bodies established by the United Nations that the Agency might consult when requiring expert advice.

The Agency has never made use of this facility since the Board established the Agency's Scientific Advisory Committee (SAC), which until 1966 had the same membership as UNSAC.¹³¹

12.2.3.2. United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR)

The United Nations Scientific Committee on the Effects of Atomic Radiation is the other body to which reference is made in the footnote to Article XI of the UN Relationship Agreement.

In a number of resolutions the General Assembly has called for co-operation between the Agency and UNSCEAR, or has assigned certain tasks to the latter organization to be performed in consultation with the Agency or to WMO to be performed in consultation with the Agency and UNSCEAR.¹³² In some resolutions it has commended the close co-operation of the IAEA and other organizations with UNSCEAR, or the assistance provided by them to that body.¹³³

Consequent on General Assembly Resolution 1376 (XIV) the Board authorized the Director General to give, at the request of a Member State or an international organization in relation with the Agency, certain limited assistance in the measurement and analysis of samples to determine the degree of environmental contamination by radioactivity.¹³⁴ In addition to co-operation carried out pursuant to that decision, the Agency makes available to UNSCEAR the results of those of its research contracts that are of interest to the Committee. The aim has been to have the Agency function as one of the technical organs of UNSCEAR, which has no scientific facilities of its own. The extent of collaboration has recently increased, as the Joint FAO/IAEA Division has assumed tasks formerly performed by FAO.

Co-operation with UNSCEAR, had, however, initially caused considerable conflict in the Agency, due to the fact that UNSCEAR was established primarily to study the extent and effects of fall-out caused by the testing of nuclear weapons. Therefore some Members of the Agency have felt that the Committee's work was not primarily related to the peaceful uses of atomic energy and consequently should be of no concern to the Agency; against this it was argued that radiation from all sources (natural, peaceful, military) is similar and cumulative in its effects, and that therefore no intelligent decision about permissible radiation levels for peaceful activities can be made without taking account of the military burden. It is this controversy which undoubtedly limited the original co-operation between the Agency and UNSCEAR, and which prevented the possible incorporation of that body into the Agency as had been suggested at the Conference on the Statute.¹³⁵

12.2.3.3. Regional Economic Commissions

The Agency is also cultivating contacts with the UN's regional Economic Commissions (for example, the Economic Commission for Europe - ECE), which are conducted in part directly, but primarily (reflecting UN Headquarters preference) through the Department of Economic and Social Affairs.

12.2.3.4. Financial organs

Aside from participating in certain advisory and co-ordinating organs, as detailed in Sections 12.4 and 24.2.2 with regard to personnel administration, the Agency has also established co-operative relationships with several of the purely financial organs of the United Nations. Prime among these is the General Assembly's Advisory Committee on Administrative and Budgetary Questions (ACABQ) to which the Agency supplies information on its operations and receives advice on fiscal problems common to organizations in the UN system; others are the Assembly's Committee on Contributions, the UN's Joint Panel of Auditors, the new Inspection Unit and the Ad hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies. These relationships are described in Chapter 25.

12.2.4. Participation in United Nations activities

12.2.4.1. The "Geneva" International Conferences on the Peaceful Uses of Atomic Energy

The Agency's relations with each of the three United Nations Conferences on the Peaceful Uses of Atomic Energy, held in Geneva in 1955, 1958 and 1964, mark separate stages in its development, and each has particular significance.

(a) First Conference - 1955

The first "Geneva" Conference was convened by the United Nations pursuant to Part B of the same resolution¹³⁶ whose other Part represented the General Assembly's first response to President Eisenhower's proposal to establish the Agency. The Conference, which in a sense is thus a "twin" of the Agency, was designed to stimulate the interest of Governments in atomic energy, whose secrecy-shrouded world had up to then given scant opportunity for any of the minor powers to develop their own programmes; in this the Conference was immensely successful and the enthusiasm it created contributed greatly to the speedy formulation of the Statute and the establishment of the Agency. One unanticipated, secondary effect was that the Conference also stimulated the specialized agencies to develop atomic energy programmes of their own, whose later co-ordination with that of the Agency formed one of the principal problems of its early years.¹³⁷ Another was to preempt the expected information distribution functions of the Agency, which would have been of greater importance and delicacy if nuclear information had continued to be closely held.

(b) Second Conference - 1958

While the results of the First Conference were largely positive for the Agency, the same cannot be said of the Second. That Conference was convened only three years after the First, in response to the great demand engendered by its success and to maintain the momentum that had been created. However, from the point of view of the Agency, that Second Conference was convened too soon since in the spring and summer of 1958 the Agency did not yet have a Secretariat capable of plausibly asserting, against the strong opposition of the UN Secretary-General, its ability to assist the Conference significantly. Indeed, the Agency could only participate by seconding a few staff members for several weeks and through the attendance of over a score of its senior officials; later it contributed to the evaluation of the scientific results.¹³⁸ Thus the Conference served to emphasize that even with the establishment of the Agency, the latter did not have a monopoly of atomic energy activities in the UN family and that indeed major projects could be carried out with only nominal assistance from the Agency.¹³⁹

Even more unfortunately for the Agency, the technical conclusions of the Second Conference served to dampen the expectations as to the imminence of cheap nuclear power that had been aroused by the First. The initial excess of optimism was perhaps over-corrected by the Second Conference, at which it also became clear that world supplies of nuclear materials were more ample

than had originally been thought and consequently the Agency's role as a supplier, broker and policeman of such materials would probably not become significant. Thus, at the crucial start of the Agency's life, both the field to which it was to devote its efforts and its role in that field were drastically reduced - a factor which contributed to the premature leveling off of the Agency's budgets and to a deterioration of the originally high morale of its staff.

(c) Third Conference - 1964

The Third Conference served, in several respects, to even out the unbalanced swings caused by the first two. It was convened by the UN Secretary-General pursuant to a General Assembly Resolution which requested him to do so "in co-operation with the International Atomic Energy Agency and in consultation with interested specialized agencies".¹⁴⁰ The Agency's contribution to this Conference was indeed significant, since the Secretary-General delegated to the Agency full responsibility for the scientific aspects of the Conference. The scientific secretariat was composed primarily of Agency staff members and did most of its preparatory work in Vienna under the direction of one of the Deputy Directors General. After the Conference the Agency provided a team of editors and record officers to assist the United Nations in publishing the proceedings.¹⁴¹

The results of this Conference also tended to restore atomic energy as a reasonable subject to interest the less-developed countries. It concentrated largely on nuclear power and closely related topics, and assessments were publicized according to which several types of large nuclear power plants were becoming economically competitive with conventional sources of power.¹⁴²

(d) Fourth Conference - 1971

In 1967 the General Assembly tentatively decided, without any encouragement from the Agency, to convene a Fourth Conference in 1970 or 1971 under the aegis of the United Nations and with "the fullest possible participation" of the Agency.¹⁴³ It is foreseen that the Agency will play the same role at this Conference as at the Third.¹⁴⁴

12.2.4.2. Conference on the Application of Science and Technology (UNCSAT)

The Agency provided part of the scientific secretariat and other assistance to the United Nations Conference on the Application of Science and Technology for the Benefit of the Less Developed Areas held in Geneva in February 1963. The Secretariat also presented several papers to the Conference.¹⁴⁵

The Agency was subsequently represented at meetings of the Advisory Committee on the Application of Science and Technology to Development which was established by ECOSOC following the UNCSAT meeting.¹⁴⁶ In compliance with requests of the Committee and pursuant to the Agency's "Long-Term Programme",¹⁴⁷ the latter has submitted proposals as well as periodic reports on several research and development topics selected as being of particular importance to the developing countries.¹⁴⁸

12.2.4.3. International Co-operation Year

Responding to General Assembly Resolution 1907 (XVIII), the General Conference requested the Director General to submit proposals to the Board for the participation of the Agency in the International Co-operation Year and to provide information and support for the Committee established by the Assembly to carry out this project.¹⁴⁹

The Director General accordingly prepared proposals and upon approval by the Board the Agency publicized both its activities and those of the United Nations within the framework of plans prepared by that organization.¹⁵⁰

12.3. RELATIONS WITH THE SPECIALIZED AGENCIES

One side effect of the Eisenhower proposal and of the First Geneva Conference was to stimulate the work of the specialized agencies relating to the peaceful utilization of nuclear energy, and many of them quickly initiated projects in this field. By the end of 1955 these programmes had proliferated to such an extent that it seemed expedient for ACC to establish a Sub-Committee on the Peaceful Uses of Atomic Energy. As the formulation of the IAEA Statute progressed, the specialized agencies attempted to stake out and consolidate claims to the types of activities that each had established or was planning to start in this field; even after the Statute was signed and its implementation commenced they continued to develop plans and programmes in this area.

In turn, the specialized agencies feared that the new Agency might encroach on their domains through a broad interpretation of the functions set forth in Article III. A of its Statute - particularly if atomic energy would rapidly become a dominant economic or scientific factor. Moreover they were concerned lest the Agency assume the function of co-ordinating those of their activities that impinged on the nuclear area, rather than merely participating on a basis of parity in the existing co-ordination machinery.

The original relations between the Agency and the specialized agencies are explicable in terms of the above factors.¹⁵¹ Though the initial fears relating to an over-powerful Agency incidentally absorbing or superseding the legitimate activities of other organizations turned out to be entirely groundless, in the event a source of friction arose from almost the opposite quarter; the imminently heralded advent of cheap nuclear power having been delayed, an under-occupied IAEA cast about for means to demonstrate its importance to its Members; since this could most readily be done through the agricultural and medical uses of radioisotopes, FAO and WHO soon felt that the Agency was encroaching on their preserves - particularly since the latter did not restrict itself to the development and testing of new techniques for using radiation but also became engaged in routine applications.

12.3.1. The specialized agencies at the Conference on the Statute

The Working Level Meeting decided to invite the ten existing specialized agencies to the Conference on the Statute,¹⁵² and seven actually sent representatives.¹⁵³

The executive heads of the specialized agencies "concerned with some aspects of the peaceful uses of atomic energy" submitted a Memorandum to the Conference on the "Relations Between the Proposed Atomic Energy Agency and the Specialized Agencies of the United Nations".¹⁵⁴ In this they reported on the consultations that had taken place in the new Sub-Committee of ACC and, after welcoming the proposed establishment of the Agency, called special attention to the following passage of the UN Secretary-General's Study on the relationship of the Agency to the United Nations:

"9. The Agency should undertake to co-operate, in accordance with its Statute, in whatever measures may be recommended by the United Nations in order to ensure effective co-ordination of its activities with those of the United Nations and of the specialized agencies. Co-ordination should aim at avoiding overlapping and duplication of activities. The Agency furthermore should participate in such bodies as the Administrative Committee on Co-ordination and should maintain close working relationships with the secretariats of the United Nations and of the specialized agencies."¹⁵⁵

They also reported on one of the suggestions that they had explored:

"... that consideration should be given to the extent to which effective international action in respect of certain matters can best be secured (a) primarily within the framework of the proposed agency or (b) by dealing with them as wider questions on which the peaceful use of atomic energy is one of several elements which must be taken into account in a broader framework providing for co-operation among the agencies concerned."¹⁵⁶

As a result of the initiative of the agencies, nine States jointly proposed an amendment to Article III of the Statute,¹⁵⁷ which after some changes was adopted by the Conference and modified the text proposed by the Working Level Meeting by the addition of the under-scored words in the following text:

"A. The Agency is authorized:

...

"6. To establish or adopt, in consultation and, where appropriate, in collaboration with the competent organs of the United Nations and with the specialized agencies concerned, standards of safety for protection of health and minimization of danger to life and property (including such standards for labour conditions), ..."

Not content with these proposed changes the representatives of four of the specialized agencies intervened early during the debate on Article III. A and proposed that the requirement of consultation with the specialized agencies, which the amendment proposed to introduce only in respect of Article III. A. 6 (the establishment of health and safety standards), should also be extended to the other functions described in Article III. A and in particular to those set forth in paragraphs 1, 3 and 4 of that Article.¹⁵⁸ These proposals were referred to the Co-ordination Committee,¹⁵⁹ which in a promptly forgotten

recommendation proposed that these matters be dealt with in the relationship agreements to be concluded between the Agency and the specialized agencies concerned, and that no addition to the text of the Statute was required.¹⁶⁰

12.3.2. Relationship Agreements

12.3.2.1. Guidelines prepared by the Preparatory Commission

Paragraph C.7(b) of Annex I to the Statute required the Preparatory Commission to:

"make recommendations to the first session of the General Conference and to the first meeting of the Board of Governors concerning the relationship of the Agency to other international organizations as contemplated in article XVI of this Statute."

The international organizations mentioned in that provision of course include the specialized agencies of the United Nations.

12.3.2.1.1. Guiding Principles for Correspondence with Specialized Agencies

After the Preparatory Commission started its work, it was disquieted to observe that several of the specialized agencies were continuing to develop their nuclear activities without taking account of (or rather possibly in anticipation of) the programmes that would soon be developed by the Agency itself under its Statute.¹⁶¹ At the same time the specialized agencies indicated considerable interest in starting discussions with the Commission on the proposed relationship agreements and on the mechanisms by which the Agency's programmes would be co-ordinated with those of the older organizations.¹⁶²

The Commission did not consider it within its terms of reference to engage in negotiations with the specialized agencies since its statutory terms of reference were merely to make recommendations on this subject to the General Conference and the Board. At the same time it wished to inhibit the development by the specialized agencies of programmes through which they might later seek to establish prior claims to fields of work in which the Agency might either become active itself or at least might wish to assert a co-ordinating role.¹⁶³ It therefore approved a set of "Guiding Principles for Correspondence with Specialized Agencies on the Question of Co-ordination of Activities"¹⁶⁴ which were to assist its Executive Secretary in his contacts with the representatives of the specialized agencies. The purport of these principles was that the agencies should be informed that the Commission was not authorized to act in this field on behalf of the future IAEA, and thus it merely wished to reserve the Agency's position with respect to the nuclear activities being developed in other organizations by asserting that none of these should be relied on as precedents after the Agency had been established.

12.3.2.1.2. Guiding Principles for Relationship Agreements

Pursuant to the above-quoted statutory mandate, the Preparatory Commission formulated a set of recommendations "Concerning the Guiding Principles for Relationship Agreements Between the Agency and the Specialized Agencies", which it presented to both the Board and the General Conference.¹⁶⁶ The key provisions were contained in the following passage:

"CO-ORDINATION OF ACTIVITIES

"2. The specialized agency should recognize that the IAEA will, by virtue of its Statute, be the body primarily responsible for international activities concerned with the peaceful uses of atomic energy in the fields covered by Article III of its Statute.

"3. The IAEA should recognize that certain activities involving the peaceful uses of atomic energy are within the particular competence of the specialized agency concerned and should recognize the right of the specialized agency to continue to take action in fields within its particular competence in which the application of atomic energy plays an incidental and subsidiary role. The specialized agency should undertake the obligation of keeping the IAEA generally informed of such activities.

"4. The specialized agency should recognize the IAEA's duty under its Statute to take action in all fields in which the peaceful uses of atomic energy play a primary and fundamental role. The IAEA should undertake the obligation to keep the specialized agency generally informed in matters of interest to it.

"5. Subject to the relationship agreement between the IAEA and the United Nations, the IAEA should be recognized as having a leading position within the existing machinery of the United Nations to assure proper co-ordination, including the advance planning, of all activities concerned with the peaceful uses of atomic energy in which both the IAEA and the specialized agency concerned have a substantial joint interest.

"6. In all cases where the party proposing to initiate action is in doubt as to whether or not the other party has a substantial interest in such action, the first party should consult the other party before initiating such action."

The remaining paragraphs, 7-16, dealt merely with the mechanism of co-operation between the organizations.

Once approved by the Preparatory Commission, these Guiding Principles were informally communicated to the specialized agencies. These organizations immediately objected that no negotiations with them had preceded their formulation and that paragraphs 2-5 were designed to place them in a position of inferiority vis-à-vis the Agency. On the instructions of the Commission, the Executive Secretary explained to the agencies that: these Principles were not meant to replace the agreements that would be negotiated with them but were merely to advise the competent organs of the Agency on the conduct of such negotiations; furthermore, neither the Executive Secretary nor the Commission itself was competent to negotiate about the Principles before they had been considered by the Agency's political organs.¹⁶⁷

At its 6th meeting the first Board, after hearing a cautiously neutral statement from a representative speaking for four specialized agencies,¹⁶⁸ adopted a resolution recommending to the General Conference that it note the Principles formulated by the Preparatory Commission and that it authorize the Board to enter into negotiations with the specialized agencies on this basis.¹⁶⁹ The resolution proposed by the Board was approved unanimously and without debate by the Administrative and Legal Committee¹⁷⁰ and then adopted by the General Conference.¹⁷¹

12.3.2.2. Negotiation

Article XVI. A of the Statute authorizes the Board to enter into agreements establishing appropriate relationships between the Agency and other organizations whose work is related to that of the Agency; Article V. E. 7 requires that such agreement be approved by the General Conference. Article XX of the UN Relationship Agreement requires the Agency to inform the United Nations before concluding any formal agreement with, inter alia, any specialized agency - and the relationship agreements between the United Nations and the specialized agencies contain similar requirements. In its resolution relating to the Guiding Principles drawn up by the Preparatory Commission, the General Conference purported to "authorize" the Board to negotiate relationship agreements with the specialized agencies - though under the Statute the Board clearly does not have to be so empowered.¹⁷² Later, when these negotiations were already well under way, ECOSOC passed a resolution in which it noted these negotiations and expressed the hope that agreements would be concluded in the near future.¹⁷³

Pursuant to these several requirements, principles and recommendations, the following steps are taken to negotiate an agreement with a specialized agency:

- (a) Either on the basis of an initiative originating in the Agency or in response to one taken by one of the specialized agencies and communicated to the Board by the Director General,¹⁷⁴ the Board authorizes the Director General to initiate consultations with the agency with a view to formulating the text of the relationship agreement.
- (b) On 17 December 1957 the Board established its first Committee, consisting of its Chairman and of five further members, to Advise the Director General on Negotiations with the Specialized Agencies.¹⁷⁵ At the same time it decided that the Committee should not itself participate in these consultations. That body held a total of 10 meetings between January and September 1958 and was not re-constituted at the end of the work of the first Board. During this time it assisted in the negotiation of the agreements with ILO, FAO, UNESCO, WHO and WMO; the agreements concluded later were negotiated without its advice.
- (c) As long as the Board's Committee was in existence the Director General reported to it on the conduct of the negotiations and obtained instructions from it - while the Committee itself reported to the parent organ. Later the Director General obtained his instructions from and made his reports

directly to the Board. On the basis of these reports the Board decides whether to approve each agreement.

- (d) After the Board has approved an agreement for transmission to the General Conference it is simultaneously communicated to the United Nations pursuant to the first requirement stated in Article XX of the UN Relationship Agreement¹⁷⁶ – which indeed also appears in Article XI.1 of each of the IAEA/specialized agency agreements¹⁷⁷ (though obviously at this stage still without force). This appears to be the most appropriate time for doing so, since by the fact of the Board's approval the text has become established – while to wait until after the General Conference has acted would be to vitiate the requirement since upon positive action by the General Conference and the corresponding organ of the other organization the agreement automatically enters into force and comments thereon can no longer usefully be taken into account. At no time has the United Nations intervened with the Agency after the text of a Board-approved agreement has been communicated to it.¹⁷⁸
- (e) Once the text of a relationship agreement is forwarded to the General Conference with the Board's recommendation,¹⁷⁹ it is first considered by the Administrative and Legal Committee of the Conference.¹⁸⁰ After that Committee has reported favourably the agreement is approved in Plenary.¹⁸¹
- (f) As was true of the UN Relationship Agreement, each agreement so far negotiated with a specialized agency provided for automatic entry into force on approval by the General Conference and by an appropriate organ of the other organization.¹⁸² If, due to the bi-annual meetings of some of these organs too long a delay would occur, provisional application may be informally agreed upon, after the text has at least secured the approval of the appropriate executive organ of the other organization.¹⁸³
- (g) Because the final stage of the negotiation of a relationship agreement is almost always under considerable time pressure (relating to the date of the next scheduled meeting of one of the competent representative organs and discrepancies may therefore appear in the texts submitted in separate documents and in several languages to these bodies, the General Conference has, usually upon the recommendation of the Board,¹⁸⁴ authorized the Director General to make, in concert with the executive head of the other organization, "any purely formal modifications that might seem necessary to the texts" of these agreements.¹⁸⁵ This authority has actually been used with respect to almost every one of these agreements, even in those instances when modifications have had to be made after the agreement had already entered into force upon action by the legislative organs of both organizations, and even if the executive head of the other organization had not explicitly received similar authority.
- (h) Once agreement has been reached on which the authentic languages of the agreement should be (usually English and French, but with ICAO also Spanish)¹⁸⁶ and on an authentic text in each of these languages, a protocol is signed by the two executive heads and the authentic texts are attached thereto.¹⁸⁷ The authority to conclude these protocols is derived from the provision of each of the agreements authorizing the executive heads to enter into arrangements for the implementation of the agreement.¹⁸⁸ The protocols are designed to:

- (i) Settle which the authentic languages of the agreement are;
 - (ii) Settle the authentic texts in each of these languages;
 - (iii) Record the method and date of entry into force.
- (i) After a relationship agreement has entered into force and the related protocol has been signed, both these instruments are communicated to the United Nations in compliance with the second part of the requirement stated in Article XX of the UN Relationship Agreement. This is done by "filing and recording" the agreement, as provided for explicitly in Article XI.2 of each such agreement.¹⁸⁹

12.3.2.3. List

The negotiations with the specialized agencies whose work was most closely related to that of the Agency started in January 1958. After considerable delays, caused in part by substantive differences,¹⁹⁰ five of the agreements (with FAO, ILO, UNESCO, WHO and WMO) were completed in time for submission to and approval by the Second General Conference.¹⁹¹ The ECOSOC resolution passed in July 1958, which noted that these negotiations were taking place and expressed the hope that agreements would be concluded in the near future, probably contributed the pressure necessary to finalize the texts.¹⁹² The agreement with ICAO was concluded and approved by the General Conference a year later.¹⁹³ Since the 1948 Convention establishing IMCO came into force only after the IAEA Statute, an agreement with that organization could not be concluded until two years later.¹⁹⁴ IBRD is the only other agency with which, due to a substantial community of interest,¹⁹⁵ the Agency desires to conclude an agreement; however, up to now the Bank has not considered it appropriate to formalize the existing contacts in that manner.

Thus the following relationship agreements have entered into force:

TABLE 12A. IAEA/SPECIALIZED AGENCY RELATIONSHIP AGREEMENTS

Specialized Agency	Date of Entry into force		Text	
	Provisional	Final	INFCIRC/20	UNTS Volume
FAO	3 Nov. 1958	18 Nov. 1959	Part VI	361
ICAO		1 Oct. 1959	Part V	361
ILO		21 Nov. 1958	Part II	328
IMCO		5 Oct. 1961	Add. 1	425
UNESCO		1 Oct. 1958	Part I	339
WHO		28 May 1959	Part III	339
WMO	1958	12 Aug. 1959	Part IV	341

12.3.2.4. Provisions

In the negotiation of the relationship agreements with the specialized agencies the Agency had to accept two major changes in its original concept:¹⁹⁶

- (a) The approach to the "co-ordination of activities", as set forth in paragraphs 2-5 of the Guiding Principles,¹⁹⁷ proved to be unacceptable to the specialized agencies — as they had signalled to the Preparatory Commission even before these had been endorsed by the Board and the General Conference. In particular, the agencies felt that agreements drafted in conformity with these Principles would place them in a position of inferiority vis-à-vis the Agency. Though reluctantly, the Board, yielding to the solid front of the agencies and acting on the recommendation of the Committee it established to advise the Director General, decided to retreat from these objectionable statements and to accept formulations which placed the Agency in a position of bilateral parity with each of the organizations.
- (b) It had originally been intended to specify precisely in each agreement the delimitation of functions between the Agency and the specialized agency concerned. But, even though extensive studies were made of the nuclear energy programmes of each specialized agency, it proved to be impractical to include in any of these agreements an exact definition of the respective functions of the two organizations, not in the least because the Agency's own programme was at that time still only most tentative. As a result, these provisions in Article I of each of the agreements are formulated in a very general way and in effect establish only a framework for later ad hoc decisions in relation to particular functions.

As a result of the abandonment of the attempt to define exactly the competence of each organization, the seven relationship agreements so far concluded are quite uniform in structure and language. This follows from the fact that there had been little disagreement about the administrative procedures for co-operation set forth in paragraphs 6-16 of the Guiding Principles. Some divergencies appear among the provisions relating to co-operation and consultation, reflecting the differences among the constitutional instruments of the several agencies; similarly, divergencies in the provisions for reciprocal representation reflect the differences in the structure of the various organs in which such representation is to be secured. Finally, some of the agreements provide for denunciation while in others no provision is made for that contingency.¹⁹⁸

Each of the agreements has the following structure:

- (i) Article I, on "Co-operation and Consultation", recites the general objectives of the two organizations as set forth in their constitutional instruments and in their respective relationship agreements with the United Nations. The mutual interest in co-operation and co-ordination is asserted and it is provided that in all cases where either organization proposes to initiate a programme or activity on a subject in which the other may have a substantial interest, the initiating party shall consult the other before completing its plans.
- (ii) Article II, on "Reciprocal Representation", provides for representatives of the other organization to be invited to attend and to participate without a vote in the deliberations of the General Conference, the Board and their committees, on items in which that organization has an interest. Similarly the Agency may participate in the corresponding organs of the

other organization. Appropriate arrangements are to be made for the reciprocal representation of the organizations at other meetings convened under their respective auspices. Article IV enables each party to propose to the other, after appropriate preliminary consultations, items for inclusion in the agendas of the latter's organs.

- (iii) Article III, on the "Exchange of Information and Documents", provides for the parties to inform each other fully concerning all projected activities and programmes which may be of interest to the other, and to arrange for consultations regarding the provision of special information. Similarly to the Agency's Agreement with the United Nations, these exchanges are subject to limitations for the safeguarding of confidential information. Article VII provides, similarly to Article XIV of the UN Relationship Agreement, for maximum co-operation to avoid duplication in the collection, compilation and publication of statistics.
- (iv) Article V provides for a close working relationship between the Secretariats and, in some agreements, for the convening of joint committees. Article VI provides in particular for administrative and technical co-operation to avoid establishing competitive or overlapping facilities and services. Article VIII provides for co-operation in regard to personnel matters, to be taken within the framework of any general UN arrangements.
- (v) Article IX, on the "Financing of Special Services", provides for the organizations to consult if compliance with requests made by one of them would involve the other in substantial expenditures.
- (vi) Article X authorises the Director General of the Agency and his opposite number to enter into arrangements for the implementation of the agreement.
- (vii) Article XI provides for the notifications to be sent to the United Nations before and after the entry into force of the agreement.
- (viii) Article XII provides for the revision of the agreement. In some texts a further clause permits its termination by either organization on one year's notice.

12.3.3. Practical relations with the agencies in general

12.3.3.1. Representation at meetings of organs

All specialized agencies, whether or not they have concluded a relationship agreement with the Agency, are invited to attend sessions of the General Conference and to participate without vote on matters of common interest between them and the Agency.¹⁹⁹

Those specialized agencies with which the Agency has concluded a relationship agreement may, in addition, propose items for the provisional agenda of the General Conference.²⁰⁰ They may in addition attend and participate without vote on matters of common interest in meetings of the Board, and may propose items for its provisional agenda.²⁰¹

12.3.3.2. Scientific meetings

For many years the Agency periodically circulated lists of its proposed panels, symposia, conference, training courses and other scientific meetings²⁰² to

the other organizations in the UN system, and corresponding lists are communicated to the Agency. More importantly, the officers in charge of planning an Agency meeting are required to consult at an early stage with the Division of External Liaison to establish whether any individual notifications or invitations should be issued to particular organizations.²⁰³ The purpose of these communications is to ascertain interest in co-sponsorship or other forms of participation in particular meetings. Various bases for co-sponsorship exist: when the meeting is to be entirely joint, normally all the administrative arrangements are delegated to one of the participating organizations (usually two, but sometimes more), but the scientific preparations are shared by all of them; invitations are issued jointly; costs are shared according to a previously agreed scheme; while one of the organizations usually takes charge of editing the records of the meeting, any publications are issued under the joint masthead of the participating organizations.²⁰⁴

At its first meeting, SAC decided that the agenda of its meetings would be circulated to the specialized agencies concerned, and that these might then solicit invitations for their representatives when matters of particular interest to them were scheduled to be discussed. Recently certain agencies have arranged to be regularly represented at SAC meetings.²⁰⁵

12.3.3.3. Research activities

For years, a list of research contracts under consideration by the Agency was periodically brought to the attention of the specialized agencies concerned and, if appropriate, consultations took place before a contract was awarded.²⁰⁶ The Agency still makes available the results of such research to any interested organizations.

12.3.3.4. Safety activities

The agencies concerned are regularly invited to participate in or to observe the panels convened by the Director General to formulate, review or revise drafts of standards, codes and other regulatory materials - most of which relate to health and safety.²⁰⁷ Similarly the Agency has participated in the preparation of corresponding instruments by organizations such as ILO and WHO.

For some years, a joint ILO/FAO/IAEA Advisory Service in Radiation Protection and Waste Management provided advice to a number of countries on training, waste treatment and the formulation of safety regulations.²⁰⁸ As relations with WHO improved, the special Service was apparently discontinued.

ILO, FAO and WHO, as well as ENEA and the League of Red Cross Societies participated in an inter-secretariat working group convened by the Agency in April 1962 to consider arrangements for emergency assistance in case of a nuclear accident.²⁰⁹

12.3.3.5. Publications

The Agency's plans for its scientific publications were regularly circulated to the specialized agencies.²¹⁰

12.3.3.6. Technical Assistance

With respect to the technical assistance to be financed through the UN Development Programme, co-ordination is automatically secured through the appropriate Secretariat-level organ of consultation: now the Inter-Agency Consultative Board.²¹¹ As to assistance financed from the Agency's own resources, the scientific and technical advice of any competent specialized agency is obtained before the project is submitted to the Board.

12.3.4. Practical relations with certain agencies

12.3.4.1. Food and Agricultural Organization

In 1961 IAEA and FAO established a Secretariat-level Inter-Agency Working Group to review current activities of mutual interest and to plan joint programmes. This committee was instructed to meet about twice a year.²¹²

In March 1964 each organization appointed a liaison officer to work at the headquarters of the other.²¹³

Already during the negotiation of the relationship agreement in 1958, FAO had proposed to the Agency the establishment of a "joint division"; at that point however the Agency's programme had not yet been sufficiently developed to enable it to consider such a step. Later, on the recommendation of the Inter-Agency Working Group, negotiations were initiated between the Directors General and subsequently between special working groups appointed by them for the establishment of such a joint division. In September 1964 an agreement was concluded by the Directors General on the "Arrangements with respect to the Establishment of the Joint FAO/IAEA Division for Atomic Energy in Agriculture".²¹⁴ This instrument lists the activities of the two organizations that are to be transferred to the Joint Division: all scientific and technical meetings, training courses and publications concerned principally with atomic energy in agriculture, agricultural projects in the Agency's technical assistance programme and in its research contract programme, and the overall planning and programming of all activities concerned with atomic energy in agriculture.²¹⁵ Under the heading of "administration" it is provided that the new Division would be located in Vienna and that the Agency would provide the necessary office accommodations and facilities and general operational services. The Division is headed by a Director appointed by FAO and agreeable to both organizations; the Deputy Director is appointed on a similar basis by the Agency.²¹⁶ Staff members of the Joint Division maintain their employment status with their parent organization, but perform their work under the supervision of the Director who is to report to the Directors General of both organizations through the appropriate Deputy Director General of the Agency and Assistant Director-General of FAO. The Arrangements further specify the method of sharing costs²¹⁷ and transitional procedures for the period before the Joint Division could be fully established. Within the Agency, the administrative arrangements relating to the "Establishment of the Joint FAO/IAEA Division of Atomic Energy in Food and Agriculture" are set forth in the Administrative Manual.²¹⁵

12.3.4.2. International Labour Organisation

Following the example of several of the European-based specialized agencies, the Agency and ILO have agreed on an extension of the competence of the ILO Administrative Tribunal to complaints submitted by staff members of the Agency.²¹⁸

12.3.4.3. United Nations Educational, Scientific and Cultural Organization

In 1963 an Inter-Agency Working Group was established, similar to that which had previously been constituted with FAO.²¹⁹

After extensive consideration of an agreement whereby the UNESCO coupon scheme, designed to assist the international flow of publications and other scientific and educational materials, might be especially extended to certain nuclear equipment and materials (such as samples of radioactive isotopes), it was decided that the Agency should merely co-operate with UNESCO in publicizing its scheme and its availability for publications in the atomic energy field.²²⁰

The Agency collaborates with UNESCO in the establishment of abstracting services relating to the nuclear sciences.²²¹

From the beginning, UNESCO co-operated in several ways with the Agency in connection with the International Centre for Theoretical Physics.²²² In particular the Agency, UNESCO and the University of Trieste co-sponsored the Advanced School of Physics at the University, which works in close co-operation with the Centre. In recognition of this co-operation and the contribution of substantial resources, UNESCO initially nominated one of the members of the Scientific Council of the Centre. As of the beginning of 1970, UNESCO's contribution reached parity with that of the Agency, and the Centre is now operated as a joint institution.²²³

12.3.4.4. World Health Organization

In 1958 the Executive Board of WHO passed a resolution on "Co-ordination with IAEA".²²⁴ In November 1958 the Directors General concluded a "Memorandum of Understanding on the Administrative Procedures in regard to Fellowships Awarded by either Organization in Fields of Common Interest to both Organizations"; this instrument dealt with prenomination, nomination and selection procedures, and with the placing of and the follow-up on fellows.

In November 1961 an Inter-Agency Working Group along the lines of the FAO model was established. However, friction and misunderstandings due to the considerable overlap in the activities of the two organizations (relating to the research, diagnostic and therapeutic uses of radiation) continued to mar relations between them. This situation was considerably improved after the appointment, in 1964, of technical liaison officers assigned by each organization to work at the headquarters of the other.²²⁵ In November 1966, the two Directors General approved a comprehensive set of "guidelines" for planning and carrying out programmes at their headquarters and in the field.²²⁶

Although SAC once declined to issue a standing invitation to WHO to be represented at all meetings concerned with medical matters, the liaison officer of WHO has for the past several years regularly attended meetings of the Committee.²²⁷ That officer similarly attends the meetings of the Board of Governors on a routine basis.

Representatives of WHO had observed or participated in numerous Agency panels convened to formulate Agency safety standards.^{227A} Recently this type of collaboration deepened through the preparation of joint Manuals, such as one on Radiation Protection in Hospitals. Early in 1970 the Director General announced that WHO had agreed to co-sponsor a considerable number of the Agency's recommendations and standards for nuclear safety, including in particular the Agency's Basic Safety Standards^{227B}; he also expressed confidence that such co-sponsorship would henceforth be a matter of course.^{227C}

12.4. CO-ORDINATION WITHIN THE UNITED NATIONS FAMILY

12.4.1. Nuclear energy activities

12.4.1.1. ACC Sub-Committee on the Peaceful Uses of Atomic Energy

In 1955, consequent on the increased interest of the United Nations and the specialized agencies in the peaceful uses of atomic energy, stimulated in part by the preparation for and the results of the first "Geneva" Conference, the Administrative Committee on Co-ordination (ACC) decided to establish a Sub-Committee on the Peaceful Uses of Atomic Energy. This group consisted of the executive heads or their representatives of FAO, IBRD, ICAO, ILO, UNESCO, WHO and WMO, meeting on a bi-annual basis under the chairmanship of the UN Secretary-General. It was in this forum, ostensibly established to co-ordinate the nuclear programmes of the existing organizations but perhaps also intended to subordinate the proposed new one, that the specialized agencies formulated the proposals that they later advanced at the Conference on the Statute.²²⁸

On the establishment of the Agency the new organization considered it anomalous to participate in this Sub-Committee on a basis of mere parity with the specialized agencies. The suggestion was therefore advanced in the Preparatory Commission that the group might be converted into a standing co-ordinating committee on atomic energy, whose chairman would be the Director General of the Agency; it was also suggested that the group should report to ACC through the Agency.²²⁹ When these and other similar proposals explored by the Agency with the specialized agencies did not receive a sympathetic response, the Agency successfully moved at the first ACC meeting attended by its Director General (in May 1958) that the Sub-Committee be dissolved on the ground that with the coming into force of the Agency's relationship agreements the residual co-ordinating tasks in this field could revert to ACC.

12.4.1.2. Concepts of co-ordination involving the Agency

From the beginning, everyone was conscious of the need for co-ordinating atomic energy activities in order to avoid the duplication of international efforts.²³⁰ This was considered particularly important in view of the scarcity of financial, technical and human resources in this field. The desire to achieve effective co-ordination was shared by the several Secretariats concerned, who felt that this was primarily a matter of bilateral or multilateral arrangements among their organizations, using formal agreements and various mechanisms of consultation negotiated or established primarily on an administrative level. The representatives of Governments also saw the need for such agreements and consultations but felt that it was for them to take the lead in settling the terms of the relationship agreements (and thereby decreeing the proper boundaries of competence among the several organizations the Governments had created) — but before that each Government would need to set its own house in order by giving consistent instructions to its representatives in the several organizations. In the event, Governments proved to be largely unable or unwilling to meet this requirement,²³¹ and consequently the effective initiative on co-ordination (aside from occasional pious nudges from governmental bodies such as ECOSOC or the Agency's General Conference) substantially passed to the executive heads of the several organizations, though ECOSOC for a time was most anxious to play a strong role.

The UN Secretary-General's thoughts on co-ordination were set forth primarily in paragraph 9 of the Study he communicated to the General Assembly and to the Conference on the Statute.²³² Subsequently these principles were incorporated with minimal changes into Article XI of the Agency's Relationship Agreement with the United Nations.²³³

The Agency's concept as to co-ordination was initially somewhat different. Instead of merely participating in the existing consultation machinery established under the leadership of the United Nations, it felt that it should be the chosen instrument to accomplish co-ordination in the field whose development was its statutory objective. Its first major struggle to assert this claim occurred in connection with the proposed inclusion of the word "primarily" in Article I.1 of its UN Relationship Agreement; in retreating from this position it only gained the satisfaction of having the letters exchanged in connection with the draft agreement record the interpretation that the Agency would "have the leading position" in the UN system with regard to the peaceful uses of atomic energy.²³⁴ The Agency's concept as to its proper role was again reflected in paragraphs 2-5 of the Guiding Principles for the negotiation of the relationship agreements with the specialized agencies;²³⁵ here a slightly different strategy had been adopted: if the Agency could not act as the central co-ordinator in a multilateral system, it should achieve a similar position by a series of bilateral relations each of which would assure it of a dominant position; this attempt was foiled by the common resistance of the specialized agencies.²³⁶ The failure of the Agency's third reach for a special co-ordinating role, by subordinating the ACC's Sub-Committee on atomic energy, has just been recounted. Thus the task of co-ordination once more temporarily remitted to a multilateral organ.

12.4.1.3. Multilateral co-ordination through ACC

With the termination of its Sub-Committee on atomic energy, and the Agency's failure to achieve a dominant position through bilateral relationship agreements, the responsibility for co-ordination reverted to ACC. In fulfilling this function it received the support of a series of ECOSOC resolutions. Gradually, as the Agency's programme and those of the specialized agencies in the nuclear field stabilized and the issue of the Agency's special status became less important, ACC cautiously delegated some of its functions in this field to the Agency. The principal stages in this evolution were the following:

ECOSOC, by its Resolution 694E(XXVI) of 31 July 1958, recalled that under the UN Charter the Council had responsibility for co-ordinating activities in the economic and social field and expressed the hope that the Agency would assist it in the discharge of this function by annually submitting a report. It also expressed the hope that the Agency would participate in EPTA, would rapidly conclude relationship agreements with the specialized agencies, and would establish effective working relationships with them.²³⁷ Finally the Council called to the attention of the Governments the need for co-ordination on a national level.

In its Resolution 743B(XXVIII) of 31 July 1959,²³⁸ ECOSOC requested ACC "to give further attention to multilateral and other measures directed to co-ordinated and concerted action among the organizations concerned in the field of the peaceful uses of atomic energy and to provide reports thereon on a continuing basis". ACC subsequently invited the Agency to assist it in carrying out this task by reporting to it periodically on the combined activities of the UN family in this field.²³⁹

In its resolution 799B(XXX) of 3 August 1960,²⁴⁰ ECOSOC expressed the view that a periodic multilateral review of the adequacy and balance of the overall international effort with regard to the peaceful uses of atomic energy should be carried out through ACC and reported to the Council. At its 31st meeting ACC yielded to the Agency's insistence that it be entrusted with the preparation of the documentation for these studies. Thereupon the Agency annually assembled the appropriate material and transmitted it to ACC.²⁴¹

In its Resolution 986(XXXVI) of 2 August 1963,²⁴² entitled "Co-ordination of Atomic Energy Activities", ECOSOC drew the attention of Governments and of the executive heads of the Agency and of the specialized agencies to:

"the need for effective co-ordination in this field and for ensuring that no proposal in which more than one agency may have an interest is approved by the governing body of any particular agency without a clear statement of the steps which have been taken to collaborate at the formative stage with the other interested agencies".

12.4.1.4. Recent approaches to co-ordination

The 1963 ECOSOC Resolution in effect constituted an admission that multilateral co-ordination, whether performed through the Agency or by UN organs, is largely ineffective. It appears that these bodies can urge and chide,

but can rarely intervene authoritatively in a serious conflict among independent organizations — in particular when such conflicts reflect real divergencies of interest within the national administration of the principal member States.²⁴³

ECOSOC's attention soon shifted to other, more topical disputes. The Agency for some years continued to perform the minor reporting tasks set it by ACC, until interest in these waned. As the Agency's programmes became more firmly established it no longer constituted an undefined threat to its sister organizations; more recently with the revival of interest in nuclear power and the corresponding concern for effective safeguards, the Agency has become less interested in certain marginal activities (mostly those involving radioisotopes) that were most likely to trespass on established preserves. Thus the occasionally arising minor conflicts now yield readily to bilateral solutions, formulated within the spirit of but without any particular assistance or guidance from the several relationship agreements.

12.4.2. General activities

12.4.2.1. Participation in ACC and its sub-committees

The Agency's participation in ACC is provided for in Article XI of the UN Relationship Agreement, and the role of that Committee in the co-ordination of peaceful atomic energy activities is described in Section 12.4.1.3.

Ordinarily the Director General personally attends the meetings of ACC, while a Deputy Director General participates in the Preparatory Committee of Deputies.²⁴⁴ The Director General regularly informs the Board of the Agency's participation in ACC meetings, either in his periodic reports or by means of special documents, and (aside from supplying copies of the complete ACC report to Board members) he brings to the Board's attention any relevant recommendations. The Board's Annual Reports to the General Conference used to refer briefly to the Agency's participation in ACC.²⁴⁵

The Agency also participates in several ACC sub-committees, of which the following are some examples:

- (a) Consultative Committee on Administrative Questions (CCAQ), consisting of the heads of the administrative or personnel departments of the member organizations. The Agency's participation in this organ is also in compliance with Article XVIII.2(a) of the UN Relationship Agreement, which calls for consultations on matters of common interest relating to personnel policies. Furthermore the Agency participates in other organs for co-ordinating personnel policies, such as the UNJSPF Board, and the informal Panel of Medical Advisers; similarly the Agency co-operates with the International Civil Service Advisory Board (ICSAB) and with the Expert Committee on Post Adjustments (ECPA).²⁴⁶
- (b) Consultative Committee on Public Information (CCPI). Participation in this organ is also in accord with Article XVII of the Relationship Agreement, which calls for co-operation in the field of public information. (Furthermore the Agency participates in the work of the UN Visual Media Board, in which experiences in this field are exchanged by the members of the UN family.)²⁴⁷

- (c) **Technical Working Group on Fellowships.** Participation in this organ is also in accord with Article XV of the Relationship Agreement, which calls for co-ordination in the field of technical assistance.

12.4.2.2. Technical assistance co-ordination

Article XV of the UN Relationship Agreement provides for the Agency to participate in the existing co-ordination machinery in the field of technical assistance, and for the Agency to give consideration to the common use of available services as far as practicable.

Until recently, the "existing machinery" for technical assistance co-ordination within the UN family consisted of the Technical Assistance Board of EPTA and of the Consultative Board of the Special Fund. The Agency participated in the former since its admission to EPTA²⁴⁸ and in the latter from the establishment of the Special Fund.²⁴⁹

In the General Assembly resolution creating the United Nations Development Programme by a merger of EPTA and the Special Fund, the Agency was specifically named as a member of the new Inter-Agency Consultative Board(IACB)²⁵⁰

The Agency's participation in the ACC's Technical Working Group on Fellowships has already been referred to.

12.4.2.3. Other means of co-ordination

In September 1959 the Board decided to accept ECOSOC's invitation²⁵¹ to participate in the five-year appraisal of the development and co-ordination of the economic, social and human rights programmes and activities of the United Nations and the specialized agencies. After authorizing the Director General to prepare a paper on the work of the Agency, it established an Ad hoc Committee on Appraisals, consisting of the three officers of the Board and of eight other Governors, to advise the Director General. Because of time pressure it was not possible for the Board to approve the Agency's report, which was therefore issued on the authority of the Director General — though with the advice of the Board's Committee.²⁵² The five-man ECOSOC Committee on Programme Appraisals took this study into account in preparing its consolidated report of the work of all the agencies.²⁵³

ECOSOC's Committee for Programme and Co-ordination (formerly the Special Committee on Co-ordination) concerns itself with the activities of all the organizations in the UN family.²⁵⁴

The UN's Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies also included the IAEA within the compass of its studies and recommendations, and the Agency has generally agreed to accept all of the latter insofar as this is possible within the provisions of the Statute.²⁵⁵

Finally note should be taken of the annual review of the administrative aspects of the Agency's budget carried out by ACABQ pursuant to a request by the Board and in accord with Article XVI.3 of the UN Relationship Agreement.²⁵⁶ Though after its first thorough review²⁵⁷ ACABQ has made no substantive comments on the Agency's budget, its annual consolidated report to the General Assembly on the budgets of the specialized agencies and the

Agency simplifies comparisons of the programmes, resources and expenditures of these organizations. Further procedural co-ordination is assured through the participation of the Agency's External Auditor in the UN's Joint Panel of Auditors.²⁵⁸

12.5. RELATIONS WITH REGIONAL AND OTHER INTERGOVERNMENTAL ORGANIZATIONS

12.5.1. Observers at the General Conference

Unlike the specialized agencies, which form a well-defined and limited group to which a blanket invitation to attend sessions of the General Conference can be issued, the other intergovernmental organizations form a large and not completely defined class, the members of which it would not be appropriate or feasible to invite without discrimination. Procedural Rule 32(a) of the General Conference therefore provides for the automatic invitation of only those intergovernmental organizations with which an appropriate relationship has been established, if the pertinent agreement so provides.²⁵⁹ However, since relationship agreements are undertaken only with a few organizations whose activities are indeed closely connected to those of the Agency, while the circle of organizations that should be invited to the General Conference is somewhat larger, the procedure described below has been devised to enlarge the circle of invitees to include certain organizations with which no agreement has been concluded.

In respect of the first regular and special sessions of the General Conference, the Preparatory Commission issued invitations to four organizations under its general authority to make arrangements for the first session of the Conference.²⁶⁰ Since then, the Conference has, instead of adopting a general procedural rule on this point, annually authorized the Board to issue invitations by a resolution substantially in the following form:

"The General Conference,

"(a) Taking into account Rule 32(a) of its Rules of Procedure which provides for the attendance at its sessions of representatives of intergovernmental organizations with which appropriate relationships have been established under Article XVI of the Statute, and

"(b) Considering the fact that before its [next] regular session such relationships will not have been established with all organizations the attendance of representatives of which may be in the interest of the Agency,

"Authorizes the Board of Governors to invite intergovernmental organizations other than those with which the Agency has established relationships under Article XVI of the Statute, engaged in the peaceful uses of atomic energy in accordance with the objectives of the Agency as stipulated in its Statute, to be represented by observers at the [next] regular session of the General Conference."²⁶¹

Although this annual exercise has become routine, it always requires a number of steps in which each of the principal organs of the Agency is involved:

- (a) A reminder by the Director General to the Board that it should propose to the next regular session of the General Conference the renewal of this authority.
- (b) A decision by the Board to request this authority.²⁶²
- (c) The consideration of the Board's request by the Administrative and Legal Committee of the General Conference — in which no disagreement with the principle of granting this authority is ever expressed, but routinely complaints are voiced about the invitations issued by the Board on the basis of last year's authorization.²⁶³
- (d) The adoption by the Conference Plenary (with or without further debate) of the resolution proposed by the Board and recommended by the Administrative and Legal Committee.²⁶⁴
- (e) A reminder by the Director General to the Board that it may wish to exercise the authority granted to it by the General Conference; to this the Director General routinely attaches a list of the organizations that the Board invited in the previous year, with an indication as to which of these actually attended; any new requests for invitations are also communicated to the Board.
- (f) The issue of invitations by the Board — after a perennial debate as to the appropriateness of inviting certain organizations.²⁶⁵

The organizations listed in Table 12B have been honoured by such invitations.

12.5.2. Co-operation agreements

Article XVI.A of the Statute authorizes the Board to enter into relationship agreements between the Agency and "any other organizations the work of which is related to that of the Agency". That Article and Article V.E.7 also require that the General Conference approve such agreements.

The Preparatory Commission did not recommend any "Guiding Principles" to the Agency's organs on its relations with regional or other miscellaneous organizations. It indicated that this omission was due to its conclusion that the "nature of any relationship agreement that the Agency may conclude with an international organization other than a specialized agency will depend upon the nature of the organization concerned and upon other factors which cannot yet be foreseen".²⁶⁶

The Board initially authorized the Director General to make informal contacts with the intergovernmental organizations concerned with the peaceful uses of atomic energy; later it asked him to obtain information about these organizations and about the aspects of their work relevant to the Agency. Without specific authority from the General Conference the Board has instructed the Director General to enter into negotiations with several intergovernmental organizations — and sometimes the Director General has

TABLE 12B. INTERGOVERNMENTAL ORGANIZATIONS INVITED TO SEND OBSERVERS TO THE GENERAL CONFERENCE

	Session of General Conference												
	1	2	3	4	5	6	7	8	9	10	11	12	13
European Organization for Nuclear Research (CERN)	i	i	i	i	i	i	i	i	i	i	i	i	i
Joint Institute for Nuclear Research (Dubna Institute - JINR)	i	i	i	i	i	i	i	i	i	i	i	i	i
Organization for European Economic Co-operation (OEEC)	i	i	s										
European Nuclear Energy Agency (ENEA)			i	i	i	x	x	x	x	x	x	x	x
Commission for Technical Co-Operation in Africa South of the Sahara (CCTA)		i	i	i	i	i	s						
Commission for Technical Co-Operation in Africa (CTCA)							i	x	s				
Scientific, Technical and Research Commission of the Organization of African Unity									i	i	i	s	
Organization of African Unity (OAU)												i	x
European Atomic Energy Community (EURATOM)		i	i	i	i	i	i	i	i	i	i	i	i

Organization of American States (OAS)	i	i	i	s								
Inter-American Nuclear Energy Agency (IANEC)				i	x	x	x	x	x	x	x	x
Central Office for International Railway Transport (CIM)				i	i	i	i	i	i	i	i	i
International Bureau of Weights and Measures (IBWM)				i	i	i	i	i	i	i	i	i
Nordic Organization for Theoretical Nuclear Physics (NORDITA)	i			i	i	i	i	i	i	i	i	i
League of Arab States				i	i	i	i	i	i	i	i	i
African and Malagasy Organization for Economic Co-operation						i	i	s				
African and Malagasy Joint Organization (the Common Afro-Malagasy Organization - OCAM)								i	i	i	i	i
Council for Mutual Economic Aid (COMECON or CMEA)								i	i	i	i	i
The Organization of the Petroleum Exporting Countries (OPEC)										i	i	i

i = Invitation issued.

s = Invitation issued to (successor) organization listed immediately below.

x = No special invitation required because relationship agreement concluded and automatic invitation issued under amended Conference Procedural Rule 32(a).

undertaken to do so on his own initiative, though only after informing the Board. The general procedures for the conclusion of these agreements are similar to those relating to the specialized agencies – except that the Board's Committee to Advise the Director General was no longer functioning after the Second General Conference and so the Director General reported directly to the Board. It should in particular be noted that the two notifications to the United Nations required by Article XX of the Agency's Relationship Agreement with that organization are also required with respect to these agreements.²⁶⁷

The following agreements have been concluded:

TABLE 12C. IAEA/REGIONAL ORGANIZATIONS CO-OPERATION AGREEMENTS

Regional Organization	Date of Entry into Force	Text	
		INFCIRC/25	UNTS Volume
[CTCA	6 Feb. 1964	Add. 1	501] ²⁶⁸
ENEAC	30 Sep. 1960	Part I	396
IANEC	21 Dec. 1960	Part II	396
OAU	26 Mar. 1969	Add. 2	

Any special features of the negotiations and of the agreements are related in Section 12.5.3. In general their texts are simplified versions of those concluded with the specialized agencies. However, since the Agency is a world-wide organization and its partners in these agreements are regional ones, and in particular since two of them have otherwise precisely the same objectives as the Agency, the delimitation of functions between the organization has had to be specified in different terms (geographically rather than qualitatively) and without reference to the UN Relationship Agreement. In view of the different legal structures of these organizations, the rights of reciprocal representation have had to be modified: thus these organizations are only invited to the General Conference and its committees (i. e. , not to the Board) – though invitations may be extended to other meetings. No provision is included for the proposal of agenda items and for the co-ordination of personnel arrangements. Thus the headings of these agreements are in general as follows:

- Article I - Co-ordination and Consultation
- Article II - Reciprocal Representation
- Article III - Exchange of Information and Documents
- Article IV - Co-ordination between Secretariats
- Article V - Administrative and Technical Co-operation
- Article VI - Financing of Special Services

- Article VII - Implementation of the Agreement
- Article VIII - Notification to the United Nations and Filing and Recording
- Article IX - Revision of the Agreement
- Article X - Termination of the Agreement
- Article XI - Entry into Force

These instruments are referred to as "co-operation" rather than as "relationship" agreements, to emphasize the distinction between them and those concluded with members of the UN family.

12.5.3. Relations with particular organizations

12.5.3.1. European Nuclear Energy Agency (ENEA)

The European Nuclear Energy Agency of OEEC (which later became OECD) has been invited to attend every session of the General Conference, though in respect of the first two sessions the invitation was issued to the parent organization. After the conclusion of the Co-operation Agreement²⁶⁹ and the adoption of General Conference Procedural Rule 32(a) in its present form, no further special invitations have had to be issued.

The Co-operation Agreement relating to ENEA was concluded by the Agency with the Organisation for European Economic Co-operation (OEEC), since ENEA itself had no separate legal personality (having been created by a resolution of OEEC²⁷⁰ rather than by a separate international treaty). In 1961 OEEC was re-constituted as the Organisation for Economic Co-operation and Development (OECD) and at the first meeting of the OECD Council on 30 September 1961 it decided to keep in force the IAEA/ENEA Co-operation Agreement;²⁷¹ this decision was then formally communicated to the Agency, which then had to consider whether this notification was sufficient for the Agreement to remain in force and whether any action was called for. On the one hand it was noted that the Agency's formal partner in the Agreement (OEEC) had changed its name, its constitution, its purpose and its membership;²⁷² and thus it could be argued that that instrument had automatically gone out of force, regardless of any unilateral attempt by the successor organization to preserve it. On the other hand the object of the agreement (ENEA) remained unchanged (in name, constitution, purpose and membership), and thus it could be argued that the purported decision of the OECD Council to continue in force the previous agreement was in fact merely a decision not to exercise its right to terminate the agreement by denunciation on six months notice (under Article X); under this theory the Agency merely had to consider whether, in view of the changes in its partner, it might itself desire to make use of its right to denounce. After considering these alternative approaches, the Director General merely reported to the Board the notification he had received of the decision by the OECD Council. The Board in turn merely noted this report;²⁷³ the only statement made with respect to it "assumed that no further legal formalities were needed to maintain in full force" the Co-operation Agreement. Thus the Agreement has remained in force, without any formal novation; no revised text reflecting the new name of one of the parties has ever been prepared.

Immediately after the conclusion of the Co-operation Agreement the Director General of the Agency and the Director of ENEA concluded "Administrative Arrangements for Implementation of the Relationship Agreement between ENEA and IAEA".²⁷⁴ Various headings cover: annual consultations; training programmes; research contracts; safeguards (pro memoria); health, safety, waste disposal and transport (pro memoria); exchange of documents, exchange of publications.

In 1961 an Inter-Secretariat Working Group was set up similar to those that the Agency has established with several specialized agencies.²⁷⁵ In addition the two organizations have regularly invited each other's representatives to various panels and other meetings - in particular to those engaged in drawing up the separate conventions on civil liability for nuclear damage for which the two organizations are responsible.²⁷⁶

In September 1964 the Agency concluded, with the Österreichische Studiengesellschaft für Atomenergie and with OECD (acting for ENEA), an Agreement for Collaboration in an International Programme on Irradiation of Fruit and Fruit Juices,²⁷⁷ under which the Austrian company, the Agency and the interested members of ENEA collaborated in a research programme set forth in an annex to the Agreement.

Recently contacts with ENEA (whose membership, augmented by the associate participation of Canada, Japan and the United States, is really a club of the advanced Western nations) have intensified. Joint International Liaison Groups have been formed on Magnetohydrodynamic Production of Electricity and on Uranium and Thorium Resources, and the Agency has outposted a scientist to Paris to assist non-ENEA members in utilizing the latter's Computer Programmes Library.²⁷⁸

12.5.3.2. European Atomic Energy Community (EURATOM)

The European Atomic Energy Community is the only one of the organizations whose work (except for its geographic constraints) largely coincides with the statutory functions of the Agency,²⁷⁹ with which no co-operation agreement has yet been concluded. Whether EURATOM (all of whose six members are initial Members of the Agency) would be interested in such an agreement is not certain.²⁸⁰ In any event, neither organization has made any move to open negotiations, for reasons that are patently political: in particular the Eastern European Members of the Agency have objected to any formal contacts with the Community, ostensibly on the ground that by not prohibiting military nuclear activities in its territory, it is itself not exclusively devoted to peaceful purposes;²⁸¹ in fact the opposition appears to be rooted in the hostility of those Agency Members to the European Community (which also includes the Common Market). In addition France, a leading member of both organizations, has not encouraged formal contacts between them.

While EURATOM has been invited to every session of the General Conference, until 1968 this has invariably provoked opposition in the Board and subsequently controversy in the Administrative and Legal Committee of the Conference.²⁸¹

In spite of the cool political relations, the Board has usually not objected to informal contacts on a Secretariat level — and these have indeed developed very well recently. In particular, the organizations are regularly represented at each other's scientific meetings, and even in the currently competitive and ticklish safeguards field fruitful technical consultations have taken place.²⁸² Other areas of co-operation include INIS,²⁸³ and the essays at machine translation of nuclear literature.

12.5.3.3. Inter-American Nuclear Energy Commission (IANEC)

The Inter-American Nuclear Energy Commission of the Organization of American States has been invited to every regular session of the General Conference since the second, except that until the fourth session the invitation was issued to the parent organization. After the conclusion of the Co-operation Agreement²⁸⁴ and the appropriate amendment of Conference Procedural Rule 32(a), no further ad hoc invitations have had to be issued.

Though IANEC, like ENEA, was constituted by a mere resolution of its regional parent organization, and though the Co-operation Agreement had to be approved by the OAS Council, IANEC has under its Statute sufficient legal personality to be a party to the Agreement in its own right.²⁸⁵

12.5.3.4. African organizations

The Board invited the Commission for Technical Co-operation in Africa South of the Sahara (CCTA) to attend every regular session of the General Conference from the second to the sixth.

In 1961 the Director General negotiated a Co-operation Agreement with the Secretary-General of CCTA, on which however the Board declined to act immediately. During 1962 the organization changed its constitution, membership and name, becoming the Commission for Technical Co-operation in Africa (CTCA). Its Scientific Council recommended to its parent body the conclusion of a relationship agreement with the Agency. Since the text that had previously been agreed with CCTA proved acceptable to the new organization, the negotiation was soon concluded. The Co-operation Agreement was submitted by the Board to the General Conference in 1963, and immediately approved. Unlike most of the similar agreements, this instrument entered into force upon signature by the executive heads of the organizations.²⁸⁶

During the Eighth General Conference the representatives of several African States informed the Agency that the Scientific, Technical and Research Commission of the Organization for African Unity was assuming the nuclearly oriented functions of CTCA, which itself was being incorporated into OAU. The General Conference thereupon passed a resolution recommending that the Board take the necessary steps to enable the Agency to conclude an agreement with the new Commission.²⁸⁷ Though these negotiations were undertaken soon, they only bore fruit in 1968, by which time the former Commission had become the Educational, Scientific, Cultural and Health Commission; the new co-operation agreement was actually concluded with

the parent OAU, since the Commission itself has no legal personality.²⁸⁸

Another African organization that the Board has invited to every General Conference since the Sixth is the African and Malagasy Organization for Economic Co-operation, which later changed its name to the African and Malagasy Joint Organization.

12.5.3.5. River Commissions

In 1962 the Director General prepared the draft of a co-operation agreement with the Central Commission for Navigation of the Rhine, and indicated that the Danube Commission might also wish to enter into a like relationship. The interest of these organizations in the Agency's work related both to the transportation of nuclear materials and to the pollution of rivers through nuclear wastes.

Several members of the Board objected that the principal interests of these organizations were too remote from those of the Agency to justify any formal relationships, and the proposed agreements were therefore not concluded. However informal relations have been established by exchanges of letters between the Director General and the executive heads of these organizations.

12.5.3.6. International Bureau of Weights and Measures (IBWM)

The International Bureau of Weights and Measures has been invited to every General Conference since the Fifth.

The Fourth General Conference requested the Director General to explore the possibility for co-operation between the Agency and, *inter alia*, IBWM and to report thereon to the Board.²⁸⁹ The Director General subsequently recommended to the Board that it authorize him to enter into consultations with the President of IBWM regarding the advisability of concluding a relationship agreement. Though the Board gave the necessary authority, up to now no agreement has been negotiated.

12.5.3.7. Socialist organizations

The Joint Institute for Nuclear Research (JINR — or the Dubna Institute), the participants in which are members of the Council for Mutual Economic Aid (COMECON),²⁹⁰ has been invited to every General Conference. COMECON itself has only been invited since 1965.

In 1968/69 the Agency exchanged letters with both JINR and COMECON, providing for closer co-operation in certain technical meetings and an increased exchange of information.²⁹¹

12.5.3.8. League of Arab States

The League of Arab States has been invited to every General Conference since 1961. During 1969 the League approached the Agency with a view to concluding a formal co-operation agreement, and in September 1969 the Board authorized the Director General to initiate the necessary steps to conclude such an agreement.

12.5.3.9. Miscellaneous projects

In a resolution on a Comprehensive Programme for World Ocean Study passed by the Intergovernmental Oceanographic Commission in September 1962 it requested the Scientific Committee on Ocean Research to consult, *inter alia*, with the Agency in furthering the work called for by the resolution.

In March 1963 the Agency participated in the "Conference of Countries in Asia and the Pacific for the Promotion of the Peaceful Uses of Atomic Energy" held in Tokyo.

Article 19.1 of the Treaty for the Prohibition of Nuclear Weapons in Latin America²⁹² specifically foresees that the Agency for the Prohibition of Nuclear Weapons in Latin America established by the Treaty, may enter into appropriate agreements with the IAEA.

12.6. RELATIONS WITH NON-GOVERNMENTAL ORGANIZATIONS

The Statute nowhere explicitly mentions Non-Governmental Organizations (NGOs). However, Article XVI authorizes the Agency to establish appropriate relations with "any . . . organization the work of which is related to that of the Agency".²⁹³ Though it has been decided that the grant of consultative status to an NGO is not the conclusion of a relationship agreement pursuant to Article XVI, no doubt has ever been expressed about the Agency's competence to establish and maintain suitable relations with such organizations.

12.6.1. Ad hoc invitations to the General Conference

Acting under its authority pursuant to paragraph C.3 of Annex I to the Statute, the Preparatory Commission passed a resolution which, *inter alia*, authorized its Executive Secretary to extend invitations to all interested NGOs enjoying consultative status with the United Nations or with any specialized agency to send observers to the First General Conference.²⁹⁴ Later it formally interpreted this resolution as referring not only to organizations enjoying Category A or B consultative status with ECOSOC, but also to those that were merely carried on its register - a decision it took because some of these latter organizations (e.g., ICRP and ICRU) had a special interest in the work of the Agency.²⁹⁵ The Executive Secretary issued invitations to 13 NGOs.

At its sixth meeting the Board decided to propose to the General Conference a draft resolution on the relations of the Agency with NGOs by which, *inter alia*, the Board would be authorized to invite appropriate NGOs to be represented by observers at the Second Conference.²⁹⁶ On the recommendation of the Administrative and Legal Committee,²⁹⁷ this resolution was approved by the General Conference.²⁹⁸ The Board accordingly decided, on 6 May 1958, to invite all NGOs having consultative status with the United Nations or with a specialized agency and which indicated a desire to receive an invitation, and it further instructed the Director General to report to the Board any other NGOs requesting an invitation. Pursuant to the first part

of this instruction the Director General invited 16 NGOs to the Second Conference, and pursuant to the second part he communicated the requests of the World Federation of Scientific Workers and of the Women's International Democratic Federation to the Board, which rejected both of them.

12.6.2. Consultative status

12.6.2.1. Rules

Pursuant to its responsibility under paragraph C. 7(b) of Annex I to the Statute, the Preparatory Commission recommended that the Agency enter into consultative arrangements with appropriate NGOs on the basis of certain principles specified by the Commission;²⁹⁹ it further recommended that the Board establish and submit for the approval of the General Conference³⁰⁰ rules for the granting of consultative status which would provide NGOs with certain specified privileges. At its sixth meeting the Board decided to propose to the General Conference a resolution by which the latter would in effect accept the recommendations of the Preparatory Commission.³⁰¹ After brief consideration in its Administrative and Legal Committee,³⁰² the Conference adopted this resolution, by which it recommended to the Board the establishment and submission to the Conference of rules for the granting of consultative status to NGOs, based upon the principles and relating to the privileges enunciated by the Preparatory Commission.³⁰³

The Director General prepared a draft of the required rules, together with the proposed terms of reference of a committee the Board would establish to implement them. The Board referred both these proposals, on an ad hoc basis, to its Committee to Advise the Director General on Negotiations with Specialized Agencies.³⁰⁴ That Committee amended the draft rules and after further amendment by the Board the latter adopted them on 8 July 1958 for submission to the General Conference.³⁰⁵ On the recommendation of its Administrative and Legal Committee,³⁰⁶ the Second General Conference approved without change the Rules on the Consultative Status of Non-Governmental Organizations with the Agency.³⁰⁷

The Rules,³⁰⁸ which have not been altered since their original adoption, contain the following principal provisions:

- (a) A short statement of the objectives of consultative arrangements (Part I).
- (b) A description of the type of organizations to which consultative status may be granted (Part II) and an outline of the procedure by which such grants are to be made (Part VI): by application addressed to the Director General and initially considered by the Board's Committee on Non-Governmental Organizations, with final action to be taken by the Board itself (paragraphs 9-11); the Board is also authorized to withdraw consultative status from an NGO if the latter persistently or flagrantly violates the obligations it has accepted by entering into that status (paragraph 12). The Director General is annually to submit to the Conference a list of the organizations to which consultative status has been granted (paragraph 13).

- (c) Organizations to which consultative status has been granted are allowed certain privileges and facilities in connection with meetings of the General Conference and the Board (Part III): the right to receive the provisional agendas of the Conference (paragraph 3(a)); the right to send observers to all public meetings of the General Conference and of the Board (paragraphs 3(b) and (c)); the right to submit written statements to any organ of the Agency, subject to censorship by the Director General (paragraph 3(d)); the right to submit oral statements to Committees of the General Conference or before public meetings of the Board, subject to various restrictions (sub-paragraph 3(e)-(g)). Such NGOs may also be invited by the Director General to other meetings convened by the Agency (paragraph 5).
- (d) NGOs with consultative status may consult with members of the Secretariat (paragraph 6). They may be given access to any document services established for the press, and to the Agency's library (paragraphs 4(b) and (c)).
- (e) The Director General may request NGOs having special competence in a particular field to undertake specific studies or investigations, or to prepare papers for the Agency (paragraph 8).

It should be noted that no provision is made for establishing categories among the organizations to which consultative status is granted. Also, after some discussion, the Board decided that NGOs should not have the right to place items on its agenda or on that of the General Conference, even though this privilege had been granted by some specialized agencies. Finally, no provision is made regarding the privileges and immunities of these organizations when participating in Agency meetings,³⁰⁹ though some protection appears to be granted automatically by the Headquarters Agreement.³¹⁰

12.6.2.2. Legal nature

By the adoption of the Rules under which consultative status is granted directly by the Board without the concurrence of the General Conference, the Board explicitly decided and the Conference later implicitly agreed that the grant of consultative status was not the conclusion of a relationship agreement pursuant to Article XVI.A of the Statute. In so doing, these bodies abruptly reversed the prior practice on this point.

At the Conference on the Statute, the representative of the United States in an undisputed statement defined the scope of Article XVI in the broadest possible terms, to include:

"... the establishment of appropriate relationships with any type of organizations, the work of which is related to that of the Agency [including also] any non-governmental organization whose work relates to that of the Agency.

"The Agency has full freedom to enter into the kind of relationship, consultative or otherwise, with or without formal agreements ... article XVI is all inclusive and provides authority for the establishment of a relationship, as appropriate, with any organization ...".³¹¹

The Preparatory Commission, in making its recommendation on the Agency's relations with NGOs, purported to act under paragraph C.7(b) of Annex I to the Statute³¹² which refers to "the relationship of the Agency to other international organizations as contemplated in article XVI of this Statute". The Resolution relating to NGOs that the General Conference adopted at its first special session on the recommendation of the Board also referred to Article XVI of the Statute.³¹³ At the same session it also adopted Procedural Rule 32 which referred, inter alia, to "non-governmental organizations, with which an appropriate relationship with the Agency has been established in accordance with Article XVI of the Statute".³¹⁴

The Director General, in the introduction to his draft of the Rules on Consultative Status, indicated that he assumed that the grant of consultative status is an agreement within the meaning of Articles V.E.7 and XVI.A of the Statute, even though no agreement was formally executed, since such a grant would actually create duties for both the NGO and the Agency; while this interpretation would ordinarily require that Conference approval be given to every grant of consultative status, he suggested that this could be avoided by considering the Rules as constituting an advance, delegated approval by the General Conference of all grants made under their terms; however, any grants not falling under the Rules (either because the organization was not one covered by them or because a special relationship was to be established) would have to be individually submitted to the Conference. The United States, in proposing an amendment to the Director General's draft to the effect that the final decision on any grant of consultative status should be made by the Conference, indicated that it could not accept the latter part of the Director General's argument (relating to the permissibility of the blanket delegation of the Conference's power of approval) — and thereby by implication accepted the first part. The Board Committee to which the draft Rules were referred, considered that the practical issue was merely whether the Board or the General Conference would be empowered to take the final decision on each grant of consultative status. In the light of the inconvenience of the latter alternative, and not being willing to accept the "delegation" argument by the Director General, the majority of the Committee concluded that consultative status did not involve an Article XVI type of agreement but was merely a revokable license that could be granted by the Board on its own authority. The Committee changed the draft consistently with that view, but also requested the Director General to prepare a legal study on this point. In his consequent report he came to no conclusion, but merely recited the arguments pro and con — with those supporting an Article XVI relationship appearing to predominate. The Director General did point out, however, that Section 27(a)(v) of the Headquarters Agreement appeared to provide for a type of consultative status not based on an agreement, for otherwise representatives of NGOs would have to be granted unusually extensive privileges under Sections 42-44 of the Agreement.³¹⁵ The Board thereupon decided to follow the recommendations of its Committee and to adopt Rules based on the assumption that the grant of consultative status was not an Article XVI agreement.

In the Administrative and Legal Committee of the Second General Conference, the representative of Australia called attention to this legal con-

clusion and indicated his support of it;³¹⁶ the Committee and the Plenary then approved the Rules without further debate on this point. Later the Fourth Conference in effect confirmed the new interpretation as to the nature of consultative status, by approving an amendment to its Procedural Rule 32 by which a distinction was drawn between organizations with which relationship had been established in accordance with Article XVI.A of the Statute, and NGOs enjoying merely consultative status.³¹⁷

While this point of statutory interpretation is now well settled, it does leave open the question about the sources of authority under which the Agency grants consultative status. Two answers are possible:

- (i) This is an implied power for which no explicit confirmation need be sought in the Statute; or
- (ii) Article XVI authorizes the establishment of relationships by means other than a Conference-approved agreement.

12.6.2.3. Grants

As foreseen in the Rules on Consultative Status, the Board on 15 January 1959 established a Committee on Non-Governmental Organizations, consisting of its Chairman and of eight other members to be named each year soon after the constitution of each new Board. This formula was borrowed from the similar bodies that had been established by ECOSOC and by some specialized agencies. The terms of reference of the Committee were those that the Board had previously communicated to the General Conference together with the draft Rules.³¹⁸

At its first meeting the Committee decided that its records should consist of a summary of its recommendations to the Board, with other views or reservations to be included on request and with explanatory material to be added as necessary. The Committee, and subsequently the Board, decided that organizations whose consultative status was under consideration would not be invited to attend these deliberations.

In order to assure that comparable information would be submitted to the Committee on each applicant organization, the Secretariat developed a standard questionnaire to elicit the required data.

Pursuant to paragraph 11 of the Rules and following in each case the recommendation of its Committee, the Board in 1959 through 1961 granted consultative status to 19 NGOs. ³¹⁹ Of these, 18 are world-wide or regional international organizations; in approving the Japan Industrial Forum (a purely national organization) the Board acted under a portion of paragraph 2(e) of the Rules which authorizes consultative status for "a national non-governmental organization after consultation and with the consent of the Member State concerned if the activities of the national organization are not covered by an international non-governmental organization and if the national organization has special competence on which the Agency wishes to draw".

Consultative status was formally denied to three organizations: the World Federation of Trade Unions (WFTU), the World Federation of Scientific Workers and the World Federation for Mental Health. Of these, the application

of WFTU was considered most extensively, and ultimately the resulting controversy led to the abandonment of the entire procedure that had been established for making these grants:

- (a) On 12 May 1959 the Board's Committee on NGOs decided not to recommend the grant of consultative status to WFTU.
- (b) On 1 July 1959 the Board rejected the grant of consultative status to WFTU.
- (c) The Third General Conference added the "question of granting consultative status" to WFTU to its agenda,³²⁰ and decided without debate to recommend to the Board (under Article V.D of the Statute) that it reconsider this question.³²¹
- (d) On 22 June 1950 the Board decided (15:7:0) that it had no reason to alter its previous decision on WFTU; however it agreed to issue a special report to the General Conference on its consideration of the matter.³²²
- (e) At the Fourth General Conference an additional item relating to this question was again accepted for the agenda;³²³ however, the proposed resolution by which the Conference would have recommended that the Board "reconsider again and decide positively the question of granting consultative status" to WFTU was rejected (17:34:6).³²⁴
- (f) Though WFTU later presented supplementary applications to the Board, these were never formally considered.

In September 1961 the Board decided to take steps at its next series of meetings to develop procedures to avoid in the future the difficulties it had contended with in connection with IGO and NGO relationships. In October it agreed that its Chairman should consult further with Governors and include a suitable item on the agenda at an appropriate time. While no such item was ever submitted and the results of these consultations were never revealed, their effect has been:

- (i) The Board's Committee on Non-Governmental Organizations, foreseen in the Rules on Consultative Status, has not been re-constituted.
- (ii) No application from an NGO for consultative status has been considered, even though about half-a-dozen new ones were circulated during 1961-62 as Committee documents.
- (iii) The Director General has discontinued the annual submission to the General Conference of the list of organizations to which consultative status has been granted, as required by paragraph 13 of the Rules.³²⁵
- (iv) The Agency has developed informal relationships with a number of NGOs (e.g., the US Atomic Industrial Forum) to which consultative status had not been granted, and in practice accords them most of the benefits of that status except for formal invitations to the General Conference.

12.6.3. Practical relations

NGOs have several times taken advantage of their right, pursuant to paragraph 3(d) of the Rules on Consultative Status, to submit written statements

to the General Conference. These have been published as information documents of the Conference.³²⁶

In considering the contributions that NGOs with consultative status have made to the Agency's work, these organizations can conveniently be divided into four groups, according to their main field of competence, with each of which a different type and intensity of relationship is maintained:

(i) Science and technology

With organizations in these fields relations have developed most quickly and to the greatest mutual benefit. Their representatives have discussed questions with members of the Secretariat, and with some arrangements have been made for continuous consultations and the exchange of documents. Their representatives have attended Agency panels as observers, and members of the Agency's staff have participated in technical committees and working groups convened by these NGOs. In the early years, the units developed by ICRU and the recommendations established by ICRP were used by the Agency before its own Basic Safety Standards were adopted;³²⁷ both these organizations have since been awarded "Technical Contracts" by the Agency to support their work,³²⁸ the results of which have a direct bearing on the Agency's own activities in connection with radiation protection and the standardization of radioactive units and measurements.

(ii) Power economics

Arrangements have been made with organizations active in this field for the exchange of documents and for attendance at each other's meetings. Thus representatives of UNIPEDE and of the World Power Conference have participated in the Agency's Panel on Nuclear Power Costing.

(iii) Industrial

With these organizations, including the transport-oriented ones as well as trade union federations, the Agency has generally merely exchanged documents.

(iv) Industrial and commercial management, and public relations

With these organizations too the principal contacts have been through the exchange of documents. However, some (particularly the World Federation of United Nations Associations) have assisted the Agency in publicizing its work.

NOTES

- 1 The texts of these agreements are reproduced in "Agreements between the United Nations and the Specialized Agencies and the International Atomic Energy Agency", UN doc. ST/SG/14(1961).
- 2 UNGA Off. Rec. (8th sess.), 470th Meeting, para.114 (quoted in Section 2.1).
- 3 Reproduced in UN doc. A/2738 (reprinted op. cit., Chapter 2, note 7), Note 8.
- 4 *Ibid.*, Note 12, para.24.
- 5 Sections 1.4(e) and 1.5(a).
- 6 UN doc. A/C.1/758, reprinted in UNGA Off. Rec. (9th sess.), Annexes, Agenda Item No. 67, pp.13-19 (1954).
- 7 UN doc. A/C.1/L.105, para. A.1, reprinted *ibid.*, p. 20.
- 8 UN doc. A/C.1/L.105/Rev.1, para. A.2, reprinted *ibid.*, p. 21; see also A/2805, para.5 (section A) (iii), reprinted *ibid.*, p. 23. The Resolution was later adopted by the General Assembly in that form (UNGA/RES/810(IX), para. A.2).
- 9 UN doc. A/C.1/L.106/Rev.1, para.1, reprinted *ibid.*, p. 21; see also A/2805, paras. 8(i) and 12, reprinted *ibid.*, p. 23.
- 10 Section 1.5(a) and conclusion.
- 11 WLM Doc. 2, Articles VI, D. 6, VII. L and XIII. D.
- 12 WLM Doc. 2(Add. 1); WLM Doc. 5(Rev. 1), para. 6 and Attachment 5; see also WLM Doc. 6(Rev. 1), Attachment 1. The USSR had also kept reverting to this issue both before and after the Negotiating Group draft was formulated; see Notes to the US of 29 November 1954, sixth paragraph; of 18 July 1955, para.(5); and of 1 October, 1955, para. 1, all reproduced in US State Dep't Press Release 527 (Oct. 6, 1956).
- 13 WLM Doc. 11(Rev. 1), Attachment 2.
- 14 WLM Doc. 8(Rev. 1), Attachment 1; WLM Doc. 17(Rev. 1), Attachment.
- 15 WLM Doc. 31, Annex III and IAEA/CS/3, Article III, B, 4 and 5.
- 16 UNGA/RES/912(X), para. II. 5.
- 17 UN doc. A/3122, reprinted as IAEA/CS/5 and also in UNGA Off. Rec. (11th sess.), Annexes, Agenda Item No. 69, pp. 1-2 and in Repertory of UN Practice, Supplement No.1, Vol. II, pp. 44-46, para. 2.
- 18 Section 27. 1. 2.
- 19 For example, comment by India, IAEA/CS/OR. 16, pp. 63-65.
- 20 IAEA/CS/OR. 33, p. 41; see, however, question by the Netherlands, IAEA/CS/OR. 34, pp. 11-12.
- 21 UNGA/RES/1115(XI).
- 22 For example, Protocol Concerning the Entry into Force of the Agreement between the UN and ILO, op. cit. *supra* note 1, p. 1.
- 23 UNGA/RES/1145(XII), Section 12. 2. 1.
- 24 2 Dahm, *Völkerrecht* (Stuttgart 1961), p. 775; Verdross, *Völkerrecht* (5th ed., Vienna 1964), p. 601. This special status is of course recognized in countless UN studies and reports -- e. g., Commentary (1) to Article 2(1) of the Draft Articles on Representatives of States to International Organizations, Chapter II of the ILC's Report on its 20th Session (UN doc. A/7209/Rev. 1 -- UNGA Off. Rec. (23rd sess.) Supplement No. 9).
- 25 Sections 12. 2. 2. 7. 3 and 32. 3.
- 26 In a superficial way this is indicated by the various "organizational charts" of the UN system produced by its Office of Public Information, where the box labeled "IAEA" generally occupies an undefined position immediately outside the perimeter enclosing the UN organs themselves; similarly in lists of all UN related organizations (e. g., Basic Facts about the United Nations, UN Publication Sales No. 67. L. 15; International Co-operation for Peace and Development through the United Nations and Related Agencies, OPI/266) the IAEA follows immediately after subsidiary UN organizations such as UNDP, UNITAR and UNIDO, and immediately before the senior specialized agency, ILO. However, a conventional phrase, recurring in many resolutions referring to all these organizations is: "the United Nations, the specialized agencies and the International Atomic Energy Agency".
- 27 Sections 12. 2. 2. 7, 32. 1. 4-5 and 32. 3. 1-2.
- 28 In practice, however, the budgetary supervision exercised by the General Assembly is much the same with respect to all the affiliated organizations. Largely this is so because the Assembly has not chosen to exert in full its Charter authority over the specialized agencies; in part, however, the Agency has voluntarily acquiesced in somewhat more extensive supervision than required by the Relationship Agreement (see Section 25. 2. 2. 5).

- 29 Para. 15 of the UN Secretary-General's "Study" referred to in Section 12.1.1, note 17. See also the intervention of various representatives, IAEA/CS/OR.33, pp.61-65, 73-75; /OR.34, pp.3-5, 11-12, 27.
- 30 INFCIRC/11.
- 31 At the Joint Meeting of the Preparatory Commission and UNSAC, IAEA/PC/OR.42 - ST/SG/AC.1/SR.32, pp.7-10.
- 32 UNGA/RES/1146(XII).
- 33 UNGA Off. Rec. (12th sess.), 715th Meeting, paras.10, 23-25, 38 and 50-54.
- 34 Sections 27.1.2, 27.2.1.2, and 27.4. See also the discussion by Shabtai Rosenne, *The Law and Practice of the International Court*, Vol. II, pp. 680-682 (1965), in which he concludes that "in the circumstances the Agency may properly be regarded as an organ of the United Nations for the purposes of [UN Charter] Article 96, and that the grant to it of authorization to request advisory opinions offends neither the letter nor the spirit of the Charter or the Statute [of ICJ]".
- 35 UNGA/RES/1201(XII); see UN doc. JSPB/G.4/Rev.3, Supplementary article C. For the background of this Resolution, see JSPB/R.50, JSPB/SR.110, pp.3-4; JSPB/R/51, para.92.
- 36 ECOSOC/RES/704(XXVI). Later, when EPTA was incorporated into UNDP and the new Inter-Agency Consultative Board was established, the IAEA was explicitly named as one of its members (UNGA/RES/2029 (XX), para.6).
- 37 UN doc. A/520/Rev.8.
- 38 UN doc. E/3063/Rev.1, footnote 2.
- 39 "Regulations to give effect to Article 102 of the Charter of the United Nations", adopted by UNGA/RES/97 (I), reproduced as amended in *Repertory of Practice of UN Organs*, Vol. V, Article 102, Annex. Thus the United Nations filed and recorded, under number 586, the Co-operation Agreement between the Agency and IANEC (396 U. N. T. S. 285), even though neither is a specialized agency. Section 26.6.2.
- 40 For example, in the General Assembly Resolution establishing UNIDO (2152(XXI)), IAEA is mentioned together with the specialized agencies eight times (either with direct reference to the organization or to its Members), but is omitted from para. 2(a)(ix). In the Resolution adopted by the Assembly at the same session concerning an International Year for Human Rights (2217(XXI)), the Members of IAEA are referred to once and the organization itself not at all, while the specialized agencies are referred to a number of times (usually without qualification), though evidently the intention was to refer only to the agencies "concerned".
- 41 As was done in a limited way by the footnote to the ECOSOC Rules of Procedure referred to above (note 38), or in the Second Report of the Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies (Committee of 14, established by UNGA/RES/2049(XX)), which, in spite of its misleading title, explains in footnote 1 to para. 14 that the Report also applies to the IAEA (UN doc. A/6343).
- 42 33 U. N. T. S. 261.
- 43 UNGA/RES/179(II).
- 44 Section 38, 3.1.
- 45 216 U. N. T. S. 132, at p.190.
- 46 Intergovernmental Copyright Committee doc. IGC/IV/12, para.4.
- 47 *Ibid.*, para.5.
- 48 Intergovernmental Copyright Committee doc. IGC/IV/18, Part A, XIII and Part B, Resolution No. 34(IV) (reproduced in *Unesco/CUA/98*, pp.11 and 16). Section 31.2.3.1.
- 49 Privileges and Immunities (International Organizations) Act, 13-14 Elisabeth II, chap.47, reproduced in *UN Juridical Yearbook 1965*, p.3.
- 50 UNGA/RES/912(X), para. II, 5.
- 51 Cited *supra*, note 17.
- 52 *Idem*, para. 3.
- 53 *Idem*, para. 4.
- 54 *Idem*, para. 5.
- 55 *Idem*, para. 8.
- 56 *Idem*, para. 9.
- 57 *Idem*, para. 15. See Section 12.1.4.1.
- 58 IAEA/CS/5.
- 59 IAEA/CS/OR.13, pp.52-55.
- 60 IAEA/CS/OR.33, pp.32-41.

- 61 IAEA/CS/OR. 34, pp. 11-12.
- 62 Statute, Annex I, para. C. 7(a).
- 63 UNGA/RES/1115(XI).
- 64 IAEA/PC/5, para. 3.
- 65 IAEA/PC/OR. 13, p. 3; IAEA/PC/W. 30(S).
- 66 Relating to the safeguarding of confidential materials; compare UN/IBRD Agreement (op. cit. supra note 1, p. 54), Article I. 3, with UN/IAEA Agreement (ibid., p. 93 and INFCIRC/11, Part I, A), Article II.
- 67 Articles X, XI, XVI and XVII.
- 68 IAEA/PC/OR. 18-21, 25-26, 33, 36, 37. See also IAEA/PC/W. 30(S)/Rev. 1, and IAEA/PC/W. 46(S).
- 69 IAEA/PC/OR. 42 -- ST/SG/AC. 1/SR. 32.
- 70 See the correspondence reproduced in GC. 1/3/Add. 1 and in UN doc. A/3602/Add. 1.
- 71 US representative Wadsworth felt that a major reason for the persisting disagreements (aside from the "very decided ideas" held by Secretary-General Hammarskjöld) was the difference in approach between the scientists who "represented" their Governments on UNSAC, and the diplomats speaking for the same Governments in the Preparatory Commission (see Wadsworth op. cit. Annex 5, No. 66, p. 56).
- 72 Thus see US proposal to the effect that the Agency should maintain only the loosest ties with EPTA (through an observer at UNTAB), so as not to become subject to or financially dependent on the United Nations (IAEA/PC/OR. 20, p. 4).
- 73 GC. 1/3/Add. 1 and UN doc. A/3620/Add. 1. See discussion preceding the exchange of this correspondence in IAEA/PC/OR. 48, 49, 50 and 52.
- 74 GC. 1(S)/RES/9, para. (b) and UNGA/RES/1145(XII), first paragraph of preamble.
- 75 INFCIRC/11, Part I, B.
- 76 This understanding was recorded in the minutes of the joint meeting (supra note 69). Sections 12. 1. 4. 1 and 27. 1. 2.
- 77 UN/IAEA Relationship Agreement (INFCIRC/11, Part I, A), Article XVI. 3. Section 25. 2. 2. 5.
- 78 Sections 12. 2. 2. 7. 2 and 32. 1. 5.
- 79 Sections 12. 4. 1. 3, 12. 4. 2. 1 and 18. 1. 3. 1.
- 80 Sections 12. 2. 3. 1 and 12. 2. 3. 2.
- 81 Respectively GOV/4-GC. 1/3 and UN doc. A/3620.
- 82 Cited supra note 70.
- 83 This Relationship Agreement, like all others concluded by the Agency, was formulated so as to enter into force automatically on securing the approval of the General Assembly and the General Conference (i. e., on the date on which the second body to act gave its approval); see Section 26. 5. 2. 1.
- 84 GC. 1(S)/COM. 2/5.
- 85 GC. 1(S)/COM. 2/OR. 6, para. 35; GC. 1(S)/24, para. 2 and /Corr. 1.
- 86 GC. 1(S)/OR. 12, para. 41; GC. 1(S)/RES/9.
- 87 UN doc. A/3713.
- 88 UN doc. A/L. 228 and /Add. 1.
- 89 At the General Assembly's 715th plenary meeting, by UNGA/RES/1145(XII).
- 90 UN doc. A/L. 229.
- 91 UNGA/RES/1146.
- 92 INFCIRC/11, Part I, A; 281 U. N. T. S. 369.
- 93 INFCIRC/11, Part I, B; 338 U. N. T. S. 406. Section 26. 5. 2. 1.
- 94 See also Fischer, op. cit. Annex 5, No. 22.
- 95 There is no need to refer to ACC in the relationship agreements between the UN and the specialized agencies, since the resolution by which that organ was established explicitly specifies that these organizations are to participate in it.
- 96 This is a boilerplate provision, appearing in many relationship agreements.
- 97 Section 18. 3. 4.
- 98 Sections 24. 4. 1. 1 and 24. 5. 2. 3.
- 99 Wawrik v. IAEA, ILOAT Judgment No. 41 (13 Sept. 1960), XLIII ILO Off. Bull., No. 7, pp. 468-471, para. 2 (Sections 24. 2. 1 and 27. 4. 3).
- 100 INFCIRC/11, Part II.
- 101 INFCIRC/11, Part III. Section 24. 5. 2. 1.
- 102 INFCIRC/11/Add. 1. Section 27. 3. 2. 3.
- 103 GC(II)/39, para. 54.

- 104 The Board has never yet used the authority granted to it by Statute Article VI.I to "appoint persons to represent it in its relations with other organizations", and thus the function of appointing such representatives has devolved on the Director General -- though because of the Director-grade rank of each of those representatives to the United Nations, the members of the Board had to be consulted informally on each appointment (Sections 9.3.3 and 24.7.4).
- 105 The functions and responsibilities of this office are fully described in the Programme and Budget for 1961, GC(IV)/116, paras. 242-246.
- 106 GC(VII)/INF/60; Section 7.3.9.2.
- 107 GOV/INF/60; Section 8.4.10.
- 108 Section 11.1.5.1.
- 109 Section 20.1.3(b).
- 110 Section 12.1.4.2.
- 111 In particular, the Director General regularly introduces the Agency's report to the UN General Assembly through an oral statement in the plenary (Section 12.2.2.7.1).
- 112 For example, GC(II)/51, by which the Board transmitted ECOSOC/RES/694(XXVI).
- 113 IAEA/PC/OR.25, p.11.
- 114 For example, GC(VII)/RES/155, para.3.
- 115 Section 34.4.
- 116 The Board's obligation to report safeguards violations to the General Assembly as well as to the Security Council is discussed in Sections 12.2.2.7.3, 21.7.2.4 and 32.3.1.
- 117 For example, GC(XI)/355 (Report for 1966-67), supplemented by INFCIRC/103, distributed to the General Assembly under cover of UN docs. A/6679 and /Add.1.
- 118 It was the Board itself, at its 20th meeting, that proposed that such an oral presentation be made, though as the Director General reported in his first bi-monthly report he was not able to speak to the General Assembly that first year. In May 1962 the Director General proposed that this oral report could entirely take the place of the supplementary report; this proposal was not accepted, but neither was a suggestion made during the course of the Board's debate, that the Director General should pre-clear his statement with the Board.
- 119 For a list of such Resolutions, see Annex 2.4. In the wake of the CNNWS, the General Assembly in 1968 included some substantive matters (Board composition; peaceful explosions) in its Resolution (UNGA/RES/2457(XXIII)).
- 120 This resolution is traditionally proposed by the UN delegations of the three States whose IAEA Governors are the current officers of the Board.
- 121 ECOSOC/RES/694(XXVI), para.E.I.2, reproduced in GC(II)/51, explanatory note, para.3.
- 122 GC(II)/51.
- 123 GC(II)/RES/24, para.1.
- 124 For example, *ibid.*, para.2. For the text of such a report see, e.g., INFCIRC/113 (1967-68).
- 125 Sections 21.7.2.4 and 32.3.1-2.
- 126 The Agency specifically complained to ECOSOC about this burden (INFCIRC/113, paras. 79-80). The following were the subjects of special reports required or requested by the United Nations for co-ordination purposes in 1967:
- (a) Relations with Inter-Governmental Organizations outside the United Nations family (UN doc. CO-ORDINATION/R.571, para.47)
 - (b) Development and Co-ordination of the Activities of the Organizations within the United Nations system (UN doc. E/4339 and /Add.1): pursuant to ECOSOC/RES/1172(XLI)
 - (c) Annual budgetary submission to ACABQ (Section 25.2.2.5)
 - (d) Reports on Implementation by the United Nations Family of Organizations of the Recommendations of the Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies:
 - (i) To the 22nd Session of the General Assembly: pursuant to UNGA/RES/2150(XXI)
 - (ii) To ACABQ at its 1967 summer session (UN doc. A/6475)
 - (e) Development Decade: pursuant to UNGA/RES/2218A(XXI):
 - (i) Survey for action in the field of development
 - (ii) Contribution to the report on "Directives for Action in the Field of Development"
 - (f) Evaluation of Technical Co-operation Programmes: pursuant to ECOSOC/RES/1042(XXXVIII), /1092(XXXIX), /1151(XLI) and /1263(XLIII)

- (g) Annual consolidated report on Industrial Development: pursuant to ECOSOC/RES/1081, D(XXXIX) and /1181(XLI)
 - (h) Biennial report on Co-ordination at Regional Level: pursuant to ECOSOC/RES/1111(XL)
 - (i) Contribution to the Report on the Development and Utilization of Human Resources: pursuant to ECOSOC/RES/1274(XLIII)
 - (j) Resources of the Sea:
 - (i) Contribution to the Secretary-General's survey on activities in marine science and technology: pursuant to UNGA/RES/2172(XXI)
 - (ii) Report on past and present activities of the Agency with regard to the sea-bed and the ocean floor: pursuant to UNGA/RES/2340(XXII)
 - (k) Contribution to the "World Plan of Action" prepared by the Advisory Committee on the Application of Science and Technology to Development: pursuant to ECOSOC/RES/1155(XLI)
 - (l) Review of the Activities and Resources of the United Nations, of its specialized agencies and of other competent international bodies relating to the Peaceful Uses of Outer Space (ACST): pursuant to UNGA/RES/2130(XX) and /2223(XXI)
 - (m) General Review of the Programmes of the United Nations Family: pursuant to UNGA/RES/2188(XXI):
 - (i) Annotated list of documents
 - (ii) Questionnaire on technical assistance activities
 - (iii) Expenditure by type of activity
 - (iv) Expenditure on field activities
 - (v) Table of funds and resources at the disposal of the Agency in 1965 and 1966 and estimate for 1967
 - (vi) Report on technical assistance activities funded from UNDP, IAEA Regular Programme and extra budgetary funds (Section 18.2)
 - (vii) Contribution to "clear and comprehensive picture of the existing operational and research activities of the United Nations family of organizations in the field of economic and social development and an assessment thereof"
 - (n) Report to CCAQ on plans for the implementation of the recommendations of the Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies (for CCAQ draft progress report)
 - (o) Statement to CCAQ of expenditures in relation to programmes
 - (p) Annual progress report to CCPI on public information activities
 - (q) Annual report to CCPI on visual information activities
 - (r) Note to ACC's Inter-Agency Study Group on Evaluation on existing evaluation practices: pursuant to ECOSOC/RES/1151(XLI) (Part III) and /1263(XLIII) (Part I)
 - (s) Working paper on the indexing of Agency publications (CO-ORDINATION/R.624) and for the Inter-Agency Working Party on Indexing
 - (t) Provisional calendar of meetings and conferences planned by the Agency for the next two years: pursuant to UNGA/RES/2361(XXII), presented to ACC's Committee on Conferences
- 127 UNGA/RES/2456(XXIII), Part A, para. 4. See Section 15.2.2.
- 128 GC(XIII)/INF/110. This report was prepared by the Director General and approved by the Board.
- 129 UNGA/RES/2456(XXIII), Part A, para. 8, based on CNNWS Resolution G (reproduced in UN doc. A/7277, para.17). GC(XIII)/404, para. 4.
- 130 IAEA/CS/OR.13, p.53.
- 131 Section 11.1.
- 132 For example, UNGA/RES/1376(XIV) and /1629(XV). For a complete list, see Annex 2.4.
- 133 For example, UNGA/RES/1764(XVII) and /2056(XX). See also reports by UNSCEAR to the General Assembly: UN docs. A/4119, Annex I, paras.16-17 (1959); A/4528(1960); A/4881(1961); A/5216(1962) (see also WMO report - A/5253, Annex, paras.17-19, 24); A/5406(1963); A/5814 and A/6123(1965). From time to time the representative of the Agency has intervened in the Assembly's discussion of these reports (e.g., A/C.1/SR.1011-14(1968); A/SPC/SR.397, paras.17-21 and A/SPC/88(1963)).
- 134 Reflected in 1959/60 Report to ECOSOC (INFCIRC/17, para. 68).
- 135 IAEA/CS/OR.6, p.12. Section 15.1.2.1(a).
- 136 UNGA/RES/810(LX).
- 137 Section 12.3.
- 138 In response to UNGA/RES/1344(XIII). The Agency's minor role in connection with the Conference is reflected in the almost complete absence of any reference to this important event in its several contempo-

- aneous annual reports: GC(II)/39, para. 64; GC(II)/40, para. 41; GC(III)/INF/20, para. 2(c); INFCIRC/4, paras. 11 and 27; GC(III)/73 -- almost no mention at all.
- 139 See the report of the UN Secretary-General on the Conference, in which the role of the Agency is hardly emphasized more than that of some of the specialized agencies (UN doc. A/3949).
- 140 UNGA/RES/1770(XVII), para. 3. Just before this resolution was adopted by the General Assembly, the Agency's General Conference had strongly encouraged the convening of such a Conference (GC(VI)/RES/129).
- 141 GC(IX)/299, paras. 10-15.
- 142 Ibid., paras. 16-23.
- 143 UNGA/RES/2309(XXII).
- 144 GC(XII)/380, para. 129; UN doc. A/7186, para. 2(e); UNGA/RES/2406(XXII) and /2575(XXIV), para. 5 of which refers to the Agency and sets the Conference for 1971.
- 145 GC(VII)/228, para. 17.
- 146 ECOSOC/RES/980(XXXVI).
- 147 INFCIRC/50, para. 17.
- 148 GC(IX)/299, paras. 216-218.
- 149 GC(VIII)/RES/175.
- 150 GC(IX)/299, para. 215.
- 151 See Whetten, *op. cit.* Annex 5, No. 89.
- 152 WLM Doc. 30, pp. 3-4; WLM Doc. 31, para. 7.
- 153 IAEA/CS/INF.1/Rev. 1.
- 154 IAEA/CS/6.
- 155 IAEA/CS/5 (cited *supra* note 17), para. 9.
- 156 IAEA/CS/6, third paragraph.
- 157 IAEA/CS/Art. III/Amend. 4.
- 158 IAEA/CS/OR. 13, pp. 46-51 (ILO); IAEA/CS/OR. 16, pp. 31-40 (UNESCO, FAO, WHO).
- 159 IAEA/CS/COORD/2, para. 2.
- 160 IAEA/CS/10, para. 3.
- 161 IAEA/PC/OR. 11, p. 3; IAEA/PC/WG. 2(S), Annex II.
- 162 See report by Executive Secretary, IAEA/PC/OR. 15, pp. 18-19.
- 163 IAEA/PC/OR. 12, pp. 8-19.
- 164 IAEA/PC/11.
- 165 See drafts in IAEA/PC/W. 37(S) and /Rev. 1.
- 166 GOV/5-GC. 1/4.
- 167 IAEA/PC/W. 58(S) and /Add. 1.
- 168 GOV/OR. 6/Add. 1, paras. 2-5 (WHO representative, also speaking for FAO, ILO and UNESCO). This part of the meeting was open in order to permit the representatives of the specialized agencies to participate, though at later meetings such participation was arranged (Section 12. 3. 3. 1) without this device.
- 169 GC. 1(S)/COM. 2/6.
- 170 GC. 1(S)/25.
- 171 GC. 1(S)/RES/11.
- 172 No such Conference authorization to negotiate was ever requested by or granted to the Board with respect to the co-operation agreements with regional intergovernmental organizations (Section 12. 5. 2).
- 173 ECOSOC/RES/694(XXVI), Part E, III.
- 174 UNESCO: UNESCO docs. 49 EX/33, para. 7 and 49 EX/DR. 2; FAO: FAO doc. C57/LIM/49, Part II; WHO: World Health Assembly Resolution WHA 11. 50 and Executive Board Resolution EB22. R22.
- 175 GC(II)/39, para. 68 and Annex 4.
- 176 INFCIRC/11, Part I. A.
- 177 INFCIRC/20 and /Add. 1.
- 178 During the discussion in the Board's Committee of the proposed agreement with ILO, the representative of the United Nations commented that the statement in Article I, 2, whereby ILO recognizes the "primary responsibility of the [IAEA], as recognized in the agreement between the United Nations and the [IAEA], to encourage and assist research on and the development and practical application of atomic energy for peaceful purposes throughout the world", could not bind the United Nations as an interpretation of its Relationship Agreement (which of course did not include the word "primarily" -- Section 12. 2. 1. 1(f)).
- 179 For example, GC(II)/46-50.

- 180 For example, GC(II)/COM.2/OR.11, paras. 31-39; GC(II)/63.
- 181 For example, GC(II)/RES/22.
- 182 Section 26.5.2.1.
- 183 GC(III)/73, para. 74.
- 184 The Board's concurrence in this procedure is necessary since, under Statute Article V, E, 7, the Conference itself is not authorized to change the text of a negotiated agreement, but can merely return it to the Board with recommendations. What the Conference cannot do directly it plainly may not do by indirection through the Director General -- unless, indeed, the whole authority might be considered as falling under a de minimis rule (which view is supported by the consideration that, without any explicit authority, the Director General agreed to conform the text of the UN Relationship Agreement to that approved by the General Assembly) -- Section 12.2.1.1(B)).
- 185 GC(II)/63, para. 2; GC(II)/DEC/8.
- 186 Section 33.4.
- 187 For the texts of these protocols, see INFCIRC/20 and /Add.1; these texts are also reproduced in the UN Treaty Series, under the same Filing and Recording Number as the relationship agreement itself.
- 188 Article X of each of the agreements.
- 189 Section 26.6.2.
- 190 Section 12.3.2.4(a) and (b).
- 191 GC(II)/46-50; GC(II)/RES/22.
- 192 ECOSOC/RES/694(XXVI), Part E, III.
- 193 GC(III)/82/Rev.1; GC(III)/RES/44.
- 194 GC(V)/153; GC(V)/RES/95.
- 195 For areas of minor collaboration, see GC(X)/330, para. 225, and GC(XI)/355, para. 115.
- 196 See Whetten, op. cit. Annex 5, No. 69, pp. 155-161.
- 197 GC.1/4, quoted in Section 12.3.2.1.2.
- 198 Compare Article XII of the UNESCO Agreement ("Revision and Termination") with Article XII of the ILO Agreement ("Revision of the Agreement"), respectively INFCIRC/20, Parts I, A and II, A.
- 199 GC(VII)/INF/60, Rule 31.
- 200 Idem, Rule 12(e); however there is no authority for these agencies to propose "supplementary" or "additional" items pursuant to Rules 13 and 15, or items for the agendas of special sessions pursuant to Rules 17 and 19.
- 201 GOV/INF/60, Rules 15(d), 17 and 49.
- 202 Section 20.1.1. Now a provisional calendar of meetings and conferences planned for the next two years is presented periodically to ACC's Committee on Conferences, pursuant to UNGA/RES/2361(XXII).
- 203 AM. VII/1 and 2.
- 204 Section 20.1.4. Such co-sponsorship was advocated by ACC -- with special reference to atomic energy meetings, in its 24th report to ECOSOC (UN doc. E/3368, Annex I, para. 2), and later, with respect to all subjects, by the Ad hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies (UN doc. A/6343, Recommendation 42, approved by UNGA/RES/2150(XXI) and reproduced also in A/7124, Annex 1, Recommendation 42), the Agency's report on implementation appears in UN document A/7124, Annex XII, Recommendation 42.
- 205 Section 11.1.5.1(e).
- 206 Section 19.2.3.
- 207 Section 22.2.2.3.2.
- 208 GC(X)/330, para. 173.
- 209 GC(VI)/195, para. 83. Section 23.4.
- 210 Section 20.2.1.
- 211 Which replaced EPTA's Technical Assistance Board (UNTAB) in which the Agency also participated, Sections 18.1.3 and 18.2.3-4.
- 212 INFCIRC/35, para. 10.
- 213 INFCIRC/54, para. 68.
- 214 GC(IX)/299, paras. 84 and 208; IAEA Press Release PR 64/45. The agreement has not been filed and recorded with the United Nations.
- 215 AM. I/3.
- 216 Apparently following the quaint medieval custom of exchanging highly placed hostages, IAEA transferred one of its staff members to FAO, which thereupon appointed him Director of the Joint Division; similarly a transferee from FAO to IAEA was appointed Deputy Director by the latter organization.

- 217 The financial provisions have led to some friction due to the efforts of the Agency to induce FAO to increase its share of contributions to the joint expenses (GC(XII)/380, para. 131); it has tentatively been agreed that any future expansion of activities will be jointly financed (GC(XII)/385, para. 120). For an account of the planned implementation of these provisions, see GC(XII)/385, paras. 61-64, et seq.
- 218 Section 27.3.2.2.
- 219 INFCIRC/35, para. 10.
- 220 The Preparatory Commission had originally proposed that the Agency establish its own coupon scheme (GC.1/1, para. 67(j)).
- 221 GC(IV)/RES/78, para. 2, and GC(VII)/RES/150, paras. (c) and 2.
- 222 Section 19.1.3.
- 223 INFCIRC/132; this development was foreseen in GC(XII)/385, paras. 300-301.
- 224 EB33.R50.
- 225 INFCIRC/61, para. 26.
- 226 Mentioned, GC(XI)/335, para. 115.
- 227 Section 11.1.5.1(e).
- 227A Section 22.2.2.3.2.
- 227B Sections 22.2.2.4 and 22.2.3.
- 227C Draft of the Introduction to the Board's 1969/70 Report to the 14th General Conference.
- 228 IAEA/CS/6; Section 12.3.1. In UN doc. E/2931, Annex II, ACC summarized the position regarding co-ordination of activities in the field of the peaceful uses of atomic energy at the time of the Conference on the Statute. See also IAEA/PC/WG.2(S), Annex II. A slightly later account was presented to the First General Conference in GC.1/INF/8.
- 229 IAEA/PC/W.14.
- 230 See in general, Balekjian, op. cit. Annex 5, No. 1.
- 231 Over a decade later, this problem had still not been solved, as indicated by ECOSOC/RES/1281.I(XLIII) (4 August 1967), reproduced in INFCIRC/100 - GC(XI)/INF/94.
- 232 IAEA/CS/5 (cited supra note 17).
- 233 INFCIRC/11, Part I, A.
- 234 GC.1/3/Add.1; Section 12.2.1.1(i).
- 235 GC.1/4; the relevant paragraphs are quoted in Section 12.3.2.1.2.
- 236 Section 12.3.2.4(a).
- 237 This Resolution was communicated to the Second General Conference in GC(II)/51, Appendix.
- 238 Which reflected ACC's report on co-ordination in the atomic energy field (UN doc. E/3247, Annex II),
- 239 INFCIRC/17, para. 18; GC(IV)/114, para. 49.
- 240 Which reflected ACC's report on co-ordination in the atomic energy field (UN doc. E/3368, Part IV),
- 241 INFCIRC/28, para. 30; GC(V)/154, para. 30.
- 242 Which was later especially noted by the Seventh General Conference (GC(VII)/RES/149) and circulated at its request to all Members of the Agency (INFCIRC/48).
- 243 The need for "National Co-ordination has been the subject of several Resolutions of the Council, including ECOSOC/RES/1281.I(XLIII) (reported to the General Conference and to the membership of the Agency (INFCIRC/100 -- GC(XI)/INF/94)) and ECOSOC/RES/1369(XLV) (reported to the Board of Governors).
- 244 Before the Statute came into force the Preparatory Commission instructed its Executive Secretary to attend the 24th meeting of ACC, on the understanding that this would not create a precedent binding on the Agency (IAEA/PC/OR.11, p. 7; /OR.12, p. 19; /OR.16, pp. 4, 7; /OR.17, pp. 3-6). However, the Commission instructed the Executive Secretary to decline an invitation to the 25th meeting, which was scheduled to coincide with the First General Conference, and to request that atomic energy questions not be considered at that meeting (IAEA/PC/OR.61, p. 8). The first meeting at which the Agency itself was represented was thus the 26th, in May 1958.
- 245 For example, GC(VII)/228, para. 19.
- 246 Sections 24.2.4, 24.4.1.1.1-2 and 24.5.2.4.
- 247 GC(III)/75, paras. 468-469 and 487-488.
- 248 Section 18.1.3.2.
- 249 Section 18.1.4.
- 250 UNGA/RES/2029(XX), para. 6.
- 251 ECOSOC/RES/743.D(XXVIII), which belatedly requested the Agency to participate in the appraisal that had been initiated during IAEA's initial months by ECOSOC/RES/694.D(XXVI); Section 15.3.1.

- 252 UN doc. E/3346.
- 253 Section 15.3.1.2.
- 254 ECOSOC/RES/1171(XLI).
- 255 UN doc. A/7124, Annex XII.
- 256 Section 25.2.2.5.
- 257 UN doc. A/4016.
- 258 Recommended by ACABQ, *ibid.*, para. 23; Section 25.8.2.5.
- 259 GC(VII)/INF/60. The original Rules (GC(II)/INF/16) did not include this final proviso, which was added in 1960 by GC(IV)/RES/67, para. (f), on the basis of a proposal set forth in GC(IV)/115/Corr.1, para. 1(ii).
- 260 Statute, Annex I, para. C.3. The organizations invited were CERN, JINR, OEEC and the Nordic Organization for Theoretical Nuclear Physics (IAEA/PC/OR.65, pp.5-8).
- 261 For example, GC(X)/RES/204.
- 262 For example, GC(X)/334.
- 263 Thus objection was raised at every session of the General Conference until the twelfth to the invitation issued to EURATOM, several delegates contending that it is not engaged exclusively in the peaceful uses of atomic energy (e.g., GC(X)/COM.2/OR.42, paras.16-20; GC(X)/347, para. 2; but cf. GC(XII)/COM.2/OR.46, paras.14-15).
- 264 For example, GC(X)/RES/204.
- 265 The Board does not formally communicate to the General Conference a list of the invitations it has issued. For some years such a list was read out by the Chairman of the Administrative and Legal Committee of the Conference in introducing the proposal to renew the Board's authority to issue invitations (e.g., GC(VIII)/COM.2/OR.35, para. 15).
- 266 GC.1/4, second introductory paragraph.
- 267 Section 12.2.1.2(n).
- 268 As indicated in Section 12.5.3.4, soon after the agreement with CTCA was concluded, that organization was superseded by the Scientific, Technical and Research Commission of OAU; in 1968 the Agency negotiated an agreement with the latter organization, providing for co-operation with its new Educational, A, IAEA, Vienna (Scientific, Cultural and Health Commission (INFCIRC/25/Add.2).
- 269 INFCIRC/25, Part I.
- 270 Multilateral Agreements, Legal Series No.1, IAEA, Vienna (1959) pp.201-208. The organization is described in Nuclear Law for a Developing World, Legal Series No.5, IAEA, Vienna (1969) pp.21-32.
- 271 Accepting the recommendation contained in the Report of the Preparatory Committee of OECD, para.129.
- 272 However, Article 15 of the OECD Convention provided that the legal personality of OEEC would continue in OECD.
- 273 At its 286th meeting.
- 274 These "Arrangements" are dated 30 September 1960. Like those concluded with other organizations pursuant to relationship or co-operation agreements, their text was not communicated to the Board or to the General Conference, nor filed and recorded with the United Nations.
- 275 GC(VII)/228, para.21.
- 276 Sections 23.1.2-3.
- 277 INFCIRC/64; Section 19.3.2.4.
- 278 GC(XII)/380, para.134. ENEA's Computer Programme Library is described in the 9th Report on the Activities of the Agency [ENEA] (December 1967, Paris), paras.71-79; that Report mentions several aspects of co-operation with the IAEA, in paras.92-98, 136-137, 181, 185, 192 and 200.
- 279 The organization is described in Legal Series No.5 (op.cit. supra note 270), pp.39-46.
- 280 In its Tenth General Report on the Activities of the Community (March 1966-February 1967), the EURATOM Commission suggests that the conclusion of such an agreement would be desirable (pp.83-84).
- 281 Section 12.5.1(c) and (f). As a matter of fact, the present text of the standard Conference resolution authorizing the Board to invite intergovernmental organizations (quoted in Section 12.5.1) was adopted as a result of efforts by Eastern European States to cause the exclusion of EURATOM by using the words "engaged in peaceful uses of atomic energy exclusively" (GC(II)/COM.2/17; see also /18 and /19, and GC(II)/COM.2/OR.10, paras.10-43 and /OR.11, paras.1-30). Overt opposition ceased in 1968 (supra note 263).
- 282 However, the formal consultations regarding safeguards that EURATOM is to hold with the Agency pursuant to its Co-operation Agreement with the United States (338 U.N.T.S. 135, Article XII, A) have apparently not yet been initiated. See also Sections 21.3.2.3(v), 21.11.2.3 and 21.11.3.3.

- 283 Section 20.4.
- 284 INFCIRC/25, Part II.
- 285 Statute of the Inter-American Nuclear Energy Commission (approved by the OAS Council on 22 April 1959), Article 21. The organization is described in Legal Series No. 5 (op. cit. supra note 270), pp. 33-38.
- 286 INFCIRC/25/Add. 1.
- 287 GC(VIII)/292, para. 3; GC(VIII)/RES/179.
- 288 GC(XII)/376, para. 2. The Agreement was approved by GC(XII)/RES/237, and entered into force on 26 March 1969 (INFCIRC/25/Add. 2).
- 289 GC(IV)/RES/79.
- 290 The nuclear activities of the organization are described in Legal Series No. 5 (op. cit. supra note 270), pp. 47-52.
- 291 GC(XIII)/404, para. 132.
- 292 Signed in Mexico City on 14 February 1967 and known as the Tlatelolco Treaty; for the text see UN doc. A/6663 or The United Nations and Disarmament 1945-1965 (UN Publication Sales No. 67. I. 9), Appendix IX. Section 21.3.2.2.
- 293 In introducing Article XVI to the Main Committee of the Conference on the Statute, the US representative indicated his Government's understanding that it also extended to relationships with "any non-governmental organization whose work relates to that of the Agency" (IAEA/CS/OR. 33, p. 37 -- quoted in Section 12.6.2.2).
- 294 IAEA/PC/12 or GC.1/5, para. 3.
- 295 IAEA/PC/OR. 26, p. 11.
- 296 GC.1(S)/COM. 2/7.
- 297 GC.1(S)/25.
- 298 GC.1(S)/RES/12, para. 3.
- 299 GC.1/5, resolution, para. 1.
- 300 *Ibid.*, para. 2. In submitting its recommendation in this form, the Preparatory Commission in effect intervened in the relationship between the Board and the General Conference; though some of the proposed rules might require Conference action if they related to attendance at or participation in its meetings, others would not require the approval of the Conference under Article V. E. 7 or any other provision of the Statute.
- 301 GC.1(S)/COM. 2/7.
- 302 GC.1(S)/25.
- 303 GC.1(S)/RES/12, paras. 1 and 2.
- 304 Section 12.3.2.2(b).
- 305 GC(II)/43.
- 306 GC(II)/61.
- 307 GC(II)/RES/20.
- 308 INFCIRC/14.
- 309 This omission is deplored by Rodgers, op. cit. Annex 5, No. 51.
- 310 INFCIRC/15, Part I; the entry into and sojourn in Austria of representatives of NGOs with consultative status appears to be adequately provided for by Section 27(a)(v), but under Section 42 other privileges and immunities would seem to depend on an "invitation" by the Board or the General Conference to come to the headquarters seat. No mention of NGOs appears in the Agreement on the Privileges and Immunities of the Agency (INFCIRC/9/Rev. 2).
- 311 IAEA/CS/OR. 33, p. 37. This statement was later cited in the Preparatory Commission (IAEA/PC/W. 26).
- 312 GC.1/5, para. 1.
- 313 GC.1(S)/RES/12, para. (a).
- 314 GC.1(S)/RES/15, para. 1; GC(II)/INF/16.
- 315 This is precisely the type of coverage Rodgers, op. cit. Annex 5, No. 51, argues that NGOs should have. Incidentally, the Director General might also have pointed out that if the grant of consultative status is considered as a type of relationship agreement, then Article XX of the UN Relationship Agreement would require each grant to be notified to the United Nations both before and after the Agency takes such action (Section 12.2.1.2(n)).
- 316 GC(II)/COM. 2/OR. 10, para. 6.
- 317 GC(IV)/115, para. 11 ("corrected" on other grounds by GC(IV)/115/Corr. 1, para. 1); GC(IV)/RES/67, para. (f); GC(VII)/INF/80, Rule 32(b).

- 318 GC(II)/43, Appendix.
- 319 Forum Atomique Européen (The European Atomic Forum)
 The European Confederation of Agriculture
 The International Air Transport Association (IATA)
 The International Cargo Handling Co-ordination Association
 The International Chamber of Commerce (ICC)
 The International Commission on Radiological Protection (ICRP)
 The International Commission on Radiological Units and Measurements (ICRU)
 The International Confederation of Free Trade Unions
 The International Co-operative Alliance
 The International Council of Scientific Unions (ICSU)
 The International Federation of Christian Trade Unions
 The International Federation for Documentation
 The International Federation of Industrial Producers of Electricity for Own Consumption
 The International Organization for Standardization (IOS)
 The International Union for Inland Navigation
 The International Union of Producers and Distributors of Electrical Energy (UNPEDE)
 The Japan Atomic Industrial Forum, Inc.
 The World Federation of United Nations Associations
 The World Power Conference
 (Derived from GC(V)/INF/43.)
- 320 GC(III)/DEC/6.
- 321 GC(III)/RES/47.
- 322 GC(IV)/INF/29.
- 323 GC(IV)/GEN/17 (proposal by Poland); GC(IV)/128, paras. 3-4 and Annex.
- 324 GC(IV)/133 (draft resolution by Czechoslovakia); GC(IV)/OR.47, para. 61.
- 325 No violation of Rule 13 is involved if it is interpreted as requiring a list of only those NGOs to which consultative status had been granted since the last report -- as no additional grants were made since the list issued at the Fifth General Conference (GC(V)/INF/43). However, the previous practice had been for the list to include the names of all the organizations currently enjoying that status.
- 326 For example, by Japan Industrial Forum (GC(IV)/INF/33); by European Atomic Forum (GC(V)/INF/44).
- 327 INFCIRC/18, footnotes 1 and 7, and Appendix, footnote 1; Section 22.2.2.4.1.
- 328 Section 19.2.6.

CHAPTER 13. RELATIONSHIP WITH STATES

13.1. STATUTORY RIGHTS AND DUTIES OF MEMBER STATES

Perhaps the principal legal fact about the Agency is that the Statute itself creates no significant rights, duties or prohibitions for the Member States. Almost all the obligations of the Agency towards its Members or of those towards the organization or to each other are based on agreements concluded with the Agency – the terms of which are in part prescribed by the Statute, but largely depend on subsidiary instruments promulgated by the Agency's organs and always require negotiations with and acceptance by the Members immediately concerned. These agreements and the instruments on which they are based form the main subject matter of the Chapters in Part D.¹

Very few of the rights and duties mentioned in the Statute are absolute – i. e., operative without any further subsidiary instruments. Most of the absolute rights are merely procedural (e. g., the right of representation in the General Conference) and most of the absolute duties and prohibitions are similarly of subsidiary import (e. g., to refrain from seeking to influence the staff in the discharge of their duties). For the rest, most of the rights and duties referred to in the Statute are merely conditional or imperfect: the rights can only be exercised if certain obligations are accepted (e. g., submission to safeguards controls) or depend on a discretionary decision by an Agency organ (e. g., to grant a request for assistance), and the obligations arise only out of some voluntary act of assumption.

Though the rights and duties of Member States, and their ramifications through ancillary instruments, form the subject of much of the balance of this study, it seems useful to present here a short catalogue of those that arise directly from the Statute, whether absolute or conditional.

13.1.1. Basic rights and duties

Article III. D pronounces the principle that:

"... the activities of the Agency shall be carried out with due observance of the sovereign rights of States."²

This rule is stated to be "Subject to the provisions of this Statute and to the terms of agreements concluded between a State... and the Agency ... in accordance with ... the Statute" – surely a self-evident qualification – indeed not a qualification at all if one considers that a State in becoming a party to the Statute or to an agreement with the Agency is exercising its sovereignty in the very act of limiting it.

Article IV.C enjoins all Members to:

"... fulfil in good faith the obligations assumed by them in accordance with this Statute."

This at most is a restatement of the general principle "pacta sunt servanda". It should, however, be noted that it is not restricted to the obligations set forth directly in the Statute, but appears to include those deriving from all agreements concluded in accordance with the Statute.

13.1.2. Assessed contributions

Peculiarly enough, Article XIV.D does not explicitly state that Members are required to pay the contributions annually assessed on them pursuant to that Article (i.e., their share of the administrative expenses of the Agency).³ Indeed, Article XIX.A could be read as merely making the payment of assessed contributions a condition of the right to vote in the Agency.⁴ However, Article XVIII.E (which specifies the consequences of withdrawal from the Agency)⁵ makes it clear that Members have "budgetary obligations" — which can only refer to the Article XIV.D assessment.

Article XIV.G states that no loan contracted by the Agency shall impose any liability on its Members.⁶

13.1.3. Supply of assistance to the Agency

Members are under no absolute duty to supply any assistance to or through the Agency. The strongest approach to an obligation is contained in Article VIII.A, which states that:

"Each member should make available such information as would, in the judgement of the member, be helpful to the Agency."⁷

Articles IX.A, IX.B and X, relating respectively to the provision of: special fissionable materials; source and other materials; and services, equipment and facilities, are formulated even more weakly, since each is introduced by the words "Members may make available to the Agency...".⁸ At the Conference on the Statute amendments to strengthen each "may" to "should" were defeated or withdrawn.⁹

Though Article IX.C states that "Each member shall notify the Agency of the ... materials which that member is prepared... to make available...", and Article IX.F uses "shall" in a similar context, this obligation to notify would only arise if a State has freely decided, pursuant to Article IX.A or B, to offer some material. Moreover, in the consistent practice of the Agency, no Member has ever considered itself obliged to notify the Agency that it had decided not to make an offer, while on the other hand the view has been stated that the absence of a notification under Article IX should not be interpreted as a refusal to make materials available — i.e., these Articles have not been interpreted as creating an obligation to notify the Agency, positively or negatively.¹⁰

If a Member freely makes a notification under Article IX and agrees with the Agency on the terms and conditions of supply, then Article IX.D specifies that the Member must "without delay deliver" the materials "on request of the Agency", and Article IX.J prevents the supplier from designating the purpose for which the material is to be used. However, Article XIII provides that, unless otherwise agreed, a Member has the right to be reimbursed for any assistance it furnishes under Article IX or X.¹¹

13.1.4. Receipt of assistance from the Agency

Article XI.A allows every Member to request assistance from the Agency for any peaceful nuclear project. However, the right to receive assistance is clearly not absolute but is subject: to the availability of the requested item or service; to a positive evaluation of the project by the Board of Governors; and to the assumption of certain obligations by the requesting Member.¹²

The discretion of the Board in deciding on whether or not to grant the request is substantial, but not unlimited. Article XI.E specifies certain factors it must consider.¹³ Article III.C prohibits the imposition of "any political, economic, military, or other conditions incompatible with the... Statute". Article XIV.E requires that any financial charges by the Agency be based on a "scale" - i.e., they may not be discriminatory.¹⁴ Finally, under Article XI.C, the Agency must take into consideration the wishes of the requesting Member as to the source from which the assistance is to be supplied.

On the other hand, the requesting Member is obliged by Article XI.A to provide information about the project and by Article XI.D to admit project examiners (though that Article also gives it a limited right to approve who is to come). Article XI.F requires the conclusion of a Project Agreement covering at least the items there listed.¹⁵ In particular, pursuant to Articles III.A.5 and 6, XI.F.4(b) and XII.A, a Member must agree to certain safeguards and to health and safety controls to the extent relevant to the assistance to be received.¹⁶ In addition, pursuant to Article VIII.B, it must "make available to the Agency all scientific information developed as a result of assistance extended by the Agency pursuant to article XI".¹⁷

Up to now the Agency has managed to avoid any overt confrontation on the issue whether a Member otherwise in good standing may be denied its right to apply for and receive assistance as a result of a request by the United Nations¹⁸ or because of political unpopularity related to behaviour not directly relevant to the Agency's operations.¹⁹ In particular, because of the benefits to be derived from attendance at scientific meetings and from participation in joint projects, the Agency has resisted attempts to exclude on political grounds any participants from world-wide meetings or projects,²⁰ or appropriate regional participants from activities restricted to a particular area.²¹

13.1.5. Safeguards

It is not always understood that a State, by becoming a Member of the Agency, does not assume any obligation either to refrain from military nuclear ac-

tivities or to submit to any control on its peaceful activities. Nor is a Member obliged to refrain from assisting other States (whether Members or not) in conducting military activities or to require that any assistance it grants for peaceful purposes is to be subject to its own or to the Agency's control.²²

Article XI.F.4(b) does require every Member receiving assistance from or through the Agency to enter into an agreement providing for the imposition of the relevant safeguards.²³ Moreover, Article III.A.5 gives States (which need not necessarily be Members) the right to request the application of Agency safeguards to bilateral, multilateral or national activities – but it is not stated that the Agency must comply with such requests.²⁴

If the Agency is carrying out safeguards in a State on any basis (and this in every case requires the agreement of that State), it must have the rights and responsibilities listed in Article XII.A "to the extent relevant to the project or arrangement". But, in listing these rights to be enjoyed by the Agency, that Article also confers certain (apparently inalienable) rights on the safeguarded State: to have any produced special fissionable material deposited with the Agency returned promptly for use in safeguarded peaceful projects (XII.A.5);²⁵ to be consulted on the designation of inspectors and to have them accompanied by its representatives (XII.A.6).²⁶

It is currently in dispute whether Article XIV.C requires the States submitting bilateral or multilateral arrangements to safeguards to reimburse to the Agency the resulting costs.²⁷

Finally Article XII.C empowers the Board, if a Member receiving assistance refuses to comply with a safeguards obligation, to "direct curtailment or suspension of assistance being provided... by a member...".²⁸ The word "direct" appears to create an obligation for the supplying Member to curtail or suspend its assistance and perhaps even to accept the return of items previously furnished; it is, however, not clear whether this obligation extends only to assistance rendered by that Member at the request of the Agency (e.g., under Article IX.D) or extends also to other assistance furnished bilaterally outside of the framework of an Agency project. On the latter interpretation, this would be one of the few absolute duties of Members deriving directly from the Statute.

13.1.6. Compliance with regulations

The Agency has no power to issue any regulations binding its Members either absolutely or even only conditionally (i.e., subject to "opting out").²⁹

Aside from safeguards, the only regulations explicitly mentioned in the Statute are the "standards of safety for protection of health and minimization of danger to life and property (including such standards for labour conditions)" referred to in Article III.A.6. However, these can be made binding on Member States only through Project Agreements (Article XI.F.4(b) and XII.A.2), or on the basis of requests, by the States concerned, for the application of such standards to a bilateral or multilateral arrangement or to a national activity (Article III.A.6)³⁰ – but again it is not stated whether the Agency is required to comply.

Article V.D authorizes the General Conference to "make recommendations to the membership of the Agency" (it is not clear whether this includes

individual Members), but nothing in the Statute suggests that States are obliged to follow such recommendations.

13.1.7. The Secretariat

Article VII. D requires the Agency, in recruiting its staff, to pay due regard *inter alia* "to the contributions of members to the Agency and to the importance of recruiting the staff on as wide a geographic basis as possible". This, however, falls considerably short of assuring any Member of the right to place its citizens in the Secretariat.³¹

Article VII. F obliges each Member "to respect the international character of the responsibilities of the Director General and the staff and [not to] seek to influence them in the discharge of their duties".³² This is one of the few absolute statutory prohibitions.

13.1.8. Privileges and immunities

Article XV. A provides that the Agency shall enjoy in the territory of each Member the necessary legal capacity, privileges and immunities. Article XV. B provides that the representatives of Governments and members of the Secretariat "shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connexion with the Agency". Article XV. C provides that the above rights "shall be defined in a separate agreement or agreements between the Agency... and the members". The wording of this Article suggests that paragraph C is not meant to detract from the absolute obligation of Members created by paragraphs A and B. It is, however, less clear whether Members are under any obligation to enter into the agreements foreseen by Article XV. C — and in practice the Agency has rarely attempted to assert the existence of such an obligation.³³

13.1.9. Participation in the representative organs and in certain decisions

Article V. A and B authorizes each Member to be represented in the General Conference — but it must bear the cost of the attendance of its delegation;³⁴ though the wording of Article V. B suggests that representation by one delegate is obligatory, this was obviously not so intended and has never been interpreted in that sense. Article V. C grants each Member one vote, but Article XIX. A makes the right to exercise it subject to the regular payment of assessed contributions.³⁵

It is not clear to what extent Article VI. A creates a right for any particular Member to serve on the Board of Governors. Article VI. A. 1 specifies several objective criteria on the basis of which the Board must make certain designations, and presumably a State clearly meeting these criteria has a right to be designated.³⁶ The first clause of Article VI. A. 2 (if read together with the final sentence) appears to create an even clearer right for each of the four States mentioned therein to be designated to the Board in alternate years;³⁷ however, the criterion stated in the second clause of Article VI. A. 2 is too vague to create such a right in any particular "supplier

of technical assistance".³⁸ The situation is less clear with respect to Article VI. A. 3, but on balance it appears that no State can assert a right to be elected (except in the absence of any other eligible candidate in its geographic area), either at a given election or in rotation; though such a right has from time to time been claimed by certain States, it has never been accepted by the General Conference and the Statute creates no mechanism by which such a right could practically be secured.³⁹

Article XVIII. A grants all Members the right to propose amendments to the Statute.⁴⁰ All Members (presumably whether or not they have forfeited their "vote in the Agency" under Article XIX. A) have the right to be counted in determining whether or not an amendment to the Statute has come into force pursuant to Article XVIII. C(ii),⁴¹ and in determining whether or not a special session of the General Conference should be convened pursuant to Article V. A.⁴²

13.1.10. Settlement of disputes

Article XVII. A provides for the submission of any question or dispute concerning the Statute to the International Court of Justice "in conformity with the Statute of the Court". To the extent that this constitutes a reference to Article 36(1) of the ICJ Statute, Article XVII. A of the Agency's Statute thus creates a right in any Member (i. e. , any party to the Agency's Statute) to submit such a question or dispute to the Court, and creates a corresponding obligation for the other Members to accept the Court's jurisdiction in the matter.⁴³

Article XVII. B, while allowing the Agency to request advisory opinions from the Court, does not make these binding on Member States.⁴⁴

13.1.11. Right to information

The final sentence of Article VI. J entitles Members to receive the Board's annual reports to the General Conference as well as the reports proposed to be submitted to the United Nations and to other organizations.⁴⁵

Under Article IX. G, Members are entitled to receive from the Agency periodic reports on nuclear and other materials delivered at the request of the Agency.⁴⁶ Under Article XII. C, Members are to be informed by the Board if it finds that any Member has failed to comply with a safeguards obligation.⁴⁷

Article XXI. F obliges the depositary Government (that of the United States) to inform Members of the dates on which States become parties to the Statute after its entry into force.⁴⁸

13.1.12. Right to withdraw

Article XVIII. D states the several conditions under which a Member may withdraw from the Agency; since one of these is the passage of five years from the date of the entry into force of the Statute, this right has become perfected for all or almost all Members.⁴⁹ However, Article XVIII. E provides that withdrawal shall not affect certain budgetary and contractual obligations.⁵⁰

13.1.13. Suspension of privileges

Article XIX.B provides for the suspension of a "member which has persistently violated the provisions of this Statute or of any agreement entered into by it pursuant to this Statute... from the exercise of the privileges and rights of membership". Article XII.C specifically refers to non-compliance with safeguards obligations as a reason for such suspension.

While the procedure for accomplishing a suspension is clear,⁵¹ its consequences are not. There can be no doubt that among the rights suspended would be the right to receive any assistance from the Agency (presumably including assistance already contracted for), and this undoubtedly is the principal purpose of the provision. However, questions might arise about certain other "privileges and rights of membership":

- (a) The assurance given by Article III.D that "the sovereign rights of States" will be respected, can presumably not be suspended — not only because of the nature of this right but also because it is not stated as restricted to Member States.⁵²
- (b) Though the right to vote in the organs of the Agency probably is suspended, it could be argued that suspension of this right is specifically and exclusively dealt with in Article XIX.A.⁵³
- (c) Articles V.A and XVIII.C(ii) require that certain decisions be taken on the basis of a stated fraction of all Members of the Agency. Unless a suspension of "privileges and rights" pursuant to Article XIX.B is assumed to remove a State from the list of Members for the purpose of such a count, the right of a suspended Member to participate in these decisions (positively or negatively) must in effect be preserved.⁵⁴
- (d) Articles VI.A.1 and 2 create an obligation for the Board to designate States meeting stated criteria to membership in the Board. If this obligation is interpreted as merely creating a right for those States to be designated, then presumably that right could be suspended; however, if the provision is considered as a constitutional one dealing with the proper composition of an Agency organ, then the opposite conclusion might have to be reached.⁵⁵
- (e) Certain "rights" of Members have been mentioned in the Sections above (particularly with respect to safeguards) which really amount to restrictions on related rights of the Agency: for example, the right to be consulted about the designation of inspectors (Article XII.A.6) and the right to demand the return of fissionable material deposited with the Agency (Article XII.A.5). It seems unlikely that, in view of their nature, these rights can be suspended — especially to the extent that some of them (e.g., the right to be consulted about and to accompany inspectors) are attributed to "States" generally and not solely to Members.⁵⁶
- (f) It is doubtful whether a Member's right to be reimbursed under Article XIII for assistance it furnished to the Agency pursuant to Articles IX or X can be "suspended".⁵⁷
- (g) The right to withdraw from the Agency (Article XVIII.D)⁵⁸ can and should not be suspended — since the Statute does not provide for expelling Members, this can in effect only be accomplished by inducing withdrawal by suspending a State's rights while maintaining its obligation to pay assessed contributions.

13.2. OFFICIAL CONTACTS WITH MEMBER STATES

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles V, B and XV, B

General Conference Rules of Procedure (GC (VII)/INF/60) 23-25

Board of Governors Rules of Procedure (GOV/INF/60) 1-3

Headquarters Agreement (INFCIRC/15, Part I), Sections 1(h)-(m) and 27(a) (i)-(ii), and Articles XII-XIV

Privileges and Immunities Agreement (INFCIRC/9/Rev. 2), Sections 1 (iii)-(iv) and 27 (a), and Article V
Administrative Manual, AM. I/6 ("IAEA Regional Officer for Asia and the Far East")

13.2.1. Representatives to the Agency

13.2.1.1. Delegates to the General Conference

Statute Article V.B specifies that each Member is to be represented by one delegate at the General Conference, who may be accompanied by alternates and advisers. This is the only direct statutory reference to the method of representation in the Conference.⁵⁹ Procedural Rules 23-25 of the General Conference⁶⁰ specify the composition of delegations and the functions of their members in various sub-organs of the Conference. Rule 27 requires that the credentials of each delegate be issued "by the Head of State or Government or by the Minister of Foreign Affairs", and be submitted to the Director General together with the names of the persons constituting the delegation. These credentials are then examined by the Credentials Committee of the Conference.⁶¹ New credentials are required for every session and must specifically refer to the Conference⁶² - i. e., an accreditation as Governor or Resident Representative does not suffice.⁶³

Most Members that have a national atomic energy commission or equivalent institution designate the head of that office as the delegate to the Conference. Others appoint the head of their diplomatic mission in Austria, or in a nearby country, or at the European Office of the United Nations. A few countries are represented by members of their Ministry of Foreign Affairs.

13.2.1.2. Governors

The only statutory reference to Governors appears in Article XV.B, which merely refers to their privileges and immunities and to those of their alternates and advisers.⁶⁴

Procedural Rule 1 of the Board of Governors⁶⁵ requires each State represented on the Board to "designate one person as its Governor", and Rule 2 permits each Governor to designate an alternate. Rules 3 and 4 require that a Governor's credentials "be issued by the Head of State or Government, or by the Minister of Foreign Affairs", and that these be examined by the Director General who is to report on them directly to the Board. Rule 3 also requires Governors to notify the Director General in writing of the names of the alternates, experts and advisers in his delegation, but the Board has permitted Governors to delegate this task to a member of their staff.⁶⁶

Many of the States represented on the Board have designated the head or some official of their atomic energy commission as Governor. Others have designated the head of their diplomatic mission in Austria or in some other near-by country.⁶⁷ The United States has designated a series of persons who held no other official position concurrently. Finally some countries are represented by a member of their Foreign Ministry or by some other official.⁶⁸ In almost no case is an assignment as Governor (even if combined with that of Resident Representative) a full-time one — generally not even for the Chairman of the Board.⁶⁹

By established practice, accredited Governors are considered by the Agency as authorized to sign agreements with the Agency, whether these enter into force on signature or only subject to ratification. However, for the signature of general international agreements of which the Agency is only a depositary, specific full powers are required even of Governors.⁷⁰

13.2.1.3. Resident Representatives

The Statute makes no reference to Resident Representatives, and except for the Headquarters Agreement (which was specifically approved by the Board and the General Conference), no decision of the Board or the Conference relates to their appointment or status.⁷¹ However, the Director General on 10 November 1958 addressed a circular note to all Members suggesting that they appoint such Representatives, whose credentials should be issued and submitted in the same way as those of Governors.⁷²

Over sixty Members have complied with the Director General's suggestion. However, many of these "Resident" Representatives are not located in Austria at all but may be officials serving in their national capital (e.g., the head of an atomic energy establishment) or in a diplomatic mission in a European capital or in Geneva. Genuine "Resident" Representatives are usually appointed from the staff of the country's diplomatic mission in Austria; unless that person is at the same time Governor (a post usually assigned to the Ambassador), generally someone other than the head of the mission receives this assignment and consequently devotes himself on a part or full-time basis to the Agency, depending on the extent of his Government's concern for its affairs. For the two or three States that maintain full-time Missions to the Agency, the head of that office serves as Resident Representative. Finally certain members have appointed Representatives from among businessmen active in Austria or a neighbouring country, whose nationality may not even be that of the accrediting State.⁷³

In view of the minimal size and purely technical character of the Agency's permanent establishments outside its Headquarters, no Representatives have been appointed to offices outside Vienna.

By established practice, accredited Resident Representatives are accorded the same recognition in signing agreements with the Agency as are Governors.⁷⁴ In addition, their credentials are automatically accepted for the purpose of participation as observers in meetings of the Board, but not for active participation in any organ of the Agency.⁷⁵

13.2.1.4. Permanent Missions

As is true of Resident Representatives, outside of the Headquarters Agreement⁷⁶ no mention is made of Permanent Missions in any decision of the Board or the General Conference, or in any provision of the Statute. Nevertheless, a number of Missions have been established — most of which are only nominal though a few have substantial size. Formally, a Member is considered to have a Mission to the Agency if it has appointed a Resident Representative, even if he is not located in Vienna; in such case some other member of the State's diplomatic mission in Vienna is usually named as a member of the Mission. In most cases the address of the Permanent Mission is thus merely that of the embassy in Austria, but for a few countries there is no resident member at all and no Austrian address is given.⁷⁷

Both the Soviet Union and the United States have from the beginning maintained Permanent Missions in Vienna with six to ten full-time officials and headed by their Resident Representatives, who usually are also appointed Alternate Governors; these Missions are maintained separately from the respective embassies, but with the establishment of UNIDO in Vienna, the USSR has converted its IAEA Mission into one to the "International Organizations in Vienna". Some other States also maintain missions separate from their embassies, though most members of these Missions are also accredited to the Austrian Government. The Republic of China, which has no diplomatic relations with the host State, maintains a Mission in Vienna, headed by a Resident Representative accredited to the Agency. The Austrian Government itself has established in its Foreign Ministry a "Liaison Office" with the Agency, staffed by officials for whom this is a part-time assignment.

These Missions perform an important function in the work of the Agency. Since almost all States represented on the Board have active Missions in Vienna, most of the informal preparatory work for its meetings is accomplished by them; through their work the amount of fruitless controversy in the Board has been drastically reduced in recent years, since by the time an issue is presented the extent of the potential opposition has been gauged and if possible an acceptable compromise has been formulated, or formal presentation is delayed or avoided if no agreement can be reached.⁷⁸ The Missions also perform an important function in preparing, among the members of the General Conference not represented on the Board, the groundwork for various Board proposals; thereby potential deadlocks between the Board and the Conference have always successfully been avoided.⁷⁹ With respect to the Conference itself, the preparatory political work, such as the selection of the principal officers and the composition of some committees, is similarly performed largely by the Missions in Vienna.⁸⁰ Finally, an important task of the Missions is to maintain contacts with the Secretariat (officially with the Director General but actually mostly at appropriately lower levels); these contacts permit the Governments to influence Secretariat action both on general issues (such as in planning new projects or drafting programmes) and on particular ones (such as the recruitment of nationals, the assignment of fellowships or the granting of other assistance, or the acceptance of particular contributions in cash or kind by the Agency).

13.2.2. Representatives of the Agency

The Agency itself has not appointed representatives to any Member State. Its officers in New York are "accredited" solely to the United Nations, and while they may on occasion be instructed to perform some minor duties in relation to the American Government, they are not accredited to it. Similarly the liaison officer to WHO in Geneva has no functions in connection with the Swiss Government.⁸¹

The Agency has appointed a "Regional Officer for Asia and the Far East", who is based in Bangkok. This beat includes some eighteen Members and several Non-members. His task is to follow the peaceful nuclear energy programmes in these countries, to advise them with respect to requests for and the use of technical assistance, to promote co-operation among the Members, and to provide liaison with the local offices of the UN system of organizations.⁸²

Except for this assignment, most of the Agency's regular in situ contacts with Member States, most of which concern technical assistance, are carried out through the UNDP Resident Representatives.⁸³

13.3. RELATIONS WITH NON-MEMBER STATES

As already indicated, the Statute lays few absolute duties on its Members; following accepted principles, it does not purport to place any on Non-members. Similarly no rights are specifically granted to Non-members, though some provisions (e.g., Articles III.A.5, III.A.6 and III.D) are stated broadly enough to apply also to them.

In practice, certain contacts with Non-members have been established by means of various subsidiary instruments. Though the specific instances are detailed in other Chapters, these contacts can conveniently be summarized here. In addition to instruments promulgated by the Agency, several international agreements to which the Agency is not a party provide for possible contacts between the Agency and various States, without specifying that they must be Members: these include bilateral agreements foreseeing the transfer of safeguards to the Agency, the Treaty on the Non-Proliferation of Nuclear Weapons,⁸⁴ the Treaty for the Prohibition of Nuclear Weapons in Latin America,⁸⁵ and Article 25 of the High Seas Convention.⁸⁶

From the point of view of the Agency it is possible to classify Non-member States into several mutually non-exclusive categories:

- (a) Candidates for membership, i.e., States that:⁸⁷
 - (i) Have signed the Statute but have not yet ratified it;
 - (ii) Have been recommended for membership by the Board but have not yet been approved by the General Conference; or
 - (iii) Have been approved by the General Conference but have not yet accepted the Statute.

- (b) Ex-members, i. e. , States that have withdrawn from the Agency, pursuant to Statute Article XVIII. D. ⁸⁸
- (c) Members of the United Nations or of any specialized agency. This category has frequently been granted special status in order to save the Agency or certain of its organs from the potential political embarrassment that might arise from contacts with States or disputed entities entirely outside the UN family (e. g. , the People's Republic of China, the German Democratic Republic); in almost every case in which this category was especially recognized this was preceded by lengthy controversy on the principle of "universality". ⁸⁹

13.3.1. Assistance to Non-members

Article XI. A of the Statute authorizes only Members or groups of Members to approach the Agency with requests for assistance. Consequently, Agency assisted projects can only be established by Member States.

Similarly no technical assistance from the Agency's own resources is granted to Non-members. However, under the general principles of UNDP, the Agency has accepted the task of administering EPTA projects also in Non-member States that are members of any other organization in the UN system. ⁹⁰ In addition, some of the Agency's Preliminary Assistance Missions also visited Non-member States, though these were called Survey Missions and special budgetary arrangements were made with respect to them. ⁹¹

Several Non-member States participate in the Middle Eastern Radioisotope Centre for the Arab Countries and thereby benefit from the Agency's assistance to that Centre. ⁹²

Research contracts ⁹³ are as a general rule never awarded to a contractor in a Non-member State, though occasionally at least part of the work on the contract has been carried out in such a State.

Persons or organizations in Non-member States are free to purchase the publications of the Agency. They also make use of its information services (e. g. , the Library) — both in Vienna and through communications mailed directly to such States. ⁹⁴

13.3.2. Safeguards, and Health and Safety regulations

Article III. A. 5 and 6 of the Statute permits any State or States concerned to request the Agency to apply its safeguards or its health and safety standards to bilateral or multilateral arrangements among themselves or to national atomic energy activities. Correspondingly Article XII of the Statute, which deals with the method of the application of safeguards, generally appears not to be limited to the application of safeguards in Member States. ⁹⁵ Of course, to the extent that safeguards are applied to Agency assisted projects, these can only be established by, and the controls would thus relate to, Member States.

Similarly the Safeguards Document, the Health and Safety Document and the Inspectors Document ⁹⁶ are so formulated as to be in principle applicable to any State. Though application to Non-members was not specifically considered in drafting these Documents, the few instances in which

certain provisions refer in particular to Members appear to be due to oversight and none of them apply to any essential arrangements. Application of safeguards to Non-members has now become a distinct possibility under the General and Latin American non-proliferation Treaties,⁹⁷ neither of which is limited to Agency members and both of which obligate all their parties that are not already nuclear powers to conclude safeguards agreements with the Agency.^{97A}

Article XVIII. E provides that the withdrawal by a Member from the Agency shall not affect its "contractual obligations" entered into pursuant to Article XI - and the principal purpose of this provision appears to be to maintain an Ex-member's safeguards and health and safety obligations.⁹⁸ Correspondingly, the Agency must have authority to carry out such control functions in an Ex-member.

13.3.3. Contributions to the Agency

The two sets of Rules to Govern the Acceptance of gifts in kind or in cash⁹⁹ both provide that the Agency may accept gifts from the Government of any Member of the Agency or of any member of the United Nations or any specialized agency. Gifts from other States cannot be accepted, either by the Director General or even by the Board.¹⁰⁰ In anticlimax to the bitter debates about those limitations, no Non-member, whether or not in the privileged class of potential donors, has ever offered any contribution to the Agency.

In Appendix II to its Resolution establishing the Working Capital Fund,¹⁰¹ the General Conference authorized the Board to obtain advances from "Members of the Agency and or the United Nations" in order to assist in the initial establishment of that Fund.

Article XVIII. E of the Statute provides that the withdrawal by a Member from the Agency shall not affect "its budgetary obligations for the year in which it withdraws" - i. e., even after withdrawal an Ex-member would have to pay the assessed contributions for the year in question.¹⁰²

13.3.4. Agreements with Non-members

Nothing in the Statute explicitly precludes the Agency from entering into agreements with Non-member States. In fact, it has entered into a number of EPTA Basic Standard Agreements with such States (though in such case the Agency is in effect merely a passive party to the conclusion of the agreement by the UNDP administration in the name of all the participating organizations);¹⁰³ in addition, when the Agency was actually required to carry out EPTA projects in a Non-member, it has concluded the usual subsidiary technical assistance agreements with these States.¹⁰⁴

Both Kuwait and Yemen became parties to the Agreement for the Establishment of the Middle Eastern Regional Radioisotope Centre for the Arab Countries¹⁰⁵ (to which the Agency is a party) at a time when they were not Members of the Agency (though Kuwait has since become a Member).

Only Member States may accept and thereby become parties to the Agreement on the Privileges and Immunities of the Agency.¹⁰⁶ As a matter of fact, pursuant to its Section 39, the Agreement remains in force with respect to a State only as long as it remains a Member of the Agency - and

there appears to be no way of securing the direct participation of an Ex-member or other Non-member in the Agreement. However, to the extent that the Agreement is incorporated by reference into some other treaty to which a State and the Agency are parties and which is maintained in force even if the State is not or ceases to be a Member of the Agency (e. g., Project Agreements), then the incorporated provisions of the Privileges and Immunities Agreement also remain in force.¹⁰⁷

Even though the Agency may enter into agreements with Non-member States, these cannot be registered with the Agency pursuant to the Regulations promulgated by the Board to implement Article XXII. B of the Statute.¹⁰⁸ Though the Board once requested the Director General to propose to it additional Regulations under which, inter alia, agreements with or between Non-members could be either registered or filed and recorded, the Board subsequently took no action on the Director General's proposals.¹⁰⁹

Both the Brussels Convention on the Liability of the Operators of Nuclear Ships and the Vienna Convention on Civil Liability (which were sponsored by the Agency but to which it is not itself a party) permit only members of the United Nations, of the specialized agencies or of the Agency to become parties.¹¹⁰

13.3.5. Staff recruitment

There is no requirement that the Agency draw its staff members only from Member States - though of course a Non-member would not have made any contribution to which "due regard" would have to be paid in recruitment pursuant to Article VII. D of the Statute.¹¹¹ The Agency continues to employ a few persons who are either nationals of Non-members or who are stateless.¹¹²

13.3.6. Participation in Agency meetings

Procedural Rule 30 of the General Conference provides that all Non-member States that are members of the United Nations or any specialized agency are to be invited to attend the General Conference, and may participate without vote on matters of direct concern to them;¹¹³ this Rule as to participation has on occasion been interpreted quite liberally, i. e., when Nigeria and the Ivory Coast (after the approval of their membership but before their formal acceptance of the Statute) were permitted to intervene on the question of the participation of South Africa in the Agency.¹¹⁴ Procedural Rule 95 of the Conference permits any State "whose application for membership has been recommended by the Board of Governors" to attend any meetings of the Conference at which its application is discussed and to participate without vote in the discussion; this privilege is not restricted to members of the United Nations or a specialized agency, since the recommendation of the Board is presumed to be a sufficient warranty of political respectability. The General Conference has at least twice rejected proposals to allow all States to send observers.¹¹⁵

Procedural Rule 50 of the Board permits it to invite any Non-member State to be represented at or to attend any meeting of the Board.¹¹⁶ No use has yet been made of this possibility.

Only Member States were invited by the Board to participate in the Vienna Conference on Civil Liability.¹¹⁷ Though the Director General is generally not precluded from inviting representatives or nationals of Non-members to participate in or to observe other scientific or technical meetings, he rarely if ever does so.

13.3.7. Notifications concerning the Statute

Article XXI. F of the Statute requires the depositary Government to inform all signatories of the date of deposit of each ratification, of the date of entry into force of the Statute, and of the dates on which States subsequently become parties thereto.

Though not required by the Statute, the Director General, for the reasons indicated in Section 5.3.3.5, notified all States that were eligible to become Members by either ratification (having signed the Statute) or acceptance (having been approved by the General Conference on the recommendation by the Board) of the Statute, of the amendment to Article VI. A.3 approved by the General Conference.

NOTES

- 1 For a summary of the principal types of these agreements with Member States, see Section 26.2.1.
- 2 This provision was proposed by the Soviet Union, first in its correspondence with the United States (Note of 1 October 1955, para. 4, and Note of 20 March 1956, second paragraph — both reproduced in US State Dep't Press Release 527 (Oct. 6, 1956)), and later at the Working Level Meeting. (WLM Doc.2 (Add. 2), para. 6).
- 3 Section 25.3. Compare the language of Statute Article XIV. D with UN Charter Article 17(2).
- 4 Section 25.3.5.
- 5 Sections 6.3.1 and 13.3.3.
- 6 Section 25.6.1.
- 7 Sections 31.1.1 and 31.1.4-5.
- 8 Section 16.2.
- 9 IAEA/CS/Art. IX/Amend. 1 and /Art. X/Amend. 1; IAEA/CS/OR. 26, pp. 14-16, 26.
- 10 Sections 16.2.2.1 and 16.3.
- 11 Sections 16.2.2.3 and 16.2.2.5.
- 12 Section 17.1.
- 13 Section 17.2.1.1.
- 14 Sections 17.6 and 25.7.2.
- 15 Section 17.2.1.2.
- 16 Sections 21.2.3 and 22.3.
- 17 Sections 31.1.1 and 31.1.4.
- 18 For example, UNGA/RES/2184 (XXI), para. 9; /2189 (XXI), para. 9; /2202 (XXI), para. 10. Also UNGA/RES/2270 (XXII), para. 13; /2311 (XXII), para. 4; /2326 (XXII), para. 8 — all of which are also set forth in UN doc. E/4546.
- 19 All the UNGA Resolutions cited in the previous note related to Portugal, Rhodesia (not an IAEA Member) and/or South Africa and were consequent on their colonial or racial practices. A more difficult problem would be posed if the United Nations were to adopt a policy that only States that had become parties to the Non-Proliferation Treaty should receive nuclear assistance, and expect the Agency to comply pursuant to Statute Article III. B. 1 (Section 15.1.2.3).
- 20 Section 20.1.2.
- 21 However, in order to find a rational basis for excluding Israel from participation in the Middle Eastern Regional Radioisotope Centre to be established in Cairo (and thereby make the project politically feasible),

- the words "for the Arab Countries" were added to the title and to the conditions of participation (INFCIRC/38, Section 3; *infra* Section 19.3.1).
- 22 As indicated in Section 21.3, such obligations may, however, flow out of other international agreements, and in particular from Articles I-III of the Treaty on the Non-Proliferation of Nuclear Weapons (UNGA/RES/2373 (XXII), Annex).
- 23 The so-called Project Agreements, Sections 17.2.1.2, 21.5.2(a) and 26.2.1.5.
- 24 Section 21.2.3.
- 25 Section 21.7.2.1.
- 26 Sections 21.8.1.2 and 21.8.2.4.
- 27 Section 21.9.1.
- 28 Section 21.7.2.4.
- 29 Compare Constitution of WHO (14 U.N.T.S. 185), Article 22, and the Convention on International Civil Aviation (15 U.N.T.S. 295), Article 38.
- 30 Section 22.2.4.
- 31 Section 24.7.
- 32 This provision is based on UN Charter Article 100(2).
- 33 Section 28.1.
- 34 Section 7.3.8.
- 35 Sections 7.3.6 and 25.3.5.
- 36 Section 8.2.2.1.1.
- 37 Section 8.2.2.2.1.
- 38 Section 8.2.2.3.1.
- 39 Sections 8.2.2.4.1 and 8.2.2.4.7.
- 40 Section 5.3.3.1.
- 41 Section 5.3.3.7 and the introductory paragraphs of Chapter 10.
- 42 Section 7.3.2.2 and the introductory paragraphs of Chapter 10.
- 43 Section 27.1.1.2.
- 44 Sections 27.1.2 and 27.2.1.2.
- 45 Sections 32.1.2 and 32.1.4.
- 46 Sections 17.7 and 32.2.2.
- 47 Sections 21.7.2.4 and 32.3.1.
- 48 Section 5.1.4.
- 49 Section 6.3.
- 50 Sections 13.3.3 and 21.6.2.2.3.
- 51 Statute Articles XIX, B and V.E.3.
- 52 Section 13.1.1.
- 53 Section 25.3.5.
- 54 Sections 5.3.3.7 and 7.3.2.2, and the introductory paragraphs of Chapter 10.
- 55 Sections 8.2.2.1, 8.2.2.2 and 13.1.9.
- 56 Section 13.3.2.
- 57 Section 16.2.2.5.
- 58 Sections 6.3.1 and 13.1.12.
- 59 However, Statute Article XV, B refers generally to "Delegates of members together with their alternates and advisers", and this presumably refers principally, if not solely, to General Conference delegations. The Headquarters Agreement (INFCIRC/15, Part I) makes no special provision for delegates or delegations to the General Conference; by virtue of Sections 1(1) and (m) these persons are included among the "representatives of Member States" to "meetings convened by the IAEA" and are thus covered by Section 27(a) (ii) and particularly by Article XIV. Similarly, Conference delegates are, by virtue of Section 1(iii) and 1(iv) (1) of the Agreement on the Privileges and Immunities of the Agency (INFCIRC/9/Rev.2), covered by Article V and Section 27(a).
- 60 GC (VII)/INF/60.
- 61 Section 7.3.5.4.
- 62 A special exception was made for the First Special Session of the Conference by Supplementary Provisional Rule of Procedure F(GC.1/9); Section 4.1(i).
- 63 "The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency Concerning their Status, Privileges and Immunities" (UN doc. A/CN.4/L.118 - reproduced in Vol. II of the

- 1967 Yearbook of the ILC, A/CN.4/SER.A/1967/Add.1, pp.154-324 — hereinafter "P & I Report"), Part One. B, para.10(ii).
- 64 In the Headquarters Agreement, Governors and their staffs are especially mentioned and are granted privileges and immunities pursuant to Section 27(a)(i) and to Article XIII. In the Privileges and Immunities Agreement they are covered in the same way as delegates to the General Conference, i.e., in particular by Article V and Section 27(a).
- 65 GOV/INF/60.
- 66 Section 8.4.2.
- 67 As permitted by the Vienna Convention on Diplomatic Relations (500 U.N. T.S. 95), Article 5(3).
- 68 P & I Report (supra note 63), Part One. B, para. 7.
- 69 Though the Chairman of the 11th Board (1967/68), Admiral Quiñillalt, the head of the Argentine Atomic Commission, took up residence in Vienna and devoted himself practically full-time to the affairs of the Agency.
- 70 P & I Report (supra note 63), Part One. B, para. 12(ii); Section 26.5.2.2.2.
- 71 Since Article XV, B of the Statute does not refer to Resident Representatives, it is not clear whether they are automatically entitled to privileges and immunities. Under Article XIII of the Headquarters Agreement their rights and those of their staffs are the same as those of Governors and their staffs. The Privileges and Immunities Agreement makes no reference to this category, since a separate agreement would in any case be concluded with a State in which the Agency establishes an office to which such Representatives might be accredited.
- 72 Circular Note No. 0/414(gen). P & I Report (supra note 63), Part One. B, paras. 11.I(ii) and 11.II(ii).
- 73 The Austrian Government, arguing by analogy from Articles 8(1), (2) and 42 of the Vienna Convention (supra note 67) no longer accepts, under the Headquarters Agreement, the Agency's notification that a Member State has designated a local businessman as Resident Representative; instead, such persons are listed by the Austrian Government as "Liaison Officers", and enjoy only functional immunity for official acts. This position is also consistent with Article 11 of the ILC's Draft Articles on Representatives of States to International Organizations (Report of ILC on its 20th Session UN doc. A/7209/Rev. 1). In April 1970 there were two such Officers.
- 74 P & I Report (supra note 63), Part One. B, para. 12(ii); Section 26.5.2.2.2. This practice is consistent with Article 14 of the ILC's Draft Articles on the Representatives of States to IGOs (supra note 73).
- 75 P & I Report (supra note 63), Part One. B, para. 10(ii).
- 76 Article XII of the Headquarters Agreement provides that "permanent missions... shall enjoy the same privileges and immunities as are accorded to diplomatic missions in the Republic of Austria."
- 77 The Agency's April 1970 list "Board of Governors and Permanent Missions" (No. 20) shows that of 103 Members, 64 had established Missions of which all but 11 were located in Vienna. The Austrian Government periodically issues a separate Diplomatic List containing the names of the members of the various missions accredited to the several international organizations in Vienna, as well as the names of those officials of these organizations who enjoy diplomatic status (for the Agency, see Section 28.6).
- 78 Section 8.4.7.
- 79 Section 10.1.
- 80 Section 7.3.3.7.
- 81 Though his brief has been extended to include other international organizations located in Geneva.
- 82 AM.1/6.
- 83 Section 18.1.3.5.
- 84 UNGA/RES/2373(XXII), Annex; INFCIRC/140. Section 21.3.2.3.
- 85 The Tlatelolco Treaty (UN doc. A/6663; The United Nations and Disarmament 1945-1965 (UN Publ. Sales No. 67.1.9), p.309), Article 13. Section 21.3.2.2.
- 86 450 U.N. T.S. 11. Section 23.3.
- 87 Sections 6.1.2-4.
- 88 Section 6.3.1.
- 89 Sections 6.1.1 and 25.5.1.2; GC(IV)/COM.2/OR.17, paras. 34-35.
- 90 Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency (GC(IV)/RES/65, Annex), para. 2; Section 18.2.3.
- 91 Sections 18.2.5.2, 18.3.7 and 25.2.1(iii).
- 92 Section 19.3.1.1.
- 93 Section 19.2.4.

- 94 Sections 20.2.3 and 20.3.2.
- 95 Only the requirement for depositing excess special fissionable material with the Agency (Article XII. A. 5) refers directly to Members – as well as the final sentence of Article XII. C, which by its nature can only apply to Members. Of course, it is not at all certain that the drafters of the Statute deliberately used the word State in connection with most safeguards provisions in order to avoid a restriction to Members.
- 96 Respectively INFCIRC/66/Rev. 2 (Section 21.4.1), INFCIRC/18 (Section 22.1.2) and GC(V)/INF/39, Annex (Sections 21.4.2 and 22.1.3).
- 97 Supra notes 84 and 85.
- 97A On 11 March 1970, the 50 parties to NPT included 11 Non-members of the Agency and 10 more such States had signed but not yet ratified the Treaty. The potentially most controversial entity in the former category is the German Democratic Republic, which has long demonstrated a so far unreciprocated interest in membership (supra Chapter 6, note 31) and which already on 23 December 1969 addressed a request to the Agency for the application of its safeguards to a bilateral agreement with the Soviet Union.
- 98 Section 13.1.12.
- 99 INFCIRC/13, Parts I and II.
- 100 The Board-promulgated Rules relating to gifts in kind could presumably be waived by the Board (Section 16.8). However, the Rules relating to gifts of money were approved by the General Conference and thus cannot be suspended by the Board (Section 25.5.1.2).
- 101 GC.1(S)/RES/7, Appendix II, para. (b).
- 102 Section 25.3.
- 103 Sections 18.1.3.4, 18.1.5.2, 26.3.5 and 26.5.2.2.1.
- 104 Sections 18.1.5 and 26.2.1.6.
- 105 INFCIRC/38 and /Add.1/Rev.1.
- 106 INFCIRC/9/Rev.2; Section 28.3.
- 107 Sections 28.3.5 and 21.5.4.10.
- 108 INFCIRC/12.
- 109 Section 26.6.1.1.2.
- 110 Sections 23.1.4 and 23.2.10.
- 111 Section 24.7.1.
- 112 For example, INFCIRC/22/Rev.7, Annex, Tables 1 and 2. Such employment is indeed specifically foreseen by Article 48(c) of the Headquarters Agreement (INFCIRC/15, Part I), in Staff Rule 8.01.3 (AM.II/1) and in particular in Staff Rule 203.7(c) Governing the Conditions of Service of Technical Co-operation Experts.
- 113 At the first regular and special sessions of the Conference, special Supplementary Procedural Rule G(a) (GC.1/9) permitted the general participation, though without a vote, of all States that had signed but not yet ratified the Statute.
- 114 Section 7.3.9.1.
- 115 GC.1(S)/COM.2/8, para.1; GC.1(S)/COM.2/OR.5, para.38; GC.1(S)/OR.12, para.37; also GC(II)/OR.15, paras.1-14. For the context of these moves, see Chapter 6, note 2.
- 116 GOV/INF/60. When the Rules of Procedure of the Board were being drafted in the Preparatory Commission, Czechoslovakia and the Soviet Union argued, largely unsuccessfully, for an extensive right of participation by Non-member States (IAEA/PC/W.67, para. 16; IAEA/PC/OR.60, pp.4-8; /OR.64, p.8).
- 117 Section 23.1.4; as recorded there, this limitation was later unsuccessfully challenged at the Conference itself.

CHAPTER 14. RELATIONSHIP WITH INDIVIDUALS

It is clear from the nature of the Agency and from that of its statutory functions that its relations and contacts are to be primarily with States and international organizations. However, nothing in the Statute precludes the Agency from dealing for certain purposes with private persons (i.e., with individuals or organizations that do not have international legal personality), and indeed practical considerations often require it to do so. Though these arrangements with such persons are for the most part dealt with incidentally in the Chapters describing particular functions and relationships, a short summary is presented here, indicating which types of arrangements are permissible and possible, and which are not.

14.1. SUPPLIERS

Articles IX and X of the Statute foresee that nuclear materials and related items required by the Agency to carry out its primary statutory functions are to be supplied by Member States. However, the Statute does not forbid the resort to other suppliers, such as international organizations, Non-member States, or private persons. With respect to nuclear materials, the issue of their possible supply by private persons was explicitly raised in the early days of the Agency, when certain members of the Board unsuccessfully objected on statutory grounds against a provision in the Co-operation Agreement with the United States which foresees that, to the extent that commercial sources of items required by the Agency are available within the United States, the Government will only assist the Agency in obtaining supplies from such sources but will not compete with them.¹ In practice the Agency has up to now obtained nuclear materials only from governmental sources (though it has considered a number of private bids – rejecting them as less favourable than some official offer), but other types of items (in particular equipment) have frequently and routinely been obtained from private suppliers.

Both the Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities and those Regarding Voluntary Contributions of Money provide for the possibility of offers being received from "non-governmental sources"² However, gifts in kind so offered can never be accepted by the Director General on his own authority but must always be referred to the Board, and the same is true of any offers of money in excess of US \$1000 from any one private source in any year. A few monetary contributions falling under the limit have indeed been offered to the Agency and accepted by the Director General.

The Agency has entered into several co-operative agreements (such as those for the establishment of the Monaco Laboratory,³ for the irradiation of fruit and juices,⁴ and in connection with the operation of the International

Centre for Theoretical Physics at Trieste⁵) in which at least one of the parties providing assistance for the project does not have international personality. Similarly, the land for the Agency's Laboratory at Seibersdorf was leased from and numerous arrangements for its operation were made with SGAE, a corporation established under Austrian law.⁶

14.2. RECIPIENTS

Project assistance pursuant to Statute Article XI may only be requested by and granted to Member States or to groups of such States. Whenever the Agency receives such a request from a private person he is advised that he may only address himself to the Agency through the Government of a Member - i.e., the request must be officially sponsored.⁷ This principle is observed equally with respect to all types of technical assistance; fellowships of course are granted to natural persons but their applications must be received through governmental channels⁸ - a rule applied equally to Associate Members of the Trieste Centre.⁹

Though nuclear materials and similar assistance can thus be granted only to States, the dissemination of information pursuant to Statute Article VIII.C is not subject to this limitation. Thus the Agency will sell or supply free of charge its publications to any person who applies to it - indeed most publications are sold, without the possibility of any restriction, through private distributors.¹⁰ Similarly, the Agency's Library is open to individuals and the Agency will also comply with private requests for the loan of books, publications or films or the supply of copies, on the same basis (if not always with the same alacrity) as in responding to governmental demands.¹¹

Research contracts are granted to private as well as to official institutions, with the former predominating.¹²

14.3. SUBJECTION TO AGENCY CONTROLS

Safeguards against diversion can (except with respect to its own activities) only be applied by the Agency on the basis of a "safeguards agreement" with the State in whose territory the controls are to be carried out.¹³ Even the "subsidiary arrangements"¹⁴ are concluded with the Government, though the actual negotiation often is carried out directly with, or with the assistance of, the operators of the facilities to be safeguarded; only the practical, informal, day-to-day arrangements (e.g., the exact timing of routine reports) are sometimes made directly with the operator concerned. However the Statute requires that safeguards inspectors have access "to any person who by reason of his occupation deals with materials, equipment, or facilities which are required by this Statute to be safeguarded"¹⁵ and the Inspectors Document requires the inspected State to "direct all such persons under its control to co-operate fully with Agency inspectors".¹⁶

Should the Agency make available significant quantities of nuclear materials to a research contractor it would be necessary that his Government consent thereto (an agreement not otherwise required in connection with

research contracts) and accept the consequent safeguards obligations, since inspection by Agency officials cannot be carried out without the consent of the State.¹⁷ Only when the supply is restricted to very small quantities does the Agency rely on the undertaking of the private contractor alone, in which case it nominally bases the exercise of its controls on its continued ownership of the material.

The same general considerations are relevant to the application of the Agency's health and safety standards to private persons. Only a Government can absolutely undertake that such standards will be complied with (since a person can only do so subject to national legal requirements), and allow inspectors to control this undertaking. Though research contractors are routinely required to observe the Agency's health and safety standards, no method of control is provided for.¹⁸

14.4. PARTICIPATION IN AGENCY MEETINGS

The Rules of Procedure of the General Conference do not provide for the participation of private persons. However, Procedural Rule 50 of the Board allows it to invite "any individual to be represented at or to attend any meeting of the Board",¹⁹

Members of panels established by the Director General to advise him with reference to particular subjects are appointed on an ad personam basis, even though they may have been nominated by their Governments.²⁰ The same is true of most scientific meetings, except of intergovernmental committees whose participants are governmental representatives.²¹

The members of SAC, whose nominations must be concurred in by their Governments, "serve in their individual capacities",²²

14.5. EMPLOYEES

The Agency's relations with its staff members, as well as with persons employed merely by Special Service Agreements, are the subject of Chapter 24. In a sense, as soon as a person is employed (particularly as a staff member) he is automatically "internationalized" and thus the relationship is no longer properly the subject of this Chapter.

14.6. SETTLEMENT OF DISPUTES

Both the Headquarters and the Privileges and Immunities Agreements require the Agency to make provision for appropriate modes for settling "disputes of a private [law] character",²³ which of course for the most part would arise with respect to private persons. These requirements and the means of complying with them are discussed in Section 27.3.

NOTES

- 1 INFCIRC/5, Part III, Articles II.D and IV. Section 16.4.7.
- 2 INFCIRC/13, Parts I and II. Sections 16.8 and 25.5.1.2.
- 3 By agreement, *inter alia*, with the Oceanographic Institute, Fondation Prince Albert 1^{er} de Monaco (INFCIRC/27 and /129); Section 19.1.2.1.
- 4 By agreement, *inter alia*, with the Austrian Studiengesellschaft für Atomenergie (SGAE) (INFCIRC/64; Section 19.3.2.4).
- 5 Section 19.1.3. The Centre (acting for the Agency) has entered into an agreement with UNESCO and the University of Trieste for the conduct of an Advanced School of Physics at the University; similarly the Centre (again acting for the Agency) has entered into Federation Agreements or Arrangements (Section 26.2.4.3) with a number of Universities and similar Institutes, both public and private, providing for the latter to send to the Centre theoretical physicists for repeated, short study visits. At the Tenth General Conference it was proposed that the Agency solicit, *inter alia*, foundation support for the Centre (GC(X)/COM.1/98/Rev.1; GC(X)/RES/214) and a substantial grant was indeed accepted from the Ford Foundation. See also *infra* note 9.
- 6 Section 19.1.1.3. In Austria the Agency also concluded in 1958 a contract with the University of Vienna to provide for access by the Agency's staff and by that of delegations accredited to it to the library of the Institute of Physics.
- 7 Section 17.2.1.
- 8 Section 18.3.4.
- 9 AM.I/4, Appendix B, para.3(e). Section 19.1.3.2.
- 10 Section 20.2.3.
- 11 Section 20.3.2.
- 12 Section 19.2.4.
- 13 Section 21.5.
- 14 Section 21.5.7.3.
- 15 Statute Article XII.A.6.
- 16 GC(V)/INF/39, Annex, para.9.
- 17 Section 21.5.4.10.
- 18 Sections 19.2.5, 22.2.4.2 and 22.4.1.
- 19 GOV/INF/60. Occasionally persons have been invited to participate in Board meetings in an individual capacity (Section 8.4.10(h)).
- 20 Sections 22.2.2.3.2, 23.1.2 and 23.2.2-4.
- 21 Sections 20.1.3 and 23.1.3.
- 22 Section 11.1.2.
- 23 Respectively INFCIRC/15, Part I, Section 50(a), and INFCIRC/9/Rev.2, Section 33(a).

PART D.
ACTIVITIES

CHAPTER 15.

FUNCTIONS, OPERATIONS AND PROGRAMMES

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III. A. 1-6 and VIII-XII

Initial Programme (GC.1/1, Chapter I)

The Long-Term Programme for the Agency's Activities (INFCIRC/50)

General Conference Resolution GC(VII)/RES/154 (Introduction of Biennial Programming)

Periodic Programmes (e.g., The Programme for 1964, GC(VII)/230, Paragraphs 18-143; The Agency's Programme for 1965-66, GC(VII)/275; The Agency's Programme for 1969-1974, GC(XII)/385, Paragraphs 32-623)

Review of the Agency's Activities (GC(XI)/362)

Administrative Manual (AM. IX/1) "Agency's Programme"

15.1. STATUTORY FUNCTIONS

15.1.1. Specified activities

Though all of Article III of the Statute is entitled "Functions", actually only sub-paragraphs 1-6 of paragraph A of that Article set forth a series of independent activities:

- (a) To encourage and assist, and perhaps to carry out research.
- (b) To receive and provide materials, services, equipment and facilities; the details as to how this function is to be carried out are specified in Articles IX-XI.
- (c) To foster the exchange of scientific and technical information; the details relating to this function are specified in Article VIII.
- (d) To encourage the exchange and training of scientists and experts – i.e., to grant certain types of technical assistance.
- (e) To establish and administer safeguards to prevent the diversion to military use of nuclear items furnished for or pledged to peaceful purposes; this function is also stated in Article II to be one of the two principal objectives of the Agency, and Article XII specifies how it is to be carried out.
- (f) To establish, adopt and apply health and safety standards and measures.

The Statute does not explicitly indicate any priorities among these functions. However, from the history of the negotiations leading to the formulation of the Statute and from a consideration of the central position occupied by Articles IX-XIII, it is evident that the founders of the Agency expected that it would be principally engaged in the receipt, storage and distribution, under appropriate safeguards and health and safety controls, of nuclear materials. At least in the expectation of those who prepared the

initial drafts of the Statute, other activities, such as technical assistance, research carried out by the Agency, health and safety controls, and safeguards applied to activities other than those sponsored or assisted by the Agency, were expected to play a secondary role.

15.1.2. Peaceful and military activities

It is a fundamental fact about atomic energy, realized from the first moments of the nuclear age, that all significant peaceful activities in this field are inescapably linked with potential military ones. This realization first led to the conceptually unprecedented Baruch Plan¹ and later resulted in the creation of the Agency and the assignment to it of a unique status in the international community.² For if the peaceful uses of atomic energy could be safely isolated, there would probably have been no need to create a special organization to deal with just one new means of generating power, or at most such an organization would have become a specialized agency in liaison with ECOSOC.

The Statute uses the terms "peaceful" and "military" repeatedly in prescribing the activities of the Agency, but it does not define either of those terms – nor does the statutory history throw much light on their meaning in this context. Apparently only one attempt was made to clarify these terms, through a French-sponsored amendment introduced at the Conference on the Statute, which would have added the following definition to Article XX:

"4. The only uses of atomic energy which shall be regarded as uses for non-peaceful purposes are military applications of the atomic explosion and of the toxicity of radioactive products."³

India proposed that this definition be revised as follows:

"'Any military purpose' shall mean the production, testing or use of nuclear, thermo-nuclear or radiological weapons."⁴

After a brief debate, in which the principal sponsors recorded their understanding that the Agency would not be precluded from concerning itself with the nuclear propulsion of civilian ships and vehicles even though similar propulsion units might equally be used for military transport, both proposals were withdrawn.⁵ Later, in the preliminary stages of formulating the First Safeguards Document, the Board debated whether that instrument should include a definition of "military",⁶ but ultimately that term was again left undefined.

In the Statute, with one exception, the term "peaceful" is used in circumscribing the types of activities that the Agency may engage in or support,⁷ while the term "military" is used to specify the activities that the Agency's "safeguards" controls are to prevent.⁸ Thus, if the two terms are considered as fully antonymous, i.e., that all activities not military and prohibited are therefore peaceful and worthy of being furthered, then the positive or promotional work of the Agency would also directly complement its control activities. In fact this is not so: in part because the vagueness

of the two terms leaves a recognized "grey area"⁹ between them; and in part because of the totally different nature of the two functions, both of which have up to now been interpreted narrowly, for political as well as for traditional legal reasons. Thus, as demonstrated below, there is a considerable gap between what the Agency does or supports and what it proscribes.

15.1.2.1. Licit and prohibited concerns

Given the uncertainty about the concepts of "peaceful" and "military", there has been a natural (though sometimes, no doubt, a politically exaggerated) concern that the Agency's own activities and the national projects it sponsors be unambiguously peaceful – i.e., that they be located well to the one side of the grey area. This strict interpretation has meant that the Agency has had to avoid not only all activities that are per se military, but has also had to be most cautious about any that might have some military application or implication, and paradoxically even about those designed to inhibit military activities. Thus one issue common to a number of controversies about the permissible nature of certain regulatory activities (e.g., relating to waste disposal or to civil liability) is whether measures primarily designed to protect the public against particular dangers associated with any nuclear activity should, either expressly or by implication, be made to extend also to the military ones, even if such extension is not designed to facilitate the execution of these activities but might possibly be considered as legitimizing them. Over the years, various programmes have been challenged, sometimes effectively and sometimes not, as offensive to the "peaceful uses only" criterion; not surprisingly, most of these objections were raised during particular freezes in the cold war (largely in the late 1950's and early 1960's). The resolution of these controversies serves to delimit, at least to some extent though without precision, the permissible range of activities under the "peaceful uses only" criterion.

(a) Measurement and analysis of environmental radioactivity

Though it had been suggested that UNSCEAR be merged into the Agency,¹⁰ and the UN General Assembly has always attempted to foster close relations between the two,¹¹ collaboration has been inhibited by the argument that most environmental radioactivity (UNSCEAR's special field) is due to nuclear weapons explosions; thus any study of such contamination is likely to relate to the desirability of test bans. After debating the General Assembly's first appeal to the Agency to contribute to a programme of research and analysis of radioactive contamination,¹² the Board's consensus was summarized by its Chairman at its 186th meeting:

"Under the Statute, the Agency's concern in the measurement of environmental radioactivity should clearly be directed towards problems arising with regard to the peaceful uses of atomic energy but it has to be recognized that it was in certain circumstances impossible to segregate contamination arising from peaceful and non-peaceful uses respectively. However, quite aside from political problems, the Agency

had a right and a duty to concern itself with the promotion of a programme providing for reliable measurements for the observation of radiation levels."

The Board consequently authorized limited participation in the UN activities in this field and also decided that the Agency should "seek recognition as one of the main operational arms of UNSCEAR".

The question was revived once more at the 281st meeting of the Board, in a discussion on the Agency's response to UNGA/RES/1629 (XVI), but no change was made in the previous decisions.

Just before the French Government was to carry out nuclear tests in the Sahara, Sudan and the United Arab Republic in February 1960 urgently requested "technical assistance" in the measurement of environmental radioactivity and fall-out. The objections related above were again raised in the Board and a similar conclusion was reached: The Agency would give the assistance requested, but not on an "emergency" basis (which would have clearly related the assistance to the proposed weapons tests).

(b) Harbour evaluation

After the Danish Government in early 1961 requested assistance in evaluating the suitability of Copenhagen Harbour for the reception of nuclearly powered ships, this was opposed, both in the Board and at the General Conference,¹³ on the grounds that at the time the only nuclear ships likely to enter that port were submarines of the NATO forces. The supporters of the request, who ultimately prevailed, denied this accusation and pointed out that such studies required extensive time and should therefore be undertaken well before the visits of nuclear ships were imminently scheduled.

(c) Waste disposal

One reason advanced by the Soviet Union for opposing the Agency's studies relating to the control of the disposal of radioactive wastes into the seas was that the data secured would merely assist the United States, the United Kingdom and France in disposing of the wastes from their military plutonium production plants.¹⁴ Similar reasons were advanced in challenging the initial proposals for the programme of the Monaco Laboratory on the Effects of Radioactivity in the Sea.¹⁵

More generally the question is whether any Agency-formulated regulation of nuclear waste disposal should also relate to military ships and other such installations. Technically, it is not only most difficult to distinguish the various sources of radioactivity in a stream or accumulation of waste, nor does it make much sense to do so since any control scheme would have to address itself to the limitation of cumulative radiation levels, in which account must of course be taken not only of peaceful activities but also of military ones and even of entirely neutral sources (e.g., natural background radiation).

(d) Civil Liability Conventions

In formulating both of the Agency-sponsored Conventions in the field of civil liability for nuclear damage, the question had to be faced whether these should be limited to damages arising out of purely peaceful activities. Those who favoured this limitation prevailed in relation to the instrument that was more nearly a pure Agency product, by relying on the restrictions in its Statute; those who opposed it, successfully in the other instance, felt that the Conventions were designed primarily to protect the public, and their extension to military installations or activities would in no way foster (and might even inhibit) these.

The first Panel of Experts on Civil Liability for Nuclear Hazards, convened by the Director General in February 1959,¹⁶ concluded that any Agency-sponsored treaty in this field should not attempt to cover military activities;¹⁷ consequently, they included in the draft convention a preamble limiting the scope of that instrument to the peaceful uses of atomic energy.¹⁸ This limitation survived in substantially the same form and now introduces the Vienna Convention on Civil Liability for Nuclear Damage by defining its purpose in terms of "damages resulting from certain peaceful uses of nuclear energy";¹⁹ however, no restriction of coverage appears in the substantive provisions of the Convention itself, and thus the effect and extent of the pre-ambular restriction is quite uncertain.

After the Diplomatic Conference on Maritime Law had at the first part of its 11th Session²⁰ tentatively decided to include warships under the coverage of the Convention on the Liability of Operators of Nuclear Ships, the Standing Committee established by the Conference considered an amendment which would have excluded military vessels on the ground that their inclusion would be contrary to the Agency's Statute as encouraging the use of nuclear energy for the propulsion of such ships.²¹ This argument and amendment failed in the Committee and again at the Resumed 11th Session of the Conference²² (perhaps in part because the Agency was only a co-sponsor of these meetings), and the Convention is therefore designed to apply also to military vessels.²³

(e) Peaceful explosions

After a senior Agency official attended an initial briefing, conducted in November 1961 for the representatives of many governments, on the "Gnome" test planned by the USAEC (a "Plowshare" project designed to obtain data on the possibility of recovering useful power from the heat generated by an underground nuclear explosion), the Soviet Governor threatened to request a special meeting of the Board and thus succeeded in preventing any Agency observer from attending the test itself. In a subsequent discussion at the 281st meeting of the Board, he alleged that all such explosions were primarily military and therefore Agency involvement would be entirely improper.

However, it now seems likely that, as a result of the Non-Proliferation Treaty's positive reference to peaceful nuclear explosions (if not carried out by non-nuclear-weapon States), the Agency may become involved in carrying out such projects.²⁴

(f) Emergency assistance

Probably because they were drafted in a period of relaxing East-West tensions, none of the "emergency assistance" agreements entered into or formulated by the Agency are restricted in their operation to radiation accidents arising out of peaceful activities.²⁵

(g) Relations with EURATOM

In connection with the invitation perennially addressed to EURATOM to be represented by an observer at the regular sessions of the General Conference, the argument has regularly been raised that that organization is involved in military activities (on the slender ground that it does not prohibit its six members – which include France – from conducting national nuclear weapons programmes) and consequently the Agency may not entertain contacts with it.²⁶ These accusations and the conclusion sought to be drawn from them have regularly been refuted by the members of the Community (all of which are also Members of the Agency) and by majority decision or tacit consent invitations have always been issued. Again it appears likely that one consequence of the Non-Proliferation Treaty will be the establishment of closer relations between the Agency and EURATOM, particularly if the latter is to continue to carry out, on the Agency's behalf and under its supervision, safeguards within the territories of the members of the European Community.²⁷

15.1.2.2. Control functions

As already suggested, the interpretation of "military purpose" in connection with Agency safeguards is by no means complementary to the restrictive definition evolved for the term "peaceful uses", but has been understood just as cautiously in the opposite sense – i.e., that the Agency's controls are only meant to prevent those national activities that are unambiguously martial. The one subsidiary instrument (the Safeguards Document)²⁸ that might be expected to contain at least a limited, operational definition is in fact as silent on this point as the Statute itself; nor is any clarification customarily included in the safeguards agreements that define the relative rights and duties of the Agency and one or more Member States with regard to a particular item, activity, transaction or geographic area to be controlled.²⁹

It should, however, be noted that the technical basis of the safeguard system is clearly designed on the assumption that the main (perhaps sole) abuse to be prevented is the production of nuclear bombs. The system makes no provision for determining the destination of power produced in a controlled reactor, and thus it appears that the supply of such power to a military installation will not be considered as a military use of the reactor;³⁰ similarly, no provision is made for following and controlling the applications of the results of experiments performed with safeguarded items (largely in view of the obvious futility of attempting to prevent the dissemination of data, as opposed to the diversion of particular materials), which implies that only explicitly military research is proscribed.³¹ No decision has yet

been required on the ticklish question of whether a propulsion reactor for a naval vessel is to be considered as used for a prohibited purpose (which might, in fact, have to be determined for some vessels on a voyage-by-voyage basis).³¹

It now appears possible that this lacuna in the Agency's safeguards system will be filled extraneously, by the Treaty on the Non-Proliferation of Nuclear Weapons.³³ That instrument is likely to become the principal basis on which the Agency will in the future impose safeguards – probably supplanting entirely most transfers of bilateral safeguards and unilateral submissions, and leaving only Agency projects as a supplementary basis. That Treaty clearly proscribes two things: "nuclear weapons" and "other nuclear explosive devices" and foresees that the Agency's safeguards system will be used "for the exclusive purpose of verification of the fulfillment of ... obligations under [the] Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices".³⁴ Acceptance by the Agency of the role foreseen for it under the Treaty thus raises three intriguing questions:

- (a) May the Agency enforce safeguards to different ends under different safeguards agreements? Though technologically and administratively this is entirely possible (though obviously not convenient), the Agency has heretofore avoided such differentiation by requiring all States submitting to safeguards, whether on the basis of an Agency project, of a bilateral co-operation agreement containing its own prohibition against military uses, of a voluntary unilateral submission, or finally of a unilateral submission required by some other instrument, to give an undertaking formulated analogously to the formula in Statute Article XI.F.4(a), and it has then related its controls to that uniform undertaking.³⁵ However, with respect to the exercise of controls under the Non-Proliferation Treaty this solution will probably not be possible, for the specific prescriptions in that instrument are so well defined and appear to express a dominant international purpose which cannot lightly be varied for the convenience of the Agency.
- (b) May the Agency use its safeguards system to deter activities that are clearly peaceful (i.e., peaceful explosions) merely because the authors of the Treaty have concluded (on technically entirely reasonable grounds) that the ability to conduct such explosions cannot be separated from the ability to make bombs? A positive answer to this question might be derived from a consideration of the Agency's obligation under Statute Article III.B.1³⁶ to conduct its activities in conformity with international agreements entered into pursuant to United Nations policies furthering safeguarded world-wide disarmament.
- (c) May the Agency apply its safeguards to admittedly military activities (e.g., a nuclearly propelled naval vessel or a shut-down reactor designed to produce military grade plutonium) in order to ascertain whether these are being used in violation of the Non-Proliferation Treaty? In this connection too Statute Article III.B.1 should be considered, as well as the fact that Article III.A.5 (in contrast to Article III.A.1-4) does not appear to require that the bilateral or multilateral arrangements or

the national activities to which the Agency applies its controls be per se peaceful, thus suggesting that the Agency might safeguard an activity that is not "peaceful" in the sense discussed in Section 15.1.2.1³⁷ in order to prevent its use for a "military purpose" within the meaning of the present Section or, more narrowly, within the meaning of the Non-Proliferation Treaty.

15.1.2.3. Furthering disarmament

The Agency's roles with respect to "peaceful" versus "military" activities should ultimately be considered in the light of Statute Article III.B.1, which requires it to:

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

This provision is one that up to now has remained almost entirely unexplored in the Agency's practice.³⁸

A minimalist, purely negative interpretation would merely prohibit the Agency from promoting nuclear activities that it might consider peaceful (e.g., certain explosions), if these are contrary to an express UN policy relating to disarmament (e.g., the Non-Proliferation Treaty or the Test Ban Treaty³⁹).

A more positive interpretation could involve the Agency in a number of directions.⁴⁰ On the one hand, it could lead the Agency to extend and modify the impact of its safeguards system, for example as described in Section 15.1.2.2(b), (c). On the other, it may assist, through its promotional functions, in paying the political quid pro quo required to assure the entry into force of a UN-sponsored agreement such as the Non-Proliferation Treaty.⁴¹ Finally, it might assist the United Nations technically in evaluating proposed measures relating to disarmament, though the early controversy concerning collaboration with UNSCEAR suggests that the Agency will only assume such a function once the consensus of the world community has been established – i.e., once the possibility of serious political controversy has been removed (as was not the case with respect to nuclear test explosions at the time the General Assembly first requested the Agency to co-operate with UNSCEAR⁴²).

It also seems to have been accepted that the Agency's obligation to conform to the disarmament policies of the United Nations should not cause it to undertake its own diplomatic initiatives in this area, particularly if thereby the tacitly accepted depoliticization of the Agency would be threatened. Thus, the Third General Conference declined to act on a proposed resolution (which specifically referred to Statute Article III.B.1) urging the suspension of the testing of all kinds of nuclear weapons,⁴³ on the ground that the matter was under consideration in more appropriate fora;⁴⁴ a similar decision was taken at the Fourth Conference on a proposed resolution⁴⁵ calling for the Agency's participation in international efforts to secure the prohibition of

nuclear weapons.⁴⁶ On the other hand, the Sixth General Conference requested the Director General to give full co-operation to the UN Secretary-General in keeping under review, pursuant to ECOSOC/RES/891(XXXIV), "the basic aspects of economic and social consequences of disarmament";⁴⁷ similarly, the Seventh Conference, on the basis of a joint initiative by the three principal nuclear powers,⁴⁸ noted with deep satisfaction the conclusion of the Test Ban Treaty and now requested the Director General to collaborate in the implementation of ECOSOC/RES/982(XXXVI) relating to the "conversion to peaceful needs of the resources released by disarmament".⁴⁹

15.2. ACTUAL OPERATIONS

15.2.1. During the first decade

The actual pattern of operations during the Agency's first decade differed considerably from the expectations of the principal authors of the Statute. The shift in emphasis was foreshadowed already at the Conference on the Statute, by the great interest shown by most of the participating States in the expected technical assistance activities of the Agency – though these were at best indirectly provided for in the draft Statute. The handwriting on the wall became even clearer in the Preparatory Commission's discussions on the programme and budget recommendations it formulated for the organs of the Agency, and is reflected in its Report on the Initial Programme.⁵⁰ However, the actual pattern of operations, which was maintained relatively unchanged during the first decade, was only fixed when the Agency started to function.

The principal activities thereupon became the following, listed in order of priority according to the funds budgeted for them:

- (a) Technical assistance: the supply of experts and equipment and the provision of fellowships and exchange professors.⁵¹
- (b) Research: performed at facilities operated by the Agency (its Laboratories at Headquarters and at Seibersdorf, the Marine Laboratory in Monaco and the Theoretical Physics Centre at Trieste) or supported by it through research contracts or joint programmes.⁵²
- (c) The distribution of information, through various types of meetings and publications.⁵³
- (d) The development of health and safety standards, and to a lesser extent their application by the Agency to particular activities.⁵⁴
- (e) The development and application of safeguards.⁵⁵
- (f) The development of atomic energy law, through the formulation of conventions or other instruments and the preparation of studies in the fields of civil liability for nuclear damage, waste disposal, international emergency assistance, etc.⁵⁶
- (g) Assistance to reactor and other nuclear projects initiated by Member States, through the supply of nuclear materials, facilities and equipment.⁵⁷

There is no doubt that to a considerable extent the actual pattern of operations that evolved reflected the more cautious and even pessimistic mood as to the immediate prospects of nuclear power that resulted from the Second Geneva Conference, which followed shortly after the first anniversary of the entry into force of the Statute.⁵⁸ The reasons for this shift in emphasis are not directly of legal interest and are therefore only reviewed here briefly:

- (i) The more modest expectations as to the rapid introduction of nuclear power due to:
 - (A) Technical difficulties in developing economic reactors;
 - (B) The decrease in the cost of conventional power.
- (ii) The greater abundance of nuclear fuel, which reduced the significance and even the feasibility of the Agency's intended role as a merchant or broker of such materials,⁵⁹ due to:
 - (A) The discovery of uranium and thorium in many places throughout the world;
 - (B) The reduced current demand for nuclear fuel due to the slow development of nuclear power.
- (iii) The active bilateral and regional programmes developed during the thaw resulting from President Eisenhower's address and continuing while the Agency's Statute was being negotiated.
- (iv) The unexpectedly strong resistance to the introduction of safeguards.
- (v) The fact that the Agency's membership consisted mostly of relatively underdeveloped countries whose interest in technical assistance was greater and more immediate than in obtaining supplies of nuclear fuels.

For all these reasons the pattern of operations approved for the initial year, originally in anticipation of the rapid development of the Agency's more "serious" functions in respect to the supply and safeguarding of nuclear materials, was maintained during the entire first decade. Thus the Agency has been largely engaged in activities for which only the scantiest provisions were made in the Statute (e.g., technical assistance; research) or none at all (the development of atomic energy law), instead of performing the functions for which the Statute prescribes almost an excess of detailed regulations.

15.2.2. Future prospects

Just on the completion of the Agency's first decade of operation, its prospects began to improve, both qualitatively and quantitatively. This development is largely due to a number of interrelated factors, mostly extraneous to the Agency, but in part reflecting some of the successes that it had managed to achieve even under its initial constraints: the establishment of a safeguards system and, through technical assistance, the stimulation in even its least developed Members of an interest in atomic energy. As a result, the Agency's operations may soon conform more closely to the statutory pattern.

The first augury of change was the apparent breakthrough in nuclear power costs achieved in the United States in the middle 1960's. Though the new "third generation" reactors have yet to be placed into operation, the optimistic forecasts relating to them quickly revived, throughout the world, the flagging interest in nuclear power. This favourable prospect was, however, immediately somewhat tempered by the consideration that in the none-too-distant future a large number of plutonium producing (and eventually of plutonium consuming) reactors would be spread around the world.⁶⁰ Fortunately this realization coincided with a period of improved Soviet-American relations and led to relatively close collaboration between these two major nuclear powers in the formulation of a draft treaty designed to inhibit the proliferation of nuclear weapons, which they presented, as co-chairmen, to the Conference of the Eighteen-Nation Committee on Disarmament (ENDC). However, though these two States and the United Kingdom were able to agree on an instrument that would freeze the current nuclear weapon status of all nations (i.e., of five as nuclear-weapon States and of all the rest as non-nuclear-weapon States) and would employ for this purpose the still maturing and largely untested but at least widely accepted IAEA safeguards system,⁶¹ many other countries were naturally not easily convinced that they should concur in the renunciation demanded of them. Aside from certain reluctance to abandon existing or prospective regional safeguard systems (particularly that of EURATOM), these States were concerned lest their ability to sustain and develop peaceful nuclear programmes be seriously inhibited by the proposed controls; in addition, some countries that would have considerable difficulty in developing or sustaining even peaceful nuclear projects entirely through their own resources, saw an opportunity of obtaining commitments of future assistance in exchange for their agreement to accept the mutually advantageous restrictions of a non-proliferation treaty.

Hard bargaining on these points, in the Eighteen-Nation Conference and later in the resumed session of the 22nd UN General Assembly, led to the adoption by the latter, on 12 June 1968 of the text of the Treaty on the Non-Proliferation of Nuclear Weapons.⁶² The provisions of special relevance to the Agency are the following:

- (a) All non-nuclear weapon States parties to the Treaty must accept Agency safeguards (Article III.1, 4);
- (b) These safeguards are to be implemented so as not to hamper legitimate peaceful activities (Article III.3);
- (c) Parties may not transfer nuclear materials or items to any non-nuclear-weapon State except under Agency safeguards (Article III.2);
- (d) Parties in a position to do so are to contribute (alone, or in co-operation with other States or with international organizations) nuclear materials, equipment and information, particularly to developing States (Article IV.2);⁶³
- (e) Non-nuclear-weapon States are guaranteed opportunities to benefit from peaceful nuclear explosions on a non-discriminatory basis and under favourable financial conditions, to be implemented pursuant to special international agreements "through an appropriate international body with adequate representation of non-nuclear-weapon States" (Article V).⁶⁴

Though the Agency is explicitly mentioned only in connection with the implementation of the safeguards provisions,⁶⁵ the activities mentioned in Article IV.2 and V fall directly within its statutory objectives and the international organization or body referred to in these provisions could well (and logically should) be the Agency.

The adoption by the General Assembly of the Treaty text did not, however, conclude the matter, since that instrument requires signature and ratification – and many of the non-nuclear-weapon States are attempting to exact further concessions before committing themselves definitively to the Treaty. Some of these concessions relate to matters not relevant to the Agency, such as security assurances;⁶⁶ others are potentially most important to it, for they would have the nuclear-weapon States submit, voluntarily (i.e., even though not required by the Treaty) to Agency safeguards;⁶⁷ finally, many States desire to spell out in greater detail the benefits they could expect under Articles IV.2 and V of the Treaty, as well as the mechanism by which such grants would be made – and these clarifications inevitably require a definition of the role the Agency is to play. These matters constituted the principal topics of the Conference of Non-Nuclear-Weapon States (CNNWS), convened by the United Nations in Geneva from 29 August to 28 September 1968.⁶⁸ A medley of resolutions was passed by the Conference, displaying a somewhat ambiguous attitude toward the Agency: On the one hand, appreciation was expressed for its accomplishments, extensive tasks were recommended for its consideration and submission to its safeguards system was urged on all States; on the other, the composition of the Board of Governors was repeatedly criticized as unrepresentative, improvements were urged in the safeguards system, and some proposals for the stimulation of the peaceful uses of atomic energy deliberately bypassed the Agency.⁶⁹ The principal recommendations can be summarized as follows:⁷⁰

- (i) Both nuclear-weapon and non-nuclear-weapon States should submit to Agency safeguards (Resolutions E and F.3);
- (ii) The Agency's safeguards system should be improved and simplified (Resolution F.2, 4);
- (iii) The Agency should study how access by all States to special fissionable materials might be assured and especially the establishment of a "Fund of Special Fissionable Materials" (Resolutions H.III and J.B.1);
- (iv) The Agency should initiate studies on its possible functions in relation to nuclear explosions for peaceful purposes (Resolution H.IV);
- (v) The Agency should increase its technical assistance budget (Resolution H.II);
- (vi) The Agency should seek to obtain, for the benefit of developing States, nuclear information of commercial or industrial value as well as information at present still classified (Resolution H.I);
- (vii) The Agency should study the establishment of a "Special Nuclear Fund" to provide cheap, long-range financing of projects in non-nuclear-weapon States (Resolution I);
- (viii) A special group of experts should be appointed to study the potential contributions of nuclear technology to the developing countries, and a "Nuclear Technology Research and Development Programme" should

be established within UNDP – both these steps to be taken by the United Nations, though with the assistance of the Agency (Resolutions G.1, 2 and J.A.1); furthermore, the World Bank should establish a "Programme for the Use of Nuclear Energy in Economic Development Projects", in connection with which no mention at all was made of the Agency (Resolution J.A.2);

- (ix) The Agency should adapt the composition of its Board of Governors in the light of its new responsibilities (Resolutions H.V and K), and in connection with the implementation of safeguards should also establish new "institutional machinery" on which the nuclearly underdeveloped States are to be better represented (Resolution F.1).

The Conference of Non-Nuclear Weapon States had not yet concluded its work when the Twelfth General Conference of the Agency was convened. That body therefore could not respond directly to any of these recommendations or to the express and implied criticisms, though the Director General included some unusually caustic comments on the Geneva meeting in his opening statement to the Agency's Conference.⁷¹ The General Conference did, however, adopt two Resolutions that were intended to be responsive to those being considered in Geneva:

- (A) In the light of Article V of the Non-Proliferation Treaty, the Director General was requested to initiate studies on the Agency's responsibility with respect to the peaceful use of nuclear explosions;⁷²
- (B) With reference to both the Non-Proliferation Treaty and the Conference of Non-Nuclear-Weapon States, the Board of Governors was requested to review the statutory Article relating to its own composition.⁷³

The UN General Assembly, at its Twenty-third Regular Session, gave extensive consideration to the conclusions of the CNNWS (and also to the reactions of the IAEA General Conference) and though it refrained from a blanket endorsement it did commend the recommendations to the attention of the international organizations concerned and agreed that the UN Secretary-General should undertake the study of the potentials of nuclear technology for development as well as of the IAEA's own future role in relation to peaceful nuclear explosions.⁷⁴ The Agency responded with an extensive report on its reactions to the CNNWS resolutions⁷⁵ and also gave considerable assistance in the preparation of the UN's study,⁷⁶ which naturally refers frequently to the Agency both in recounting current activities and in proposing their future extension.⁷⁷ The General Assembly considered this report and this study at its Twenty-fourth Session and once more adopted cautiously phrased resolutions suggesting further studies by the IAEA and the other organizations concerned, requesting progress reports and placing two aspects of this subject on the provisional agenda of its next Session.⁷⁸

It is still too early to know whether the change and growth in the Agency's role forecast by these several developments will actually be realized. In large part this will depend on the fortunes of the Non-Proliferation Treaty itself (which entered into force for 49 States on 5 March 1970) – and this in turn may depend on the economic, technical and political concessions the principal nuclear States are willing to make, which will probably for the most part be presented and negotiated in the Agency's Board of Governors.

15.3. PROGRAMMES

The statutory functions of the Agency are translated into actual operations or activities by means of Programmes.⁷⁹ In the Agency's practice two types of such instruments could originally be distinguished, though with the recent adoption of the six-year programming cycle the distinction between the two has now largely disappeared.

15.3.1. Long-term programmes

Though the Statute does not provide for the establishment of formal Programmes, the Agency has from time to time found it convenient to decide in what directions and at what speed it should proceed to implement its statutory functions during an indicated future period. Up to now the Agency has, in effect, performed such an exercise on four occasions, though only the last two of these were carried out deliberately for the purpose of staking out a series of guideposts to be followed for specified periods of years.

15.3.1.1. The Initial Programme

Paragraph C.5(b) of Annex I to the Statute charged the Preparatory Commission with making studies, reports and recommendations on "the programmes and budget for the first year of the Agency". The Commission properly considered this to be one of its major responsibilities and established a Working Group of the Whole,⁸⁰ which after extensive studies⁸¹ developed a document which the Commission published as its Report on "The Programme, Staff, Budget and Financing of the Agency during its First Year".⁸²

The first Board recommended that the General Conference approve, *inter alia*, the "Initial Programme" which constituted Chapter I of the Preparatory Commission's Report,⁸³ and the Conference gave its endorsement at its first special session after consideration of the Report by its Programme, Technical and Budget Committee.⁸⁴

Though the Statute only required the Preparatory Commission to make recommendations relating to the first year of operations, and though the title of its Report as well as of the Conference Resolution endorsing it, suggested that this restriction was observed, in fact the Initial Programme was designed to and did give policy guidance to the Agency for a number of years. This was explicitly recognized by the Board in presenting the first annual Programme it had developed itself (that for 1959),⁸⁵ and also by the Conference in calling, four years later, for the Board and the Director General to prepare a formal long-term programme.⁸⁶

15.3.1.2. Programme Appraisal (1959-1964)

A few days after the Agency's Statute came into force, ECOSOC decided that the United Nations should prepare an appraisal of the scope, trends and costs of its regular programme and also invited the specialized agencies to do likewise.⁸⁷ In July 1959, after the Agency had been organized and its relations to ECOSOC and to the specialized agencies had been reasonably

defined, the Council invited the Agency to participate in the "Programme Appraisals for the Period 1959 to 1964".⁸⁸

On the recommendation of the Director General the Board decided to comply with this invitation. However, because of the late date on which this decision was taken (nearly nine months of the specified period having already passed) it was not possible to arrange for the Agency's contribution to be developed with the participation of the Board. Instead the Board charged the Director General to prepare the draft of a report, to consult with an Ad hoc Committee on Appraisals which it established for this purpose, and to submit the resulting report directly to the United Nations on his own authority. This was done, and the Agency's report was presented to ECOSOC⁸⁹ and considered in the preparation of the Consolidated Report⁹⁰ prepared by the special Committee of Five established for this purpose by the Council. Though the Board noted the Consolidated Report, it never took any action on the Agency's contribution which had merely been submitted to it for information after having already been transmitted to the United Nations.⁹¹

Since ECOSOC requested that the agencies participating in the appraisals exercise should in their future reports measure their actual experience against their estimates,⁹² the Agency several times mentioned its report in statements submitted to ECOSOC.⁹³ However, within the Agency itself this report was, for several reasons, never used as a guide:⁹⁴

- (a) It had been prepared hurriedly, without the depths of consultations that would have given it authority.
- (b) It had never been considered by the Board and was not even presented to the General Conference.
- (c) It had been drafted to fit an outline proposed by ECOSOC, which was not particularly relevant to the pattern of the Agency's operations.
- (d) It was prepared too early in the Agency's existence, when no basis of experience existed from which to make firm projections.
- (e) During practically the entire period covered by the appraisal, the Agency's operations were still guided by the Preparatory Commission's Initial Programme.

15.3.1.3. The Long-Term Programme (1965-1969)

The Preparatory Commission had recommended that the Agency should prepare, for consideration in 1959, a long-term operational plan.⁹⁵

Though proposals to comply with this recommendation were introduced at the Second and Fourth General Conferences,⁹⁶ no action was taken until the Board mentioned its interest in long-term programming in the draft Programme and Budget for 1962.⁹⁷ The Conference responded to this initiative with a Resolution requesting the Director General and the Board, in consultation with SAC, to initiate the preparation of a long-term programme and to present to the Conference at its next regular session a progress report.⁹⁸

During the following year the Director General, on the instruction of the Board, held consultations with Governors, with the representatives of other Members not on the Board and with the members of SAC on the best procedure for developing a long-term programme. His proposals, in modified form, were presented to the Sixth General Conference in a joint report by him and the Board. The following procedure was outlined:⁹⁹

- (a) The preparation by the Secretariat of separate papers on approximately ten topics.
- (b) The establishment, with respect to each scientific topic, of a separate group of experts appointed by Governments, to advise as to these papers; the papers and reports on the consultations with the experts would then be submitted to SAC. The two or three papers relating directly to technical assistance would instead be sent to all Member States for comment, and then submitted, together with any replies, to the Board's Technical Assistance Committee.
- (c) After consideration of these portions by SAC and the Technical Assistance Committee, the Director General would prepare the first complete draft of the long-term programme.
- (d) The Director General's draft would then be considered by the Administrative and Budgetary Committee of the Board.
- (e) The draft and the Committee's report would then be considered by the Board itself.
- (f) The Long-Term Programme as adopted by the Board would then be submitted to the General Conference at its seventh regular session.

The Sixth General Conference took no action on this progress report.¹⁰⁰

During the following year the projected steps were carried out as planned, except that the Board decided that no consideration of the complete draft programme by its Administrative and Budgetary Committee would be necessary. In June 1963 the Board approved the Long-Term Programme and authorized its submission to the General Conference, with a joint recommendation by the Board and the Director General that it would be desirable for the Conference to endorse it.¹⁰¹ In addition, a paper on the financial implications of the Programme (which the Director General had originally prepared for use by the Board) was also transmitted to the Conference for its information.¹⁰²

After consideration by its Programme, Technical and Budget Committee,¹⁰³ the Conference adopted the resolution¹⁰⁴ recommended to it and thereby:

- (i) Endorsed the Long-Term Programme, subject to the availability of financial resources;
- (ii) Invited the Board and the Director General to take the Programme as a guide in planning and executing the Agency's work over the years, beginning in 1965.

The "Long-Term Programme for the Agency's Activities"¹⁰⁵ covered the period 1965-1969. It largely consisted of a series of policy recommendations, the bulk of which were contained in two substantially overlapping analyses of the Agency's operations in terms of their "substantive" and "functional" aspects. This instrument was not designated to have legal force - though the endorsement by each of the three principal organs of the Agency lent it considerable political weight. In fact, just as had been true of the Initial Programme, the Long-Term Programme was used to justify various activities for which specific plans were included in the periodic Programmes or to support other proposals advanced tentatively or definitely by organs of the Agency or by Member States.

15.3.1.4. Programme for 1969-1974

In 1967 the Board announced that, in accordance with the recommendation of the UN's Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies,¹⁰⁶ it intended to introduce a "Six-year planning cycle: a two-year programme and budget, a second two-year plan, and a further two-year tentative plan".¹⁰⁷ The first of these cycles was to cover the period 1969-74 (thus overlapping the final year of the original Long-Term Programme), and it would be renewed every two years – the "second ... plan" becoming the immediate "programme and budget", the "further ... tentative plan" becoming the new "plan" for the period beyond that, and a new two-year "tentative plan" being added. The General Conference took oblique note of the Board's intention by requesting¹⁰⁸ that the first six-year programme reflect the result of the review of the Agency's activities¹⁰⁹ that had just been considered by the Eleventh Conference.

The Programme for 1969-74 was prepared by the Secretariat and slightly revised by the Board during 1967-68. The procedure of elaborating this document was considerably simpler than that which had been applied to the formulation of the earlier five-year Long-Term Programme:

- (a) The first stage consisted of the preparation by the Director General of a document entitled "Outline of the Agency's Programme and Budget for 1969-70". True to its title, this 7-page outline consisted merely of briefly annotated lists (i) of "Completed or Diminishing Programmes", (ii) of three "Functional Activities" and six "Programme Areas" on which it was proposed to place increased emphasis, and of a rough estimate of the increase in the over-all budget totals for 1969 and for 1970. No reference was made to the period beyond 1970.
- (b) This Outline was briefly reviewed in December 1967 by the "Committee of the Whole on the Tentative Programme and Budget Proposals" that the Board had established in June 1967 in response to another recommendation of the UN's Ad Hoc Committee to the effect that "The heads of organizations should transmit preliminary and approximate estimates to the bodies responsible for examining the budget early enough to enable them to consider the main items of the budget well in advance of formal presentation and to make comments and suggestions thereon in good time".¹¹⁰ Most unusually, this Board Committee prepared no report to its parent, but merely enabled the Director General to note the views of most of the Board members as to the proposals he had sketched.
- (c) The first draft of "The Agency's Budget for 1969 and Programme for 1969-74" was prepared by the Secretariat in the usual manner, though presumably taking into account the comments made in the Committee of the Whole.
- (d) This draft was considered in the customary way, first by the Board's Administrative and Budgetary Committee in May 1968 and then, together with that Committee's reports, by the Board itself in June. That body approved the draft with minor changes and presented it with the following introduction:

"In the present volume the Board of Governors presents to the General Conference:

"(a) The programme of work for the Agency for the six-year period 1969 to 1974;

"(b) Cost estimates for the component parts of the programme for the years 1969 and 1970 and, in so far as it is possible to give them at this stage, indications of budgetary trends for the remaining four years. It is emphasized that the estimates for 1970 are at this stage tentative and intended only as an indication of likely financial implications for the second programme year; and

"(c) Proposals for budgetary appropriations and allocations for the year 1970 which, upon approval by the General Conference, will provide funds for the first year of the six-year programme."¹¹¹

As usual, the Board merely recommended that the Conference accept its budget proposals for 1969.¹¹²

- (e) The Conference too considered these massively expressed proposals in the customary manner, first in its Programme, Technical and Budget Committee,¹¹³ and then briefly and formally in the Plenary. As had been its practice in connection with the one- and two-year "periodic" programmes it had received in earlier years,¹¹⁴ the Conference took no direct action or formal note of the Programme itself (either for the full 1969-74 period, or for the 1969-70 portion), but merely approved the draft resolutions containing the budget estimates and the usual proposals relating to the Working Capital Fund.¹¹⁵

The Board indicated that the programme and budget cycle for the Agency will in the future consist of the

"(a) Presentation, every two years, of a six-year programme with detailed cost estimates for the first two years and proposals for appropriations for the first year only; and

"(b) Presentation, in every alternate year, of only major changes affecting the work during the second year of the programme, and of revised cost estimates and proposals for appropriations for the second year."¹¹⁶

It also indicated that its Committee of the Whole need not be reconvened in 1968 to consider the budget to be presented in the first "alternate year" (1969)¹¹⁷ but implicitly left open the question of whether it would function in those years in which the six-year programme is to be renewed. In the event, the Committee was not reconvened in 1969.

A comparison of the procedures described above will show their great similarity to those through which the previous one- and two-year "periodic programmes" had been developed;¹¹⁸ on the other hand the special efforts and somewhat solemn preparations made in connection with the first Long-Term Programme were almost completely lacking. It is thus likely that the new six-year programmes (which of course actually maintain their full validity for only two years) will not fully supply the policy guidance of the former long-term programmes whose elaboration involved at least a certain

detachment from the practical demands of year-to-year operational planning. However, it is possible that in the currently once more rapidly evolving nuclear energy field this new approach, which derives from the UN's recommendations addressed to all its associate organizations, may be particularly suited to the management of the Agency.

15.3.2. Periodic programmes

While long-term Programmes are concerned primarily with policy issues, the Agency's periodic Programmes relate to the implementation of policy.

15.3.2.1. Relation to the Budget

The Statute does not require the preparation of periodic Programmes, any more than it requires any long-term ones. However, the Director General and the Board have found it useful, in preparing the annual budget estimates required by Statute Article XIV.A, to support them with explanatory notes, a part of which has always been entitled the "Programme" for the period in question (originally one year, later two years).

Thus in connection with each annual Budget, a Programme of operations has also been developed. The relation between these two instruments (or parts of instruments when they were included in the same document) is the following: the Programme specifies the operations that it is planned to carry out during the period in question¹¹⁹; the Budget itself indicates the financial consequences of the proposed programme, and is divided into about a dozen headings. The budget figures are then summarized in the draft resolutions which are proposed by the Board to the General Conference and acted on by the latter; however, those resolutions do not directly refer either to the textual material on the Budget itself, or to the Programme on which the Budget is based.¹²⁰

15.3.2.2. Development

The periodic Programmes are developed together with and by the same organs as are the annual budget estimates. This procedure is described in detail in Section 25.2.2. In brief, both these instruments are first developed by the Inter-departmental Secretariat "Preparatory Committee on Programme and Budget";¹²¹ and are then submitted by the Director General to the Administrative and Budgetary Committee of the Board; after consideration by that Committee its report and the Director General's original proposals are submitted to the Board; the Board's recommendations are then submitted to the General Conference, where they are first considered in the Programme, Technical and Budget Committee; finally the Conference adopts the necessary appropriation resolutions on the basis of the report of its Committee. Only one of these standard resolutions refers explicitly to part of the Programme,¹²² but the Conference takes no formal action to endorse or even to note the Programme as such. However, occasionally as a by-product of this consideration resolutions are passed by which the Conference makes recommendations with respect to particular aspects of the Programme.¹²³

15.3.2.3. Term

During the first several years, a separate Programme was developed with respect to each annual Budget, and was indeed presented to the General Conference in the same document.¹²⁴

In 1962, in connection with the consideration of the desirability of long-term programming, South Africa proposed to the Board and then to the Conference¹²⁵ that the Agency should adopt a biennial system of programming, for the following reasons:

- (a) Planning of scientific activities is facilitated by longer programming periods – e.g., research contracts were in effect already being granted for two or three-year periods.
- (b) EPTA had switched to biennial programming.
- (c) Several of the principal specialized agencies had from the beginning or later adopted biennial programming (usually because of a pattern of biennial membership meetings) and were satisfied with its results.
- (d) Biennial programming could be introduced without any change in the Statute (since that instrument does not mention and therefore establishes no requirements as to Programmes) and might be considered as the first step toward the eventual adoption of:

- (i) Biennial budgeting (which would require some amendments to the Statute);
- (ii) Biennial General Conferences (which would require still more extensive amendments to the Statute).

As a result of this initiative the Sixth General Conference adopted a Resolution inviting the Board and the Director General to implement this proposal as soon as practicable and convenient.¹²⁶ The Board thereupon proposed to the next Conference the introduction of biennial programming.¹²⁷ The Seventh Conference resolved to invite the Board and the Director General to take steps to implement this proposal beginning in 1965, but necessarily within the framework of the statutorily required annual Budgets.¹²⁸

The Board complied with this recommendation by presenting in 1964, in separate documents, a Programme for 1965-1966 and a Budget for 1965.¹²⁹ In 1965, no new Programme was presented for 1966, but only a budget¹³⁰ – which referred to the previously presented biennial Programme. Another cycle was started in 1966 when the Board, again in separate documents, proposed a Programme for 1967-1968 and a Budget for 1967¹³¹; this time the two-year Programme also included tentative budget estimates for 1968.¹³² Except for these changes and the necessary physical separation of the Programme and Budget documents, the relationship between these instruments was in no way altered.

As described in Section 15.3.1.4, the Board in 1968 initiated a "six-year planning cycle" consisting of the simultaneous preparation of three successive two-year projections (the later ones naturally reflecting the increased uncertainty), which are to be refined and extended at two-year intervals.

15.3.2.4. Legal status

The principal legal features that should be noted in connection with the periodic Programmes are that:

- (a) They are not called for by the Statute.
- (b) They, in effect, are adopted by the Board.
- (c) They are presented to the General Conference to support the budget estimates, which in turn support the figures in the budget resolutions; however, they are not acted on directly by the General Conference.¹³³

Thus, the periodic Programmes appear to constitute no more than explanatory notes to the budget. As such they have substantially the same legal nature and effect as the budget document itself (see Section 25.2.3), except that the Programme is even one step further removed from the actual Budget approved by the Conference. Consequently the Board is not restricted in directing or authorizing a change in the implementation of a particular Programme (though it rarely does so), as long as this does not affect the amounts stated in the Budget approved by the Conference. In the light of these considerations it would also appear that the Board was not obliged to consult the General Conference before adopting the system of biennial programming, or to comply with its recommendation to that effect.

The Director General is bound to carry out the Programme as written, unless a change is authorized by the Board, since for him it constitutes a directive which the Board is competent to give pursuant to Articles VI.F and VII.B of the Statute.¹³⁴ In practice, however, the Programmes, which are initially drafted by the Secretariat, generally contain sufficient flexibility so that the Director General can in most areas decide among several permissible alternatives without having to consult the Board.¹³⁵

15.4. EVALUATIONS

In spite of numerous programming exercises in which the Agency has engaged and in spite of the several types of annual reports on various aspects of the Agency's operations,¹³⁶ no complete, systematic evaluation of its activities has yet been prepared, either in the abstract or in relation to one of the approved programmes. The Board's Annual Report to the General Conference¹³⁷ of course contains elements of an evaluation. However, this review is by no means systematic, and is in any case difficult to relate to any given annual or biennial programme, since the latter are based on calendar years while the Reports cover periods from July 1 to June 30. Only in relation to technical assistance is a reasonably systematic report available on an annual, calendar year basis – which can thus be conveniently compared with the projections contained in the programme and the budget for the same period.¹³⁸

The Tenth General Conference, at its own initiative, adopted a Resolution requesting the Board "in consultation with the Director General, to review the activities of the Agency in order to find ways and means to in-

crease its assistance to developing countries".¹³⁹ As indicated by the quoted language, as well as by the text of other preambular and operative paragraphs, the purpose of the proposed exercise was not so much to obtain a fully objective review of all the Agency's significant operations during its initial decade but rather to lay the groundwork for the possible future reorientation or extension of the Agency's activities in a particular direction. Indeed, it was only after considerable controversy that the task of preparing the report was entrusted to the Board, instead of to a "Special Evaluation [or Review] Committee" whose membership would have been biased more strongly in favour of the developing States than that of the Board itself.¹⁴⁰

The Tenth Board, with the assistance of the Secretariat, laboured mightily to produce a report meeting the specifications of the Conference:

- (a) On 20 October 1966 and 1 February 1967 the Director General addressed Circular Letters to all Member States, inviting them to communicate their views and recommendations; altogether 36 Members responded.
- (b) The Secretariat prepared "A Preliminary Analysis of the Extent to Which the Agency's Activities Benefit Developing Countries".
- (c) At its series of meetings during February 1967 the Board gave preliminary consideration to the Secretariat's Analysis as well as to those replies from Member States that had been received up to then. It thereupon established an Ad Hoc Committee of the Whole to Review the Agency's Activities to study the issues raised by Member States; it also invited any Member of the Agency not serving on the Board and desiring to supplement its written comments to send a representative to participate in the Committee's discussions.
- (d) The Committee met five times during April 1967; aside from 21 members of the Board, Romania and the United Arab Republic participated in its work.
- (e) The Board considered the Committee's report in June and on the basis thereof prepared its own to the General Conference; in its final form, the "Review of the Agency's Activities"¹⁴¹ consisted of:
 - (i) A short introductory portion, stating the Board's conclusions and recommendations;
 - (ii) The text of the comments that had been submitted by Member States;
 - (iii) The text of the "Preliminary Analysis" that the Secretariat had prepared for the Board — this study, which generally covers the period 1958-1966, being the most valuable and only reasonably systematic part of the entire Review;
 - (iv) "An Integration of the Views and Recommendations of Member States and of the [Secretariat's] Preliminary Analysis", in which the Secretariat reviewed the comments received and gave, as far as possible and politic, a point-by-point answer.
- (f) The General Conference considered this Review at its Eleventh Regular Session. After a debate which concentrated almost exclusively on the single issue of the supply of equipment to technical assistance projects,¹⁴² the Conference requested the Board to reflect the results of the review, as well as the observations and recommendations by Members, in the six-year programme to be formulated during the coming year.¹⁴³

Due to its deliberately restricted scope, the Review does not, in spite of its general title, cover all the activities of the Agency. This is true even though, as pointed out in Section 15.2, the Agency has during its initial decade concentrated most of its efforts on technical assistance, and the Board's report was indeed designed to demonstrate how very substantial this orientation was by classifying as many projects as possible in the category of assistance to developing States. Still, certain activities, such as safeguards and the formulation of multilateral conventions, could not plausibly be fitted under this heading, and therefore such work is not dealt with in the Review at all. In the light of these omissions and because of the general bias of the study, it must be concluded that the first complete, balanced and impartial evaluation of the Agency's activities, either for a given period or for its entire first decade, has yet to be prepared.

One of the recommendations of the UN Ad Hoc Committee called for the improvement and strengthening of the evaluation process whenever possible.¹⁴⁴ The Agency's response indicates that at least for the present no comprehensive review of its operations is planned, but that it will content itself with the Secretariat's "annual evaluation reports ... on major programme components, such as technical assistance, research contracts, laboratory activities, the International Centre for Theoretical Physics, and the Monaco Laboratory for study of marine radioactivity."¹⁴⁵

NOTES

- 1 Section 1.4.
- 2 Section 12.1.1.
- 3 LAEA/CS/Art.XX/Amend.1.
- 4 LAEA/CS/OR.35, p.67; which is based on earlier statements recorded at LAEA/CS/OR.7, p.46, and /OR.28, p.67.
- 5 LAEA/CS/OR.35, pp.66-81; /OR.36, p.34.
- 6 Section 21.4.1.1.1. The principal discussions took place at the 150th and 152nd meetings of the Board of Governors. See Gorove, *op. cit.* Annex 5, No. 26A, pp. 499-500.
- 7 Statute Articles III.A.1, 2, 3, 4, VIII.C and XI.A. The one exception is Article III.B.2, which refers to the controls the Agency is to establish over the special fissionable materials received by it (i.e., the "internal safeguards" discussed in Section 21.1.1).
- 8 Statute Articles II, III.A.5, XI.F.4, XII.A.1, 5, 6 and XII.B ("internal safeguards" again).
- 9 A characterization by the Indian representative (IAEA/CS/OR.35, p.67).
- 10 LAEA/CS/OR.6, p.12.
- 11 Section 12.2.3.2.
- 12 UNGA/RES/1376(XIV).
- 13 GC(V)/OR.51, para.1 (31-39).
- 14 GC(V)/OR.51, para.1(40-46). Section 23.3.
- 15 Section 19.1.2.1.
- 16 Section 23.1.2.
- 17 DG/PL/11, pp.29,31.
- 18 DG/PL/17, Part B, para.8; DG/PL/18; CCL/2.
- 19 Civil Liability for Nuclear Damage, Legal Series No.2, IAEA, Vienna (1964) 501; International Conventions on Civil Liability for Nuclear Damage, Legal Series No.4, IAEA, Vienna (1966) 3.
- 20 Section 23.2.8.
- 21 Section 23.2.9. CN-6/3, pp.5, 18.
- 22 Section 23.2.10.
- 23 Legal Series No.4, *supra* note 19, p.36, Articles I.11 and X.3.

- 24 Sections 15.2.2(e), (iv) and (A); 17.5.
- 25 Section 23.4. However, the Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents specifies that any assistance furnished to the distressed State "shall not be used in such a way as to further any military purpose" (INFCIRC/49, Article I.4).
- 26 Sections 7.3.9.3, 12.5.1 and 12.5.3.2.
- 27 Section 21.11.3.3.
- 28 INFCIRC/66/Rev.2; Section 21.4.1.
- 29 Section 21.5.4.1.
- 30 This question was muted at the Conference on the Statute (IAEA/CS/OR.35, p.76).
- 31 A negative definition in this sense is included in the Safeguards Submission Agreement relating, *inter alia*, to the US Yankee Reactor (INFCIRC/57, Section 6).
- 32 As a result of these several inclusions and exclusions, the operational definition of "use for a military purpose" implicitly applied by the Agency, is rather similar to that in Article 17 of the [European] Convention on the Establishment of a Security Control in the Field of Nuclear Energy (Multilateral Agreements, Legal Series No.1, IAEA, Vienna (1959) 187. Outside the strict statutory context, the Agency's own Co-operation Agreement with the United States suggests that there may be some military purposes aside from "atomic weapons" (INFCIRC/5, Part III Article V(b), quoted *infra* Section 16.4.6).
- 33 UNGA/RES/2373 (XXII), Annex; INFCIRC/140. Section 21.3.2.3.
- 34 *Ibid.*, Article III.1.
- 35 Section 21.5.4.1.
- 36 Quoted and analysed in Section 15.1.2.3.
- 37 This is also true of Statute Article XII.A.6, relating to health and safety controls, to which somewhat similar considerations apply.
- 38 It is, however, incorporated verbatim in the Relationship Agreement with the United Nations (INFCIRC/11, Part I.A, Article I.4) and is quoted in part in the preamble to the Mexican Safeguards Submission Agreement relating to the Tlatelolco Treaty (INFCIRC/118).
- 39 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, 480 U.N.T.S. 43.
- 40 At the Conference on the Statute the Soviet Union had suggested that the establishment of the Agency be linked with a nuclear disarmament agreement (IAEA/CS/OR.3, p.26); this was a deliberate reversion to an issue first raised in UNAEC (Section 1.5(b)).
- 41 Section 15.2.2.
- 42 Section 15.1.2.1(a).
- 43 GC(III)/89 and /Add.1, and GC(III)/93/Rev.1.
- 44 GC(III)/107; GC(III)/OR.35, paras. 31-32.
- 45 GC(IV)/131.
- 46 GC(IV)/DEC/11.
- 47 GC(VI)/RES/130.
- 48 GC(VI)/250.
- 49 GC(VI)/RES/160.
- 50 GC.1/1.
- 51 Chapter 18.
- 52 Chapter 19.
- 53 Chapter 20.
- 54 Chapter 22.
- 55 Chapter 21.
- 56 Chapter 23. Other activities for this purpose include the Training Course on the Legal Aspects of Peaceful Uses of Atomic Energy held in Vienna 16-26 April 1968 (see Nuclear Law for a Developing World, Legal Series No.5, IAEA, Vienna (1969)) and the Seminar on the Development of Nuclear Law held for Asian countries in Bangkok, 7-12 April 1970 (PR 70/24), as well as the publication of the Legal Series in which the present study appears.
- 57 Chapter 17.
- 58 Section 12.2.4.1(b).
- 59 One of the basic assumptions of the Baruch Plan had been the relative scarcity of nuclear raw materials (Section 1.4(A) and (c) (ii)).
- 60 For example, Willrich, *op.cit.* Annex 5, No.73.

- 61 The Agency's safeguards had, for instance, already been made the basis of the control system foreseen in the Treaty for the Prohibition of Nuclear Weapons in Latin America (the Tlatelolco Treaty, reproduced in UN document A/6663 and in The United Nations and Disarmament 1945-1965, p.309 (UN Publ. Sales No. 67.1.9); Section 21.3.2.2), Article 13.
- 62 UNGA/RES/2373 (XXII), Annex; INFCIRC/140.
- 63 This provision was especially emphasized in the preamble to the Assembly's Resolution.
- 64 Article 18 of the Treaty for the Prohibition of Nuclear Weapons in Latin America (supra note 61) already foresaw that the Agency might safeguard peaceful explosions. See also Section 17.5.
- 65 In addition, Article VIII.2 of the Treaty provides that in amending this instrument the concurrence of all parties that "on the date the amendment is circulated, are members of the Board of Governors of the ... Agency" must be obtained at two separate stages. This, however, is not a function assigned to the Agency or to its Board, but only to the members of the latter.
- 66 See UN Sec. Coun./RES/255 (1968). These "security guarantees" were analyzed for the CNNWS in UN docs. A/CONF.35/Doc.1, 8 and 12.
- 67 A step that the United States has already offered to take with respect to all its peaceful nuclear facilities, and which indeed it had previously essayed on a small scale by submitting certain of its reactors to Agency safeguards (INFCIRC/36 and /57).
- 68 Analysed by Scheinman, op.cit. Annex 5, No.54, pp.42-62.
- 69 In particular, UN docs. A/CONF.35/DOC.5, Part E, and /DOC.15 (relating to peaceful explosions). Resolution G of the Conference (infra note 70) called on the UN Secretary-General to appoint a group of experts to "report on all possible contributions of nuclear technology to the economic and scientific advancement of the developing countries"; the IAEA, rather than being entrusted with this task, received only collateral mention.
- 70 The Resolutions of the Conference of Non-Nuclear-Weapon States are reproduced in the Final Document of the Conference (originally UN doc. A/CONF.35/10, later A/7277), para.17.
- 71 GC(XII)/OR.119, paras.50-51; IAEA Press Release C/XII/1, pp.3-4; these remarks were reported to the CNNWS and were severely attacked at its final meeting (A/CONF.35/SR.20). In addition, Pakistan unsuccessfully proposed that the General Conference endorse the establishment of the Special Nuclear Fund, a suggestion which the PT & B Committee preferred to refer directly to the Board (GC(XII)/COM.1/108; /COM.1/OR.82, paras.1-20; GC(XII)/396, para.8).
- 72 GC(XII)/RES/245.
- 73 GC(XII)/RES/241.
- 74 UNGA/RES/2456 (XXIII), Part A, paras.2-4, 8-10, and Part C; also UNGA/RES/2457 (XXIII), paras.2-3. See also supra note 69.
- 75 GC(XIII)/INF/110 (reproduced as the Annex to UN doc. A/7677), a report drafted by the Secretariat and approved by the Board of Governors. The Agency has thus responded more positively than did other organizations similarly addressed by the CNNWS and the General Assembly (see the responses of IBRD and UNDP in UN docs. A/7327 and A/7364).
- 76 GC(XIII)/404, para.4; UN doc. A/7568, para.3.
- 77 Report of the Secretary-General on "Contributions of Nuclear Technology to the Economic and Scientific Advancement of the Developing Countries" (UN doc. A/7568) *passim*, but in particular paras. 41-43, 55, 230, 237-243 and 257. This report was also submitted to and considered by UNSAC (A/7743).
- 78 UNGA/RES/2536 (XXIV); UNGA/RES/2605.A (XXIV) (see Sections 16.3.2. and 17.8(d); and UNGA/RES/2605.B (XXIV) - dealing with the Agency's potential role in connection with peaceful nuclear explosions (Section 17.5).
- 79 AM. IX/1.
- 80 LAEA/PC/3.
- 81 LAEA/PC/WG.1-12.
- 82 GC.1/1; Section 3.3.2.3.
- 83 GC.1(S)/19.
- 84 GC.1(S)/26, paras. 3-6 and Annex C; GC.1(S)/RES/5.
- 85 GC(I)/36, para.3.
- 86 GC(V)/RES/105, paras.(a) and (b).
- 87 ECOSOC/RES/665.C (XXIV), clarified and amplified in July 1958 by ECOSOC/RES/694.D (XXVI).
- 88 ECOSOC/RES/743.D. II (XXVIII).
- 89 UN doc. E/3346 and /Corr.1.

- 90 UN doc. E/3347/Rev.1.
- 91 INFCIRC/28, paras.163-166.
- 92 ECOSOC/RES/791(XXX).
- 93 INFCIRC/28, paras. 163-173; INFCIRC/35, paras.7-8.
- 94 GC(IV)/114, para.41.
- 95 GC.1/1, para.19(e).
- 96 GC(II)/COM.1/22; GC(IV)/COM.1/44, withdrawn on the understanding that the proposal would be brought to the attention of the Board (GC(IV)/143, para.15).
- 97 GC(V)/155, para.22.
- 98 GC(V)/RES/105.
- 99 GC(VI)/203.
- 100 The Conference merely mentioned the preparation of the long-term programme in passing, in GC(VI)/RES/131.
- 101 GC(VII)/227, para.4.
- 102 GC(VII)/INF/59.
- 103 GC(VII)/262.
- 104 GC(VII)/RES/151.
- 105 INFCIRC/50.
- 106 UN doc. A/7124, Annex I, recommendation 29.
- 107 GC(XI)/362, para.7.
- 108 GC(XI)/RES/230, para.2.
- 109 GC(XI)/362 and /Add.1 and /Add.2; Section 15.4.
- 110 UN doc. A/7124, Annex I and Annex XII, recommendation 1.
- 111 GC(XII)/385, para.1.
- 112 GC(XII)/385, para.31.
- 113 GC(XII)/395 and 396.
- 114 Sections 15.3.2.2. and 15.3.2.4.
- 115 GC(XII)/RES/242-244.
- 116 GC(XII)/385, para.3.
- 117 UN doc. A/7124, Annex XII, recommendation 1.
- 118 Section 15.3.2.2.
- 119 The Programmes for the first several years (e.g., for 1959; GC(II)/36, Chapter II; for 1962, GC(V)/155, Chapters I and II) were divided into two parts, indicating separately the proposed activities of the Agency as a whole and the functions to be carried out by each Division or Office of the Secretariat; indeed, this involved a three-fold presentation, since the plans were once more restated in terms of budgetary headings. The practice of presenting an extensive text indicating the sub-division of the Programme by Secretariat units was abandoned in the Programme and Budget for 1963 on the ground that the structure of the Secretariat had become sufficiently stabilized so that the tasks of each unit remained roughly the same from year to year (GC(VI)/200, paras. 10-16); instead of the extensive textual presentation, two sets of tables were substituted in which the budget estimates were sub-divided separately by budget headings and by the organizational units of the Secretariat and the amounts applicable to each "Part of the Programme" and each "Object of expenditure" were shown (*ibid.*, Annexes II and III); starting with the Budget for 1969 (GC(XII)/385), the presentation in terms of Secretariat units was abandoned, and three tables present analyses by "programmes and appropriations" (Annex I.A), "activities" (Annex I.3) and "major functions" (Annex I.C).
- 120 for example, GC(VI)/200, Annex IV.
- 121 AM. I/7, Appendix D; Section 9.4.4.1(d).
- 122 For example, GC(XI)/RES/226-228; of these only the Resolution on "Operational Budget Allocations for 1968" obliquely accepts "the recommendations of the Board of Governors relating to the Agency's operational programme for 1968" (GC(XI)/RES/227, para.(a)). In fact, through the Eighth Conference, not even the Operational Budget Resolution referred at all to the programme (e.g., GC(VIII)/RES/172); the new phraseology was introduced in 1965 in GC(LX)/RES/193 — however, in that year no "periodic programme" at all was presented to the Conference (see Section 15.3.2.3) and the footnote reference was to the budget document.
- 123 Section 7.3.5.2.
- 124 For example, for 1959, GC(II)/36, Chapter II.
- 125 GC(VI)/INF/55, Annex. The South African representative had indeed introduced this subject during the general debate the year before (GC(V)/OR.49, para.27).

- 126 GC(VI)/RES/120.
127 GC(VII)/238.
128 GC(VII)/RES/154.
129 Respectively GC(VIII)/275 and 276.
130 GC(IX)/300.
131 Respectively GC(X)/332 and 333.
132 GC(X)/332, para.7.
133 Supra note 122.
134 Section 10.3.
135 Sections 9.3.4 and 9.3.6.
136 Sections 32.1-2.
137 Section 32.1.2.
138 Section 32.2.1.
139 GC(X)/RES/217.
140 The original proposal called for the establishment of a "Special Evaluation Committee composed of the representatives of nine Members States" (GC(X)/COM.1/101, para.1); this was modified to request the Board to perform the review with the assistance of a special review committee, composed of 11 members from the whole membership of the Agency (GC(X)/COM/101/Rev.1, para.1); in the next version the possibility of "establishing a committee including representatives from the developing countries" was included as an alternative, but even this was finally excised (GC(X)/352, para.3).
141 GC(XI)/362 and /Add.1 and 2.
142 GC(XI)/COM.1/OR.77, paras.36-58; /OR.78; GC(XI)/374. See Section 18.3.3.
143 GC(XI)/RES/230.
144 UN doc. A/7124, Annex I, recommendation 30.
145 Ibid., Annex XII, recommendation 30. Indeed, the Director General explicitly warned the General Conference against excessive, repeated "self-examination", which was threatening to interfere with the normal work of the Agency (GC(XIII)/OR.127, para.46).

CHAPTER 16. RECEIPT OF NUCLEAR MATERIALS AND RELATED ITEMS

PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Articles IX and X, but also XI.C, XI.F.2 and 3, XIII, XIV.E, XX

General supply agreements with the USSR, the UK and the USA (INFCIRC/5)

Master Contract for Sales of Research Quantities of Special Nuclear Materials [by the USA to the Agency] (INFCIRC/83, Annex A)

Supply agreements, for example those relating to:

US supplied reactor projects (e.g., a TRIGA in Yugoslavia, INFCIRC/32, Part I, and INFCIRC/32/Add.2;

a Lockheed reactor in Uruguay, INFCIRC/67, Part I; the RAEP reactor in Argentina, INFCIRC/62, Part I)

USSR supply of fuel to Finnish sub-critical assemblies (INFCIRC/53, Part II)

Canadian gift of uranium to the Agency for Japan (INFCIRC/8, Part I)

Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities (INFCIRC/13, Part I)

Financial Regulation 10.06 (INFCIRC/8/Rev.1), Interim Financial Rules 3.01-.03 (AM.V/3) and Terms of Reference of the inter-departmental Contract Review Committee (AM.1/7, Appendix B)

The original concept of an international atomic energy agency, which still influenced but no longer dominated the thinking of the founders of the Agency even as late as the Preparatory Commission, saw the receipt, custody and distribution of nuclear materials as its principal functions - which both justified and made necessary the creation of the new organization. The Articles relating to these functions, in particular IX and XI and to a lesser extent X, XIII and XIV.E, thus occupy a central position in the statutory framework, and though the work of the Agency has up to now developed in other directions, these provisions and functions must form an important part of any legal study of the Agency. This Chapter deals mainly with the first two of these functions, while distribution of assistance through "Agency projects" forms the subject of the next one.

What the Statute foresees is basically as follows: each Member State able to do so should from time to time notify the Agency that it is willing to place at its disposal particular nuclear materials. The Agency thereupon concludes an agreement with the State, specifying the terms on which the latter will deliver the materials offered. Whenever the Agency subsequently requires any nuclear material, either for its own operations or for an approved project in a Member State, it selects the most favourable available supplier (without having to take into account its views on the proposed project), and directs it to deliver the required material - for which the Agency pays the previously agreed price. To reimburse itself the Agency charges the State to which it delivers or causes material to be delivered - but these charges do not necessarily reflect the cost of acquiring the specific material delivered but are based on a uniform scale of charges (adjusted only for the type of material involved) calculated so as to enable the Agency to break

even and perhaps to make a slight profit on the totality of these transactions – a device through which all recipients are treated equally, regardless of the source of their particular supply.

16.1. DEFINITIONS

Certain technical terms are used in the balance of this Chapter and in those following. Some of these are defined in Article XX of the Statute¹ and others in the Safeguards Document; still others have merely acquired a meaning by usage, which of course may vary from time to time and according to context.

- (a) The term "nuclear material", which is extensively used in the practice of the Agency and in this study, is not defined in the Statute but only in the Safeguards Document²; it covers two types of materials:
 - (i) "Special fissionable materials", defined in Statute Article XX.1, are plutonium and any mixture of uranium whose isotopic composition is richer in ²³³U plus ²³⁵U than the 0.7% ²³⁵U found in natural uranium.³ These materials are not found in nature and are the ones which, in certain forms, constitute the main elements of nuclear weapons.
 - (ii) "Source materials", defined in Statute Article XX.3, are natural and depleted uranium and thorium in the form of metal, alloy, chemical compound or concentrate.⁴ Uranium and thorium are found in nature (widely though unevenly distributed throughout the world) and are the materials out of which special fissionable materials can be made in certain "principal nuclear facilities".
- (b) "Other materials" is a term used but not defined in the Statute,⁵ but is evidently meant to include those "non-nuclear materials" (e.g., heavy water (D₂O), pure graphite, zirconium) that are necessary or useful in the conversion of source materials into special fissionable materials.
- (c) The term "related items", used in the title and text of this Chapter, does not occur in the Statute nor is it commonly used in the Agency. In the present context it is meant to cover non-nuclear (or "other") materials as well as the "services, equipment and facilities" referred to in Statute Article X, in particular those used in the conversion of source materials into special fissionable materials or in purifying the latter. Most important of these are:
 - (d) "Principal nuclear facilities", a term originated and defined in the Safeguards Document, covering isotopic enrichment plants, conversion plants, fabrication plants, nuclear reactors, and plants for the chemical processing of spent fuel elements to separate the various nuclear components.⁶
- (e) The "Supplying States", as used in this Chapter, mean those Members that are able to supply nuclear items (particularly special fissionable materials or principal nuclear facilities). According to its context this term may apply only to those States actually supplying assistance directly

to the Agency, or at its request to other Members (the "Receiving States"), or also to States that have merely offered such assistance, or perhaps even to all States potentially able to offer it.

16.2. STATUTORY PROVISIONS

16.2.1. Evolution

During the development of the Statute the proposed functions of the Agency with respect to nuclear materials evolved through several stages.⁷ At first the IAEA was conceived of primarily as the "custodian" of a "pool" of such materials into which there could be siphoned off some of the military stocks held by the nuclear powers; as a secondary function the Agency could act as a "merchant" (or "retailer" or "banker") of the materials deposited with it, lending some of it out to benefit peaceful projects. The pool idea was soon abandoned when it became clear that no agreement could be reached on neutralizing significant amounts of nuclear materials. However the merchant idea persisted, though not in its original monopolistic form - and in the course of the negotiations on the Statute it was largely transmuted into the still more modest concept of the Agency acting merely as a "broker", arranging and supervising transactions among its Members.

The final text of Article IX of the Statute shows traces of each of these several stages in the planning of the Agency. The result is that, instead of following clearly one particular approach (perhaps the final and now dominant one of the Agency as "broker"), this Article is one of the most confusing provisions of the Statute - which in practice has caused no difficulties only because it has almost from the beginning been completely inoperative. Its one virtue is that it leaves open all possibilities, so that as the political climate changes or particular technological and economic developments occur, the Agency can as convenient assume the functions of custodian, merchant or broker.⁸ However, the choice of roles for the Agency depends almost completely on the potential Supplying States, and hardly at all on the organization.⁹

President Eisenhower's proposal clearly saw as one of the two main functions of the Agency the reduction in the amount of nuclear materials available for military purposes. However, he indicated that the primary responsibility of the Agency would not lie in the "impounding, storage and protection" of this material but in its allocation "to serve the peaceful pursuits of mankind".¹⁰

The first US Sketch of the Statute to some extent still reflected the "custodian" idea. Thus it was indicated that all Members of the Agency "possessing stocks of normal and enriched uranium, thorium metal, U-233, U-235, U-238, plutonium and alloys of the foregoing would be expected to make contributions of such material to the agency";¹¹ the United States would be prepared to make a substantial initial donation "towards the needs of the agency" (the "merchant" idea) and the Soviet Union "would make an equivalent donation" (once more, the "custodian" idea).¹² However, the

remaining provisions all related to the "merchant" approach - in particular it was proposed that initially the Agency would merely lease out the materials deposited with it, while retaining title to them.¹³

In the Negotiating Group Draft it was provided that "Members may contribute to the Agency such quantities of fissionable materials as they deem advisable", and the offers of contributions could be amended by the Members concerned at any time - though the approval of the Board had to be secured.¹⁴ Thus any concept of obligatory contributions or parity of contributions had already been abandoned at that stage (of course such obligation or parity might still be achieved by a separate agreement concluded by Member States outside of the Statute), though Members were to be exhorted to "be guided by the principle that the objectives of the Agency are to be furthered to the greatest possible extent".¹⁵ It was, however, foreseen that the contributed material would be stored by the Agency (residue of the "custodian" idea) and that until the Agency had established the necessary facilities a contributing Member would store the material it had made available separately from other similar materials.¹⁶

At least one of the comments on this Draft took exception to the principle that the level of contributions of materials be left entirely to the discretion of the individual Members and not be determined by the Agency.¹⁷

At the Working Level Meeting, where Article IX received its present form, the provisions foreseeing that the Agency might act as the custodian of a pool of demilitarized material were all but eliminated, and even the merchant-oriented provisions were considerably weakened - while the broker features were emphasized. At the behest of the three nuclear powers, the Agency's right to store contributed material was restricted to the contingency that the Supplying State asked it to do so. Deleted was the obligation of Supplying States to segregate, pending delivery, the materials they had promised to make available; instead the Agency itself was charged, when storing materials, to assure its geographic dispersion.¹⁸

At the Conference on the Statute two attempts were made to restore some teeth to Article IX - i. e., to assign a stronger role to the Agency. One amendment proposed that the word "may" in the first clauses of Article IX, A and B be changed to "should", so as to suggest at least a mild element of obligation to make available materials to the Agency.¹⁹ Another amendment would have required that changes in outstanding offers might only be made if adequate reasons were given therefor "and the projects being carried out in the recipient countries are not prejudiced thereby".²⁰ Both these proposals were defeated and Article IX was adopted without any change.²¹

16.2.2. Content

As indicated above, Article IX of the Statute is distinctly lacking in lucidity and it is fortunate that there have been few occasions to interpret its provisions. Its requirements can conveniently be considered under a few principal headings:

16.2.2.1. Notification of offers

Article IX.C provides that:

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

According to Article IX.F, the initial notifications are to be made within three months of the entry into force of the Statute with respect to the Member, and thereafter further notifications are to be made by the first day of each November - all notifications normally having effect for the following calendar year unless the Board decides otherwise. Article IX.E permits Members, with the approval of the Board, to change at any time the "quantities, form and composition of materials made available".

The first question that arises concerns the legal effect of these "notifications" and, related thereto, the meaning of the term "make available". That this phrase does not necessarily imply a donation is clear from Article IX.A and B, which refers respectively to "terms... agreed with the Agency" and to agreements provided for in Article XIII (relating to the reimbursement of Members for items "furnished" to the Agency); however, the possibility of donations is not excluded. Nor does the phrase necessarily imply an offer to transfer materials directly to the Agency, for Articles IX.D, XI.C and XI.F.3 foresee that such materials might be delivered directly to another Member State, at the direction of the Agency. Nor, finally, does the "making available" of materials necessarily require its transfer from the Supplying State. Thus the phrase really means no more than the notification itself, which in turn at most creates an option, not unilaterally revocable during a limited period, for the Agency to direct the disposition of the materials in question for certain purposes foreseen in the Statute - but subject to agreement first being reached on the terms and conditions of the transfer and reimbursement.²²

The next, related question is whether the Agency must take action to accept a notification. Article IX speaks in both paragraphs A and B of agreement and IX.B also mentions acceptance, but in IX.B and in the second sentence of IX.A these steps appear to be required only if the material is actually to be delivered. Since "making available" by itself does not imply a consequent requirement for the Agency to do or pay anything, it might be held that acceptance can in every case be assumed. Only in the first sentence of IX.A do the words "make available" appear to imply the actual furnishing of the material (contrary to the use of the term elsewhere in the Article) and thus active acceptance through an agreement as to terms and conditions may be required.

One right the Agency receives from a notification is to bind the State concerned to its offer for the effective period thereof, unless the Board pursuant to Statute Article IX.E approves a change. This is at best a weak hold, both because of the wording of the latter provision ("may be changed

at any time by the member"), and because of the history of the defeat of the restrictive amendment that had been proposed at the Conference on the Statute.²³ According to Article XI. F, the Board may also determine the effective duration of a notification - but presumably this can only be done in advance: i. e., a unilateral Board decision taken after a notification is made cannot prolong its duration past its original termination date.

Notifications may relate to three types of materials: "special fissionable" (mentioned in Article IX. A and C), "source" (mentioned in IX. B and C), and "other" (mentioned solely in IX. C). Though the provisions in IX. A and B, relating respectively to special fissionable and to source materials, are worded entirely differently, on analysis it is hard to detect any effective difference: under both provisions Members may offer what they wish, but the Agency need only accept what it decides.

16.2.2.2. Storage

Article IX. A provides that:

"[Special fissionable] materials made available to the Agency may, at the discretion of the member making them available, be stored either by the member concerned or, with the agreement of the Agency, in the Agency's depots."

This in effect means that the Agency will only store such material if both the State and the Agency desire that arrangement.

No special requirements are imposed on the Supplying State if it is to store the material itself. The Negotiating Group's proposal, that the State segregate such material from others in its possession, was eliminated by the Working Level Meeting.

If, however, the Agency undertakes storage, it must, according to Statute Article IX. H-I, "ensure the geographical distribution of these materials in such a way as not to allow concentration of large amounts of such materials in any one country or region of the world". In particular, the Agency must "safeguard"²⁴ such material against:

- (1) Hazards of the weather;
- (2) Unauthorized removal or diversion;
- (3) Damage or destruction, including sabotage; and
- (4) Forcible seizure.

For this purpose the Agency is to establish or acquire as soon as possible, inter alia, "Plant, equipment, and facilities for the receipt, storage, and issue of materials".²⁵

Although Article IX. B (referring to source materials) contains no provision similar to the above-quoted sentence of Article IX. A, presumably here too the Agency will store such materials if and only if the Supplying State and the Agency agree. In any case, Article IX. H-I is drawn broadly enough to apply also to source materials, as well as to "other materials".

16.2.2.3. Right of disposition

Within the period for which a notification is valid the Agency may, if it reaches an agreement as to terms and conditions with the offering State, dispose of the material made available in accordance with Article IX, D and J. In effect, the Agency can require either of two dispositions: delivery to another Member State for an approved Agency project, or delivery to the Agency "for operations and scientific research in the facilities of the Agency". It cannot require the delivery of the material for the purpose of stock-piling by the Agency - this follows from the second sentence of Article IX, A and from the words "as are really necessary [for operations and scientific research]" in Article IX, D. (It should be noted that the "really necessary" requirement does not appear to apply to deliveries to Member States, so that if the Board were to approve a project that includes the stock-piling of materials by a Receiving State, then the Supplying State might have to deliver the material.)

The Supplying State may not designate the project for which its material is to be used. This vital provision, which makes it possible for a State politically unpopular with the Supplier to obtain material from it through the Agency, is designed to inhibit supplier-induced discrimination.²⁶ On the other hand, Article XI, C permits a Requesting State to exercise some discrimination as to suppliers, since its wishes are to be taken into consideration in arranging whether material is to be supplied directly by the Agency or from a Supplying State.

16.2.2.4. Delivery

The Agency may require a State having made material available, to deliver it to another Member State for an approved Agency project. It may also require delivery to itself for its own operations and research or, but only with the agreement of the Supplying State, to the Agency's own storage facilities.²⁷

Whether the material is to be delivered to the Agency or, at its direction, to a Member State, Statute Article IX, G requires the Agency to specify the place and method of delivery and to verify and report on the quantities delivered.

16.2.2.5. Payment

Although the first US Sketch explicitly foresaw that the nuclear powers would make donations of materials to the Agency, this possibility is no longer explicitly mentioned in Statute Article IX. Instead Article IX, A speaks of "terms"²⁸ to be agreed, which suggests but does not necessarily mean payment; Article IX, B explicitly refers to Article XIII, which provides for the Agency to reimburse the State for materials furnished "unless otherwise agreed".

However these options, indicating that payment need not always be required for all deliveries to the Agency, are important, for only on such basis would it be possible for the Agency ever to fulfill any significant custo-

dial function over a "pool" of expensive nuclear materials - which, while no longer in the foreground of the statutory purposes, is one not entirely foreclosed. Such a pool might thus be constituted from related (but not necessarily equivalent) donations of nuclear materials to the Agency by each nuclear power, or more likely from free deliveries of material for cost-free storage by the Agency during an agreed period, to be paid for only if withdrawn by the Agency for any purpose consistent with Article IX. D.

If material is accepted by the Agency, either for its own use or for one or more of its Members, the funds to pay for it must be raised by means of the charges the Agency is to levy (on a uniform basis pursuant to Statute Article XIV. E) on the materials and services it furnishes to its Members. However, if the material is to be transferred directly to another Member, then the financial arrangements can be agreed to between the Supplying and the Receiving States and need merely be noted by the Agency in the Project Agreement with the latter State.

16.3. NOTIFICATIONS UNDER STATUTE ARTICLE IX

16.3.1. Initial notifications

Soon after the Statute entered into force, the Preparatory Commission sent letters reminding all Member States that the three-month period specified in Article IX. F had begun running on 29 July 1957 with respect to all States that had deposited their instruments of ratification on or before that date, and correspondingly later for those that had acted afterwards.²⁹

It is evident that most Members did not interpret Article IX. C or F as obliging them to make any notification, within three months of the effective date of their membership or later. Altogether no more than a dozen States ever made formal notifications complying with the statutory requirements:

- (a) Three States offered to make available special fissionable material - each in the form of ²³⁵U contained in enriched uranium: the Soviet Union 50 kilograms, the United Kingdom 20 kilograms, and the United States 5000 kilograms³⁰ plus an amount of special fissionable material matching all other notifications received by the Agency by 1 July 1960.³¹
- (b) The Board's Second Annual Report to the General Conference listed in addition to the notifications mentioned above, offers from seven States of various types of source material, ranging from uranium metal to Monazite containing about 9% thorium.³² Later Reports mentioned, without details, the receipt of a few further notifications.³³

Soon after the first Board took office, it instructed the Secretariat to correspond with the States that had submitted notifications, in order to elicit necessary technical details about the materials offered and about the proposed terms of delivery.³⁴ It also indicated its hope that these offers would be held open for more than the minimum of one calendar year required by Statute Article IX. F, and indeed assurances were received that all the offers were being held open beyond 31 December 1958.³⁵ However, the Board never

took action pursuant to Article IX. F to prolong the effective period of offers beyond the statutory one-year period, and consequently the minimal legal effect of these early notifications has long since lapsed - except insofar as the ones relating to special fissionable materials have been embalmed in the three general supply agreements mentioned in Section 16.4.

16.3.2. Fund of special fissionable materials

In view of the glutted state of the world source materials market until 1966, it had not been considered necessary to take action to solicit any further notifications, or to prolong the initial ones, or systematically to distribute information about the occasional notifications that were received. For all practical purposes, the notification and related provisions of Article IX are at present completely dormant.

Recently, in view of the improved prospects for and the consequently revived interest in nuclear power, attention has again been focused on the Agency's potential role as a supplier of nuclear materials to developing countries and the consequent need for the organization to obtain such materials from the principal Supplying States. The Non-Proliferation Treaty charges all States able to do so to supply nuclear materials to other parties to the Treaty, inter alia through international organizations.³⁶ The 1968 Conference of Non-Nuclear-Weapon States adopted two Resolutions on this subject, addressed in part to the Agency: in one it merely recommended that the Agency "study the most effective means of ensuring access to special fissionable materials on a commercial basis" and urged "the nuclear-weapon States to facilitate... the availability of fissionable materials" for peaceful programmes; in the other, it requested the Agency to consider the establishment of a "fund of special fissionable materials" for the benefit of non-nuclear-weapon States and in particular of developing countries", and asked the nuclear-weapon States to "give a firm undertaking regarding the supply of such materials to the fund at reasonable prices and in adequate quantities at the request of non-nuclear-weapon States" and to channel into the fund "a substantial share of... special fissionable materials as may be released in the future as a result of the adoption of nuclear disarmament measures".³⁷ The Resolution does not indicate how the fund is to operate, but presumably no more would actually be necessary than to reactivate and implement Article IX of the Agency's Statute, with particular reference to the role of the Agency as a "merchant" of nuclear materials.

This, in effect, was the conclusion of the Board of Governors in reporting to the General Conference on this subject,³⁸ a view also reflected in the responses of the four nuclear-weapon States Members of the Agency to an inquiry by the Director General as to the possibility of having increased quantities of nuclear materials made available to the Agency on more flexible terms;³⁹ these replies all indicated that for the present the Agency had received adequate commitments, though if need could be demonstrated these might be increased or improved. Though several other States evidently wished to advance the creation of a new "fund",⁴⁰ the Thirteenth General Conference merely decided to transmit all these views to the United Nations⁴¹ The General Assembly noted these "actions" by the Agency "with satis-

faction", and requested it "to continue its efforts to ensure the supply to member States, when required and on a regular and long-term basis, of [special fissionable] materials, including materials for power reactors".⁴²

Though never officially notified under Article IX, an additional potential supply of special fissionable materials for the Agency should be kept in mind. In a number of bilateral agreements that the United States has concluded with other States and with EURATOM,⁴³ it has included a requirement that certain excess materials not required by the receiver itself must under specified conditions be offered for sale to the Agency. Up to now there has not yet been any such excess production of materials, and consequently no sales have been offered to the Agency.

16.4. THE GENERAL SUPPLY AGREEMENTS

As mentioned above, a notification pursuant to Statute Article IX creates at best an incomplete obligation by the offering State to deliver materials to or at the direction of the Agency. In order to perfect this obligation it is necessary, at least in respect of special fissionable materials, to conclude an agreement concerning the terms on which the material is to be eventually delivered. Of course, such agreements could be concluded on an ad hoc basis each time a shipment is required – but such a procedure would nullify the principal purpose of the elaborate notification mechanisms established by Article IX: to assure the Agency and its Members that whenever nuclear material is required for a particular project the Agency can immediately secure such material, within the limits of the notifications in effect, regardless of any possible reluctance by potential suppliers to assist the project in question. It was therefore decided that the Agency's rights flowing from Article IX notifications should be perfected by concluding general agreements with each notifying State specifying in sufficient detail the terms and conditions on which delivery "without delay" could later be demanded by the Agency. Such agreements could also serve the subsidiary purpose of extending the effective period of a notification beyond the statutory one-year term, without requiring a unilateral Board decision as apparently foreseen by Article IX. F.

In the case of the United States there was another reason for concluding such a general agreement. Pursuant to the 1954 Atomic Energy Act, the Government could only deliver nuclear materials to a State or an intergovernmental organization with which it had previously entered into an agreement for co-operation tacitly or expressly approved by Congress.⁴⁴

In view of these considerations the Board in May 1958 instructed the Director General to start negotiating agreements with the States that had offered to supply materials, and in July the Board established a Committee on Agreements for the Supply of Fissionable, Source and Other Materials, consisting of its Chairman and 8 named members (including the three States that had offered special fissionable materials). The negotiations were thereupon conducted mostly within the Committee. The principal issues faced and their resolution were the following:⁴⁵

16.4.1. Form and uniformity

Though the Secretariat had hoped to establish uniform patterns for the general agreements, the insistence of each of the three principal offerors on the form of instrument it had initially proposed quickly doomed any efforts in that direction. In the event, the three agreements eventually concluded differ considerably in form and structure: those with the Soviet Union and the United States are in the form of regular treaties (the latter being considerably more elaborate), while that with the United Kingdom is contained in a brief exchange of letters.⁴⁶

16.4.2. Price

It was soon decided that no fixed prices should be inserted into the agreements, partly because of the variety of forms in which enriched uranium could be supplied, but also because the fluid price picture made the offerors unwilling to state any long-term price, and finally because it was likely that prices would continue to decrease and thus any set price would be detrimental to the Agency. Still, one of the principal objects of these agreements was to specify a formula according to which the price of the offered material could be determined unambiguously and without further negotiation whenever the Agency demanded delivery. If possible, these formulae should enable the Agency to receive materials at more favourable prices than the Member States themselves could obtain – since if the Agency can only secure materials at the same price and must resell with the addition of storage and handling charges (as specified in Statute Article XIV. E), then it can never compete with direct bilateral transactions between Governments.⁴⁷ The formulae finally appearing in the agreements are the following:⁴⁸

(a) USSR agreement:

"The Government undertakes to base prices on a scale of charges corresponding to the lowest international prices in effect at the time of delivery for enriched uranium hexafluoride and for uranium compounds according to their percentage content of uranium-235."⁴⁹

This clause was criticized on the ground of vagueness and of the difficulty of making the required determination in the absence of a regular world market for enriched uranium – but it was also recognized that potentially it gave the most favourable terms to the Agency.

(b) United Kingdom agreement:

"The material shall be supplied at a price and on conditions which are not less favourable than the most favourable price and conditions which the United Kingdom Atomic Energy Authority are offering or are prepared to offer, at the date of the contract in question, to any other customer outside the United Kingdom for the supply of similar material."⁵⁰

This clause was criticized on the ground that it might enable British domestic customers to compete unfairly with the Agency's customers whenever the UKAEA's domestic price is lower than its foreign one.

(c) United States agreement:

"The United States undertakes to make special nuclear material available to the Agency at the United States Atomic Energy Commission's published charges applicable to the domestic United States distribution of such material in effect at the time, . . ." ⁵¹

This clause was criticized on the ground that it did not allow any preference to the Agency. A favourable feature was that the agreement also foresaw that the United States might annually make up the \$50 000 worth of material available to the Agency free of charge. ⁵²

16.4.3. Materials covered

Each of the agreements relates primarily to the enriched uranium that the Government had offered to make available to the Agency, though the United States also undertook to assist the Agency in obtaining source and reactor materials. Basically each Government offered to make the uranium available in any enrichment up to 20% ²³⁵U, but both the American and the British agreements provided that "the parties may agree to a higher enrichment with respect to uranium to be used in research reactors, material testing reactors or for research purposes". ⁵³

16.4.4. Delivery

Each agreement provides that the material will be kept in the custody of the Supplying State, until "requested" (USSR), "required" (UK) or "needed" (USA) by the Agency. ⁵⁴

16.4.5. Liability

The original drafts of the American and British agreements, like many bilateral agreements concluded at that time, provided that the Agency and or the Receiving State should "hold harmless" the supplier if any nuclear disaster should occur involving the delivered material. The potential Receiving States considered this type of arrangement an imposition by the Suppliers and urged that the Agency should resist and not further this device. The clause in the American draft was, like several others, also critically compared with the corresponding provisions in the EURATOM/USA Co-operation Agreement⁵⁵ which had just been negotiated and which threatened to (and in fact did) cut deeply into the Agency's potential business in Europe. Finally the objectionable clauses were replaced by neutral ones, providing for the negotiation of mutually satisfactory liability arrangements before delivery of any material. ⁵⁶

16.4.6 Safeguards

Even though the Agency's Statute requires it to apply safeguards with respect to nuclear items it makes available to its Members,⁵⁷ Article V of the American agreement provides:

"The Agency guarantees, to the full extent of its statutory powers, that:

(a) The safeguards set forth in the Agency Statute shall be maintained and implemented as provided in the Agency Statute with respect to material, equipment or facilities, made available by the United States or persons under its jurisdiction for use in Agency activities.

(b) No material, equipment or facilities, transferred pursuant to this Agreement will be used for atomic weapons or for research on or for development of atomic weapons or for any other military purposes.

(c) Material, equipment or facilities, used, transferred or re-transferred pursuant to this Agreement shall be used or transferred only in accordance with the Agency Statute and this Agreement."

This provision caused serious concern in the Committee and the Board; in particular, it was feared that it would deprive the Board of the flexibility foreseen in Article XII.A of the Statute to adjust safeguards to the extent relevant to each project. When this agreement was finally approved in the Board it was only done so subject to the understanding:

"that the Agency's guarantee 'to the full extent of its statutory powers' should be interpreted in the light of Article II of the Statute, and would thus be given by the Agency only 'so far as it is able'; as for subparagraph (a) of article V of the draft, relating to safeguards, ... the phrase 'as provided in the Agency's Statute' [was] interpreted as making the Agency's obligation subject to the power of the Board to decide on the extent to which safeguards are relevant in each case."

The British agreement contains a similar clause, which however was not objected to since it included the "to the extent relevant" restriction.⁵⁸ The Soviet agreement does not refer to safeguards.

16.4.7. Transactions with individuals

Articles II.D and IV of the American agreement foresee that the Agency may obtain some material, equipment or facilities from "persons under the jurisdiction of the United States". The Soviet Union vigorously objected to this provision on the ground that nothing in the Statute authorized the Agency to deal with private persons, who are not bound by the obligation of the Statute. This was answered by pointing out that the agreement did not require the Agency to deal with private persons if it could not do so on satisfactory terms

and with adequate guarantees, and that in any case the Agency always had and would have to continue to deal with private persons for a number of purposes (e. g., in granting research contracts).⁵⁹

16.4.8. Consistency with the Statute

With reference to some of the early drafts of the agreements, the Legal Counsel of the Agency advised the Committee that the Agency could not waive any of its statutory rights by such an agreement – but to make doubly sure a clause to this effect should be included in the agreements. Finally most of the provisions that had raised constitutional doubts were appropriately revised, and no clause such as suggested by Counsel was added.

In the American agreement some problems of terminology persist. In particular the material defined as "special fissionable material" by Article XX.1 of the Statute is called "special nuclear material" in the Agreement, following the terminology of the US Atomic Energy Act.⁶⁰ However, the substantive problem initially caused by the American desire that the scope of this definition should be subject to change unilaterally by the US Atomic Energy Commission (as provided in the Act) and the Agency's reply that only the Board could do so (in accordance with Statute Article XX.1), was resolved by providing that the definition (and thus the scope of the agreement) can be extended "by mutual agreement".⁶¹

16.4.9. Scope

The United States had originally proposed to the Agency an agreement similar to those it was currently concluding with its bilateral partners, covering the whole range of potential co-operative activities in the nuclear energy field. This approach was objected to, and in the event the agreement was restricted practically to the implementation of Statute Article IX.

A few extraneous clauses remain in both the American and the Soviet agreements; for instance, both provide for the possibility that the State might reprocess nuclear materials for the Agency.⁶² The American agreement in addition provides for the possibility of the Government purchasing special fissionable material deriving from Agency activities (whether or not these had been carried out with American material) and also for the Government to permit private persons within its jurisdiction to transfer and export materials, equipment or facilities or to perform services at the request of the Agency⁶³ – a clause which has since been relied on frequently to secure export licenses for reactors required for Agency projects in Member States.⁶⁴

16.4.10. Settlement of disputes

None of the agreements contain a disputes clause.

16.4.11. Duration

- (a) The agreement with the Soviet Union "shall cease to have effect one year after the day of its denunciation by the Agency of [sic] the Government"⁶⁵

- (b) The agreement with the United Kingdom "remains open until the end of any calendar year after 1960 in which notice of the withdrawal of the offer [of enriched uranium] has been given".⁶⁶
- (c) The agreement with the United States was concluded to "remain in force for a period of twenty years".⁶⁷

The three agreements were all signed on 11 May 1959. Those with the Soviet Union and the United Kingdom came into force on that day. That with the United States required the exchange of written notifications that each party had complied with all requirements for the entry into force of the agreement (i. e., that the Government had complied with the requirement established for agreements of this type that they must lie before the Joint Atomic Energy Committee of Congress for 30 working days⁶⁸) - a formality which delayed the entry into force until 7 August 1959.

16.4.12. Subsequent developments

From the point of view of the Agency, the principal reason for concluding the three general agreements for the supply of nuclear materials was to perfect the right to demand unconditional delivery which Statute Article IX almost, but does not quite provide. Up to now there has been no occasion to rely on this feature of the agreements, for each time delivery was required for a particular project in a Member State or for an internal Agency activity, a specific offer to supply the material was received from one of the Supplying States and a separate supply agreement was concluded which at most made a preambular reference to the general agreement. Since the Agency always needed the material in a particular form (usually as fuel elements designed for a specific reactor), any reliance on the compulsory features of the Statute and of the general supply agreements would in any case not have been satisfactory, for the Agency could at most have demanded raw materials requiring further processing and fabrication.

No general supply agreements were concluded with any of the States that had offered merely source materials - principally because these materials are now in ample supply at ever-decreasing prices, so that there is no need to rely on the compulsion of a treaty to receive the materials the Agency requires.

On 20 August 1962 the Agency and the United States concluded, pursuant to the 1959 Co-operation Agreement (which is the name given by the United States to the general supply agreement), a "Master Contract for Sales of Research Quantities of Special Nuclear Materials".⁶⁹ This too is an agreement of a general "framework" type,⁷⁰ in that this instrument also does not of itself provide for the delivery of any particular material. However, unlike the general supply agreement, it specifies all the commercial details of such a delivery (e. g., the arrangement for transportation within the United States, formal arrangements to be made at the port of export, method of delivery, transfer of title, transfer of responsibility, liability for defects, distribution of costs of transportation and delivery, method of payment, non-warranty as to time of delivery, settlement of disputes), so that whenever the Agency requires "research quantities" of materials (a term not defined

quantitatively in the agreement), the precise type and amount required and the time and place of delivery need merely be specified in a "Supplemental Contract";⁷¹ the transaction then takes place pursuant to that instrument, which of course must be agreed to by the United States for each supply.

Since significant nuclear power plants cannot prudently be constructed without an assured, long-term fuel supply, for some years consideration has been given to renegotiating the general supply agreements in order to enable the Agency to offer such extended contracts to its Members, and also to facilitate arrangements for the fabrication of fuel elements in countries other than the Supplying or the Receiving State.⁷² Such changes would enable the Agency to compete more easily with bilateral agreements, many of which have already been adjusted in the indicated sense. It appears likely that such renegotiations will be advanced by the CNNWS recommendation⁷³ (made ignorant of or impatient with these slow developments) for the establishment of a "fund of special fissionable materials", though for the present the nuclear powers have indicated they see no cause for hasty changes.⁷⁴

16.5. PARTICULAR SUPPLY ARRANGEMENTS

16.5.1. Type and form

Under the Statute the Agency can act either as a "merchant" or as a "broker" of nuclear materials. The former function (which is particularly foreseen in Statute Articles IX. H and I, in the second alternative in Article XI. C, in the first alternative of Article XI. F. 2 and 3, and in Article XIV. E) would require it to establish its own stocks of materials purchased from or donated by Member States and possibly but not necessarily kept in its own storage depots. As a matter of fact the Agency has not established any storage facilities, almost no donations of materials have been made directly to it, and its own resources have not permitted it to purchase stocks of materials - thus for the present it is precluded from playing the role of merchant.

The role of broker implies that each time the Agency approves a project for which a Member requires nuclear materials and enters into a Project Agreement⁷⁵ with that State, it must initiate a corresponding transaction with a Supplying State - i. e., every arrangement with a receiver must be matched by a corresponding arrangement with one or more suppliers. Up to now such matching transactions have been carried in two distinct forms:

- (a) Title to, and sometimes even possession of the material passes through the Agency - even if only instantaneously and as a matter of form. These transactions can be accomplished in two ways:
 - (i) By means of two separate agreements, through one of which the Agency purchases (or leases) material from the supplier and through the other of which it sells (or sub-leases) the material to the receiver. Thus the Supplying and Receiving States are not parties to the same agreement. Nevertheless, since the Agency is only acting as a broker and not as a merchant (or financial buffer), it must negotiate the two agreements so

that they match exactly, i. e., every obligation of the Agency toward either party is matched by an exactly equivalent obligation by the other toward the Agency. This can be accomplished in several ways, of which two have been used up to now:

(A) The conclusion of mirror-image agreements — which the Agency has attempted only once: in connection with the JRR-3 reactor project, whereby three tons of natural uranium were donated by the Canadian Government to the Agency for re-sale to Japan.⁷⁶ This method is full of complications: for example, if either State wishes to give a notice which concerns the other, it must give it to the Agency, which in turn gives a corresponding notice to the other — therefore the deadline by which the Agency has to receive the notice from the initiating State must be set so that the Agency can still safely meet its own deadline for transmitting that notice; similarly every payment required to be made to the supplier must first be paid over to the Agency by the receiver; if the receiver wishes to have its own officials observe the sampling procedure, the Agency must designate these persons as its own representatives to the supplier; if a dispute should arise with either State, the Agency can only protect itself by simultaneously invoking the arbitration clauses of both agreements, arranging to have two tribunals established and urging these to reach corresponding decisions — even though the Agency would have to take contradictory positions before them (e. g., if the receiver claims that the material received was unsatisfactory, the Agency must assert its quality vis-a-vis the claimant and at the same time deny it in the litigation with the supplier).

(B) The negotiation of an agreement with the Supplying State by which the Agency agrees to assume title to and possession of the material but reserves the right to designate its own agents for this purpose, and the incorporation of this entire agreement into an agreement with the Receiving State by which that State agrees to assume all the obligations of the Agency vis-à-vis the supplier and to act as the Agency's agent in accepting delivery of the material. This device has been used by the Agency in connection with most of its transactions involving small quantities of nuclear materials, and in principle works satisfactorily though it occasionally leads to a formidable super-structure of agreements with respect to a simple transaction. Thus, in order to supply Turkey with 80 grams of plutonium for a plutonium-beryllium neutron source the following instruments had to be accepted by that Government:

— A Master Agreement between the Agency and the Turkish Government for Assistance by the Agency in Furthering Projects by the Supply of Materials;⁷⁷ and subject thereto:

— A Supplementary Agreement between the Agency and the Government relating to the particular transaction;⁷⁸ this in turn incorporated by reference:

— A Supplemental Contract... of Sale of Research Quantities of Special Nuclear Materials concluded between the Agency and the US Government with respect to the material in question;⁷⁹ this finally incorporated by reference:

- The "Master Contract for the Sales of Research Quantities of Special Nuclear Materials" between the Agency and the United States.⁸⁰

- (ii) By means of a single trilateral agreement concluded by the Agency with both the Supplying and the Receiving States.⁸¹ The advantage of this type of instrument is that it avoids the complicated negotiation of mirror-image agreements and also the never quite satisfactory incorporation by reference of a contract between the Agency and one State into an agreement between the Agency and another; in addition, if any dispute should arise, both States become parties to the same settlement procedure and the Agency need not fear that it will lose out between two separate, uncoordinated decisions. Since the acceptance of delivery by the Agency is necessary merely to comply with a formal requirement of the Supplying State (i. e., the United States), such agreements usually provide that the Receiving State act as the agent of the Agency for accepting the material on the latter's behalf, while at the same time accepting it also on its own behalf from the Agency - thus reducing the period of time during which the Agency is liable as the owner of the material to an arbitrarily short interval.⁸²
- (b) Title to and possession of the material passes directly from the Supplying to the Receiving State. Though arrangements of this type require in effect three separate bilateral agreements, their total structure is simpler than that of the arrangements described above, since there is no need to introduce the Agency artificially into those aspects of the transaction with which it has no genuine concern. Thus, in order to accomplish the transfer of fuel elements from the Soviet Union to Finland for a sub-critical assembly,⁸³ the following transactions were necessary:

- An agreement between the Agency and the Soviet Union requiring the latter to deliver the material in question to Finland. However, for this purpose no new agreement had to be concluded, for it was sufficient for the Agency to send a demand for delivery to the Soviet Union pursuant to the general supply agreement.⁸⁴

- A Project Agreement between the Agency and Finland, by which the Agency "allocated" to Finland the material the Government had requested, and specified that it would be sold to Finland directly by the Soviet Union in accordance with a contract to be drawn up between the two States, whose principal terms (i. e., the price and time of delivery) were set out in the Agreement.⁸⁵ This Agreement otherwise did not deal with any of the commercial aspects of the transaction, but only with arrangements, such as safeguards and health and safety control, with which the Agency had a genuine direct concern and whose inclusion in such instruments is required by Article XI. F of the Statute.

- A contract between the Soviet Union and Finland, conforming to the request transmitted by the Agency to the Soviet Union and to the specific terms set out in the Project Agreement.⁸⁶ This contract covered all the commercial terms, such as price, quality, packaging, and procedures for delivery, acceptance and payment.

These several types of arrangements can be evaluated more meaningfully if viewed as examples of a whole spectrum of transactions through which the Agency can assist a State in obtaining nuclear materials, whose range might be described as follows:

- (1) Complete separation between the transactions whereby the Agency receives and furnishes materials - but this would only be possible if the Agency assumed its potential alternative role as merchant. Only in this type of transaction would the Agency have a genuine financial interest, since it could not pass all costs directly from a Supplying to a Receiving State, but would have to take a "position" in the market.
- (2) Matching transactions whereby the Agency orders the material required for a particular project and then passes it on - but the complete legal separation of the two States is maintained, through the mirror-image type of transaction described in sub-paragraph (a)(i)(A) above.
- (3) Separate transactions in which the provisions defining one are incorporated by reference into the agreement relating to the other, as described in sub-paragraph (a)(i)(B).
- (4) A single transaction defined in a trilateral agreement which foresees the Agency occupying a nominal position separating the two States, so that title and/or possession is formally passed from the Supplying State through the Agency and immediately to the Receiving State, as described in sub-paragraph (a)(ii).
- (5) A triangular transaction, as described in paragraph (b), whereby the Agency specifies any political terms (e. g., safeguards) in separate agreements with the two States, but the commercial provisions are concluded between the States with only minimal reference to the Agency.
- (6) A direct transaction between the Supplying and the Receiving States by means of a bilateral agreement which contains commercial as well as political terms, but which foresees that the Agency is to assume certain functions such as: safeguards in the Receiving State and usually even in the Supplying State (as to any produced material that State buys back from the Receiving State);⁸⁷ health and safety control in the Receiving State;⁸⁸ umpiring of technical disputes,⁸⁹ - to which the Agency would have to agree by means of separate agreements with one or both of the States.

Of these examples, only (1) - (5) fall under the Agency's functions under Articles IX and XI of the Statute (while (6) is in part covered by Article III. A. 5 and 6), and only (2)-(5) express its functions as a broker. Transactions of types (2), (3), (4), (5) and (6) have actually taken place. The choice as to the type of transaction depends on a number of factors, primary among which is the relationship between the two States: the closer these are politically and commercially the more likely it is that they will prefer transactions toward the higher-numbered end of the spectrum, requiring the Agency to assume only very limited functions; if relations are distant or strained the tendency will be to move toward the beginning of the scale and to request the Agency to serve as more and more of a buffer.

16.5.2. Provisions

While the choice as to type of arrangements thus depends largely on the relations between the States, and to a lesser extent on technical problems such as the ease of negotiating a particular arrangement under the available time limits, the substantive provisions of the Supply Agreements themselves (whether bilateral or trilateral, and whether or not the Agency is a party to them) largely reflect the wishes of the suppliers since their limited number in effect permits them to dictate to a considerable extent the form and terms of these arrangements (e. g., price - except as limited by the general supply agreements; payment and delivery terms; etc.). The Agency's concerns are merely:

- (a) To preserve its several statutory prerogatives, such as the right to apply safeguards and health and safety measures, and to specify the place and method of delivery and its right to verify the quality and quantity of all material transferred at its request.⁹⁰
- (b) To protect its fiscal interests by making sure that it will not lose money through a transaction in which it can in no case gain any: for example, the obligation of the Receiving State to complete its payments to the Agency must always precede the deadline for the Agency's payments to the supplier, and any penalty that the latter may assess for late payment must be recoverable by the Agency from the receiver.⁹¹
- (c) To protect the interest of the Receiving State as far as possible against arbitrary actions or requirements by the Supplying State: for example, the right sometimes claimed by the latter to alter unilaterally the price specified in long-term delivery contracts to reflect developments on the domestic or world market.⁹²

16.5.3. Examples

It is possible to classify the types of nuclear materials supply agreements that the Agency has entered into largely in terms of its several suppliers:

- (a) The largest number of supply agreements have been concluded with the United States. These have been of several types:
 - (i) Agreements for the transfer of substantial amounts of materials (typically an entire reactor core) on a sale basis have always been drawn up in a trilateral form, featuring the illusion of almost complete legal separation between the US Atomic Energy Commission (acting for the Government) and the Receiving State: at almost every point where the two States would normally come into contact (e. g., when making payments or giving notifications), the Receiving State is supposed to act nominally on the instructions and as the agent of the Agency.⁹³ Title to material passes not at the time of transfer of possession but, following the dictates of the 1954 Atomic Energy Act,⁹⁴ only when the material leaves the "jurisdiction" of the United States (never further defined in the agreements but assumed to refer to the 3-mile territorial

sea limit in case of the usual type of transoceanic transfer); at that point title passes from the United States to the Agency, and "thereafter immediately and automatically" to the Receiving State.⁹⁵ In the more recent agreements no fixed price is stated, because of the American insistence that the price charged must be the same as the USAEC's official domestic price at the time of the actual transfer (i. e. not at the entry into force of the agreement); however, it is always specified that if that price should be higher than the current one (which is stated in the agreement) then the Receiving State can cause the Agency to cancel the transaction.⁹⁶ The possibility of the complete or partial remission of the sales price, under the annual American gift offer,⁹⁷ is usually provided for. The United States and the Agency are exempted from any responsibility for "the safe handling and the use of the material" after delivery.⁹⁸ Usually a dual dispute procedure is provided for: certain technical questions are referred to an "umpire" laboratory and other disputes to a three or five-member arbitration tribunal.⁹⁹ Finally a number of formal clauses are included as required by American law, such as one providing that no Member of Congress shall benefit from the contract.¹⁰⁰

- (ii) Agreements for the leasing of materials are similar in form and structure to the sales agreements, but are even more elaborate, since they have to provide for the return of the material in the same antiseptic way, i. e., without any formal contact between the two Governments. In theory, the trilateral agreements contain two separate lease instruments: one from the USAEC to the Agency, and the other from the latter to the Receiving State.¹⁰¹ The lease charges are not only left open but are variable by the USAEC, subject to the right of the receiver to cause the agreement to be cancelled in case of an upward revision.¹⁰² Finally, supplementing the liability disclaimer provision, the Agency is required to hold harmless the Commission against any liability arising in connection with the leased material, and the Agency exacts an exactly corresponding commitment from the receiver.¹⁰³ In addition to these standard provisions, some lease agreements include options for the Commission to donate and/or for the receiver to purchase any or all of the material.¹⁰⁴
- (iii) A special variety of the usual sale-type supply agreement is the "Title Transfer Agreement" which is used when the United States had, under some prior bilateral arrangement, delivered (e. g., through a lease) nuclear material to another State without the latter receiving title to it, and it is later agreed to regularize this situation by a transfer of title accomplished through the Agency.¹⁰⁵ These trilateral agreements are relatively simple, since there is no need to make provisions for means of delivery, etc.
- (iv) Most arrangements for the transfer of small quantities of materials (involving often only a few grams or a fraction of a gram) are handled under the "Master Contract for Sales of Research Quantities of Special Nuclear Materials" described in Section 16.4.12. Each transaction takes place pursuant to an individual Supplemental Contract, which incorporates the Master Contract by reference and sets out only the few variable elements of the transaction: the amount and the specifications of the material, the time and place of delivery, and the price.¹⁰⁶

- (b) Only one substantial supply has been received from the Soviet Union – that of fuel elements containing 10% enriched uranium for use in Finnish subcritical assemblies. The sale contract was concluded directly between the Agency and Finland specified only the most essential of the commercial terms.
- (c) Numerous lots of small quantities of nuclear materials have been supplied by a number of States.^{107A} The formal supply instruments have been kept very simple, and usually consist only of an ordinary Agency purchase order signed for the Agency and counter-signed by an official of the supplying authority¹⁰⁸ – and this in turn is incorporated by reference into the Project Agreement with the Receiving State.
- (d) The supply by Canada of three tons of natural uranium to the Agency as a gift to be re-sold to Japan, was a sui generis transaction.¹⁰⁹ It was the first nuclear materials transfer arranged by the Agency; as described in Section 16.5.1(a)(i) and on an experimental basis, a mirror-image set of bilateral agreements was negotiated – a device that has not been used since.
- (e) The transaction whereby Belgium transferred to the Congo title to certain enriched uranium that the former had received from the United States and which was located in Leopoldville¹¹⁰ is also sui generis and is described in Section 17.2.2.8.

The Agency itself has received, from various Supplying States, minor quantities of nuclear materials for use in its Laboratory or by its research contractors. The contracts used are basically the same in form as the ones by which the same suppliers provide small quantities of nuclear materials for Agency projects, though simplified because there is no third party to these transactions.

A complete list of all nuclear materials delivered at the request of the Agency to itself or to its Members is periodically published, pursuant to the final clause of Statute Article IX.G, in document INFCIRC/40 and its updated revisions.¹¹¹

16.6. CHOICE OF SUPPLIER

The only guidance given by the Statute as to how the Agency is to choose the supplier for a particular transaction relates to projects and requires the Agency to take into consideration the wishes of the Members making the request.¹¹² If the material is to be obtained for the Agency itself, then Financial Regulation 10.06¹¹³ requires it to seek tenders in accordance with rules established by the Director General, which in turn provide for the examination of the tenders by the inter-departmental Contract Review Committee if the amount to be purchased exceeds US\$1000.¹¹⁴

In practice, most requests for significant quantities of nuclear materials have up to now involved orders of fuel elements for a particular reactor, and these can almost always only be obtained from the supplier of the reactor. Actually the commercial arrangements for the supply are usually made between the reactor operator in the Receiving State and the manufacturer in the Supplying State before the Agency is even approached with a request to

assist in implementing the formalities required for the international transfer of the nuclear fuel. Thus the choice of supplier has not yet raised any problems.

In the case of requests for minor quantities of nuclear materials, whether for the Agency or one of its Members, the Secretariat usually addresses enquiries to those States thought most likely (because of past offers and the Agency's experience) to have the material required and to be willing to supply it. On the basis of the replies received, the choice is made: by the Receiving State if it is to pay for the material, and otherwise by the Agency. Rarely have many offers been received, and usually the factors of price and delivery conditions were so disparate that there was no difficulty for the Agency in recommending or making a choice.

The Agency's one experience with formal competitive tenders for nuclear materials arose out of the request by Japan for three tons of natural uranium for its JRR-3 reactor.¹¹⁵ The Board, indicating cautiously that it did not desire to establish a precedent, instructed the Director General to invite all Members that had offered to make available any nuclear materials to the Agency (10 States in all) to submit sealed tenders by a fixed date for the supply of the requested uranium and to notify all other Members of this invitation. Three tenders were received:

- From a private American company (submitted through its Government) at US \$54.34 per kilogram of uranium.
- From a private Belgian company (submitted through its Government) at US \$34.00 per kilogram of uranium.
- From the Canadian Government, the material to be supplied free of charge to the Agency which was, however, required to sell it to Japan "under the conditions outlined in Article XIV. E of its Statute, and at a price bearing a reasonable relationship to the current world price for this material".

The Board consequently had little difficulty in choosing Canada as the supplier (after deciding that it could legally comply with the conditions and that the "world price" at which the uranium would be resold should be related to the price in the Belgian tender)¹¹⁶ - and thus secured a windfall income of over \$100 000 for the Agency.

16.7. FREE MATERIAL FROM THE UNITED STATES

Though Section 54 of the US Atomic Energy Act of 1954 requires the Atomic Energy Commission to sell nuclear material to its foreign customers (including the Agency) at the established domestic price, it also permits the Commission in each calendar year to distribute to the Agency up to \$50 000 worth of special fissionable material free of charge "to assist and encourage research on peaceful uses [of atomic energy] or for medical therapy".¹¹⁷ The possibility of making this gift is specifically referred to in the general supply agreement (the Co-operation Agreement) between the Agency and the United States.¹¹⁸

The implementation of the USAEC's power to make this gift requires several steps to be taken each year:

- (a) The Commission must decide that the gift shall be offered for a given calendar year. This is usually announced by the American representative to the regular session of the General Conference which precedes the calendar year in question, as part of his address during the general debate.¹¹⁹
- (b) Requests for the free material must be formulated by the Agency for its own use or more usually for projects in Member States. If the Commission decides that a project is in principle eligible to receive this assistance, a clause such as the following is included in the relevant trilateral supply agreement:

"In order to assist and encourage research on peaceful uses or for medical therapy, the Commission has in each calendar year offered to distribute to the Agency, free of charge, special fissionable material of a value of up to US \$50,000 at the time of transfer, to be supplied from the amounts specified in Article II. A of the Co-operation Agreement. If the Commission finds the project to which this Contract relates eligible, it shall decide by the end of the calendar year in which this Contract is concluded on the extent, if any, to which the project shall benefit by the gift offer, and shall promptly notify the Agency and [the Receiving State] of that decision. The payments provided in sections... and ... shall be reduced by the value of any free material thus made available."¹²⁰

- (c) At the end of each calendar year the Commission decides which of the several projects or Agency activities represented by contracts signed during that year should actually receive the free material. The tendency has been to allocate the material each year in one to five sizeable lots to small reactor projects¹²¹ rather than to finance a larger number of small requests, even though this authority was probably originally included in the US Act primarily with the latter purpose in mind.

Undoubtedly this offer has frequently induced Members to approach the Agency for assistance to a project (rather than to apply directly to the United States from which each could at most receive \$10 000 worth of free material).¹²² In spite of this stimulation to the Agency's business, certain complicating factors must be recognized in the implementation of the American donation:

- (i) The choice of the recipient of the American bounty is made by the US Commission, rather than by the Agency's Board. In a sense this violates the spirit of Statute Article IX.J, which is designed to prevent suppliers from discriminating among Agency recipients - though for the present no harm is done since, as long as the Agency only plays the role of broker and not that of merchant, the supplier/receiver separation foreseen by the Statute cannot be achieved.
- (ii) The choice of recipients by the Commission is made only at the end of the calendar year, and after all the candidates have signed contracts

- obliging them in principle to purchase and pay for the material that each requires. Since certain Members may not be in a position to undertake to acquire the material if they have to pay for it, some elaborate contractual devices have had to be developed to avoid this possibility: Thus the Supply Agreement in connection with the Uruguayan Lockheed reactor project was formulated as a lease, with an option for the Commission to donate all or part of the material at the end of the calendar year in which the contract was signed and an option for Uruguay to buy any or all of the material at any time before the expiration of the lease (which the Government might wish to do if the Commission should donate a large part but not all the leased material).¹²³ This convoluted procedure serves to negate one of the potential advantages of the offer: the possibility of dealing rapidly and less formally with minor supply arrangements on the basis of the free supply of the necessary materials.
- (iii) The financial benefits of the donation accrue to the Agency only when some free material is donated directly to it - otherwise the Agency must pass the benefit directly on to the State concerned. This would make it difficult to maintain the uniform scale of charges called for by Statute Article XIV.E - but in any case no attempt has yet been made to establish such a scale.¹²⁴

16.8. SUPPLY OF SERVICES, EQUIPMENT AND FACILITIES

Though the Statute foresees that Members will provide the Agency with "services, equipment and facilities", this possibility is not covered by provisions as elaborate as those that apply to materials. In fact, Article X merely states that Members may "make available" such items "which may be of assistance in fulfilling the Agency's objectives and functions"; Article XIII requires that, unless otherwise agreed, the Agency shall pay for items furnished to it.

No particular provisions have been established for the purchase of services, equipment and facilities from Member States. Such transactions would thus follow the usual requirements under Financial Regulation 10.06, that competitive tenders must be solicited and examined by the Contract Review Committee in respect of any substantial item,¹²⁵ or - if the service required is scientific research - the review must be conducted by the Committee for Contractual Scientific Services.¹²⁶

If the service, equipment or facility is offered free of charge, then the transaction must conform to the "Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities" which the Board adopted on 13 January 1959.¹²⁷ These Rules, unlike those regarding the Acceptance of Voluntary Contributions of Money,¹²⁸ are not specifically called for by the Statute; nevertheless they were drawn up by the Board at the same time (during the politically tense early years of the Agency) and by the same procedures as the draft rules relating to financial contributions that the Board proposed for the approval of the General Conference. The Rules relating to "gifts in kind" thus have the same purpose and background, and almost the same provisions as those relating to financial contributions.¹²⁹ They are designed to guard against two political dangers:

- (a) Offers of gifts from potentially embarrassing sources: Entities that are not members of any organization in the United Nations system (e. g., East Germany), or politically motivated organizations (e. g., the Non-governmental organizations to which consultative status has been denied¹³⁰);
- (b) Offers of items whose acceptance and use would distort the Agency's programme from the pattern established by the approved budget.

The Rules therefore authorize the Director General to accept gifts in kind from any State that is a Member of the Agency, of the United Nations or of any specialized agency, and from any organization with which a relationship agreement has been concluded:

"if in his opinion such services, equipment or facilities can readily be incorporated into a project, programme or activity which he has already been given authority to execute by the competent organ or organs of the Agency; provided that he shall not accept any gift which involves the Agency in expenditure for which funds are not available."¹³¹

Any gift that does not meet the quoted requirement or that is offered by a "non-governmental source" is to be referred to the Board. However, the Board appears to have precluded even itself from accepting any gift in kind from any State that is not a member of any UN system organization or from any intergovernmental organization with which no relationship agreement has been concluded - though of course in fact nothing can prevent the Board from suspending the Rules by a simple majority vote.

The somewhat rigid restrictions of these Rules have from time to time been avoided by a certain amount of indirection. Thus when it was considered undesirable, for political reasons or because of the necessary delay, to refer to the Board an offer received from a non-governmental organization, a Government was found to sponsor the gift so that it could be accepted by the Director General.¹³² When an offer is made with respect to a project or activity proposed but not yet approved, then in any case some Board action must be awaited: either specific Board action to accept the offer, or more usually, hurried Board action to approve the project; this has in particular occurred in several cases where the project in effect consisted entirely of the use to be made of the offered item.¹³³ On the other hand, where an offer of funds restricted as to purpose would require referral to the Board,¹³⁴ this can be avoided by restating the offer in terms of a particular gift in kind (which may of course amount to an even more severe restriction) that the Director General may be able to accept on his own authority.¹³⁵

Though the term "make available" is used in Statute Article X in an ordinary sense, and not in the rather abstracted one discussed in connection with Article IX,¹³⁶ it is plainly intended to be broad enough to cover both items furnished to the Agency itself and those furnished at its request directly to another Member State. This appears from a consideration of Articles XI. C and XI. F. 3, which indicate the several ways in which the Agency can assist Member States. Consequently the possibility of direct delivery to a Member is foreseen in the Rules relating to gifts in kind.

The general supply agreements with the Soviet Union and the United States foresee the provision of nuclear material reprocessing services by these States to the Agency.¹³⁷ In addition, the latter agreement provides that the United States will, subject to applicable laws, regulations and license requirements, permit persons under its jurisdiction to make arrangements to transfer and export materials, equipment and facilities or to perform services for or at the request of the Agency.¹³⁸ Consequently a number of Project Agreements relating to reactor projects provide that the Agency will request the United States to "permit the transfer and export" to the Receiving State of a reactor and its associated equipment and facilities¹³⁹ — a request that the Agency can address to the United States under the general supply agreement without having to conclude any further formal instruments. The Soviet Union has recently informed the Agency of the terms under which it is prepared to perform "toll-enrichment".¹⁴⁰

Though no explicit reference is made in the Statute to peaceful nuclear explosions, if the Agency is to assume the role and perform the tasks discussed in Section 17.5, then it will be necessary that some "nuclear weapon States" make available the appropriate materials and services to it, or rather to the Agency's non-nuclear-weapon States at its request. Such assistance could readily be covered by the provisions of Statute Articles IX, X and XIII, and even by the existing Rules relating to gifts in kind.

NOTES

- 1 This Article had been formulated by the Scientific Sub-committee of the Working Level Meeting (Section 2.7.2(A)) and was, in spite of a proposed change (IAEA/CS/Art.XX/Amend.2), approved unaltered by the Conference on the Statute (IAEA/CS/OR.35, pp.67-81; /OR.36, p.33).
- 2 INFCIRC/66/Rev.2, para.77.
- 3 Statute Article XX.2.
- 4 The various "forms" in which source material can appear merely indicate that to fall into this category material must have been chemically or physically altered from its virgin state in nature (the term "natural uranium" refers only to the isotopic composition of the element and not to its physical or chemical form); thus ore in the ground is plainly excluded. The question, which may become of some importance once the Agency administers comprehensive safeguards in a country under the Non-Proliferation Treaty (Section 21.3.2.3), when raw ore in the ground (which is not "source material") becomes a "concentrate" covered by the statutory definition, has not yet been answered; indeed, it has been confused by the recent Agreement between the Agency and Mexico for the Application of Safeguards under the Treaty for the Prohibition of Nuclear Weapons in Latin America, which Agreement defines "nuclear material" as "any source or special fissionable material as defined in Article XX of the Statute, except source material in the form of ore" (INFCIRC/118, Section 1(i)); sensing the importance of this issue, the Board in approving the Agreement recorded its understanding that this definition did not constitute an Interpretation of Article XX.
- 5 Statute Article IX.B and C; as used in Articles III.A.5 and XI.A, the term plainly includes, but need not be limited to, "source materials".
- 6 INFCIRC/66/Rev.2, para.78, as refined by Annex I, para.7, and Annex II, footnote 1 and paras.12 and 13.
- 7 These are described, inter alia, by Stoessinger, op.cit. Annex 5, No. 60, pp.148-153.
- 8 Thus the establishment of a "Fund of Special Fissionable Materials", as envisaged by the Conference of Non-Nuclear-Weapon States (Section 16.3.2), might place the Agency into the role of "merchant".
- 9 Section 16.5.1.
- 10 UNGA Off. Rec.(8th sess.), 470th Meeting, paras.117-118.
- 11 Note No.8 of 19 March 1954, Part III.A(i) (reproduced in UN doc. A/2738, op.cit. Chapter 2, note 7). Such an obligation was later also proposed by the United States in a statement to the First Committee of the UN General Assembly, Off. Rec.(9th sess.), 707th Meeting, para.18.

- 12 *Ibid.*, Part III.A(ii). This proposal was reiterated in para.4 of the US Note of 14 April 1955, US State Dep't Press Release 527 (Oct.6, 1956).
- 13 *Ibid.*, Part III.B(ii).
- 14 WLM Doc.2, Article X.A, C, D.
- 15 WLM Doc.2, Article X.J.
- 16 Though not provided explicitly, the sense of these provisions was evidently that the Agency would be obliged to accept, as soon as it was physically prepared to do so, all special fissionable materials offered to it; WLM Doc.2, Article X.B indicated that "source" and "other materials" would only have to be accepted within limits established by the Board. It was also clear from draft Article XII.B.2, that deliveries by a Supplying State might be made either to the Agency directly or at its request to another Member State; this point was remarked on by the Soviet representative in the Meeting of 6 Governments(Section 2.5; PV/1/Rev.1, pp.17-18).
- 17 WLM Doc.3, comment by Spain.
- 18 WLM Doc.2 (Add.10); WLM Doc.12 (Rev.1), para.3.G; WLM Doc.18 (Rev.1), p.6, para.3. Now Statute Article IX.A and H.
- 19 IAEA/CS/Art.IX/Amend.1.
- 20 IAEA/CS/Art.IX/Amend.2.
- 21 IAEA/CS/OR.26, pp.14-17.
- 22 Only in the first sentence of Statute Article IX.A does "make available" appear to be used in a somewhat different sense, for there mention is made of an agreement concerning the terms and conditions for the making available - but this is probably only an unfortunate formulation.
- 23 IAEA/CS/Art.IX/Amend.2; IAEA/CS/OR.26, p.17. Section 16.2.1.
- 24 Statute Article IX.H. This obligation to safeguard the materials in the Agency's possession (the "internal safeguards" defined in Section 21.1.1) should also be read in the light of Articles III.B.2 and XII.B.
- 25 Statute Article IX.I.
- 26 This prohibition in Statute Article IX.J should be compared to Article IV.6(e) of UNGA/RES/2186 (XXI) establishing the UN Capital Development Fund:
 "To the end that the multilateral character of the Capital Development Fund shall be strictly respected, no contributing State shall receive special treatment with respect to its contributions nor shall negotiations for the use of contributions take place between contributing and receiving countries."
 The non-interference provision of the Statute became a minor issue during the consideration by the US Congress of the IAEA Participation Act of 1957, in which Senator Bricker proposed to include (as an alternative to a reservation to the Statute), a provision for Congressional control of the distribution of nuclear materials to the Agency (H.Rep.No.960, 85th Cong. 1st sess., Appendix C; 1957 US Code Cong. & Adm. News 1654-1656).
- 27 Statute Article IX.D; also Article XI.F.2.
- 28 The US Senate Committee on Foreign Relations, *op.cit.* Chapter 5, note 32, in Part 7: "Meaning of the Phrase 'on such terms' in Article IX.A" concluded that "terms" means "terms and conditions" in their common usage, including price.
- 29 IAEA/PC/OR.52, pp.6-7.
- 30 The United States had first proposed that at least these three States should make offers - see para.4 of Note of 14 April 1955 to the Soviet Union, reproduced in US State Dep't Press Release 527 (Oct.6, 1956). The USSR responded with an advance indication of a 50 kg offer in their Note of 18 July 1955 (*ibid.*). The American promise was first announced in the closing message of President Eisenhower to the Conference on the Statute (IAEA/CS/OR.40, p.7); soon thereafter its terms were embodied, by Section 7 of the IAEA Participation Act (P.L.85-177, 71 Stat.455, 28 August 1957), into Section 54 of the 1954 Atomic Energy Act (42 U.S.C. Sec.2074), with the new proviso that any special nuclear (fissionable) materials additional to the original offer would have to be separately authorized by Congress - a restriction which, though not contrary to Statute Article IX, tended to inhibit its generous operation.
- 31 Since only the British and Russian offers were made before that date, the total American commitment was for 5070 kilograms of contained ²³⁵U. However, the United States later offered to make available one-half kilogram of ²³³U and three kilograms of plutonium, but it is not clear whether these were notified in accordance with and pursuant to Article IX.A.GC(XIII)/409, para.5.
- 32 GC(II)/39, para.177.
- 33 GC(III)/73, paras.212-213 and Annex X; GC(IV)/14 para.222; GC(V)/154 para.86; GC(VI)/195, para.55
- 34 GC(II)/INF/13, paras.2 and 3. This preliminary study on "The Acceptance and Supply by the Agency of Fissionable, Source and Other Materials", which was originally prepared by the Secretariat for use of the

- Board and transmitted by the latter to the General Conference, gives much of the early thinking on the possible operation of Statute Articles IX and XI.
- 35 GC(III)/14, para.186.
- 36 UNGA/RES/2373(XXII), Annex, Article IV.2.
- 37 CNNWS Resolutions H.III, J.II.1-2 and J.III, reproduced in UN doc. A/1277, para.17.
- 38 GC(XIII)/409. This report contains a short account of the current operation of Statute Articles IX and XI (cf. GC(II)/INF/13 - cited supra note 34). It is briefly summarized in the Agency's preliminary response to the UN Secretary-General with respect to the CNNWS recommendations (GC(XIII)/INF/110, paras.110-111; reproduced in UN doc.A/1877, Annex).
- 39 GC(XIII)/419 and /Add.1.
- 40 GC(XIII)/COM.2/OR.50, paras.29-38.
- 41 GC(XIII)/DEC/11, taken on the report of the A & L Committee (GC(XIII)/428).
- 42 UNGA/RES/2605.A(XXIV), para.6.
- 43 338 U.N.T.S. 135, Article III.E.
- 44 42 U.S.C. Secs.2153 and 2154.
- 45 See also Joshi, op.cit. Annex 5, No.36.
- 46 Respectively INFCIRC/5, Parts I, III and II.
- 47 GC(II)/INF/13, para.5(b).
- 48 The three price formulae are set out in GC(XIII)/409, para.7.
- 49 INFCIRC/5, Part I, Article 3.
- 50 INFCIRC/5, Part II, para.(3).
- 51 INFCIRC/5, Part III, Article II.B. This provision corresponds to Section 54 of the 1954 Atomic Energy Act as amended in 1957, 42 U.S.C. Sec.2074.
- 52 Section 16.7.
- 53 INFCIRC/5, Part I, Article 2; Part II, para.(2); Part III, Article II.A.
- 54 INFCIRC/5, Part I, Article 4; Part II, para.(1); Part III, Article II.C.
- 55 338 U.N.T.S. 135, Article IX.
- 56 The texts of the respective liability clauses are set forth in Section 29.2.1.1. The omission of the hold harmless requirement was considered significant enough for mention in a Press Release (PR 59/28).
- 57 Statute Articles II, III.A.5, XI.F.4 and XII; Section 21.2.3.
- 58 INFCIRC/5, Part II, para.(4).
- 59 Section 14.1.
- 60 42 U.S.C. Sec.2014(y).
- 61 INFCIRC/5, Part III, Article I(h).
- 62 INFCIRC/5, Part I, Article 8; Part III, Article II.E.
- 63 INFCIRC/5, Part III, Articles II.F. and IV.
- 64 For example, INFCIRC/24, Part II, Article II.1; Section 17.2.2.2.
- 65 INFCIRC/5, Part I, Article 9.
- 66 INFCIRC/5, Part II, opening paragraph.
- 67 INFCIRC/5, Part III, Article VI.
- 68 42 U.S.C. Sec. 2153 (c).
- 69 INFCIRC/83, Annex A.
- 70 Section 26.3.3.
- 71 For example INFCIRC/83, Annex B. Section 17.3.
- 72 GC(XIII)/409, paras.12 and 18(d). However, some transactions of this type have taken place even under the unmodified general supply agreements: e.g., arrangements to manufacture US nuclear materials in Germany for Yugoslavia (INFCIRC/32/Add.1; Section 17.2.2.5) and Argentina (Section 17.2.2.20), in Canada for Pakistan(INFCIRC/116; Section 17.2.2.18) or in the United Kingdom for Chile (Section 17.2.2.21). The complication in these arrangements does not lie primarily in relation to the original supplier, but in the necessity of making adequate safeguards arrangements with the Government of the fabricator, for the relatively brief period that the nuclear material is under its jurisdiction; in all cases so far these arrangements were merely the standing bilateral ones between the USA and the fabricating State, and did not directly involve the Agency.
- 73 Section 16.3.2. and note 37 thereto.
- 74 GC(XIII)/419 and /Add.1.
- 75 Section 17.2.1.2.

- 76 INFCIRC/3, Parts I and II. Section 17.2.2.1.
- 77 INFCIRC/83, Part I.
- 78 INFCIRC/83, Part II.
- 79 INFCIRC/83, Annex B.
- 80 INFCIRC/83, Annex A. See Sections 16.4.12 and 17.3.
- 81 For example, Contract for the Transfer of Enriched Uranium for a Research Reactor, concluded on 30 December 1960 between the Agency and the Governments of the United States and of Yugoslavia (INFCIRC/32, Part I); Section 17.2.2.5.
- 82 For example, INFCIRC/32, Part I, Section 3(e) and (f).
- 83 Section 17.2.2.3.
- 84 INFCIRC/5, Part I. Section 16.4.
- 85 INFCIRC/53, Part I.
- 86 INFCIRC/53, Part II.
- 87 Section 21.5.2.
- 88 Section 22.2.4.4.
- 89 In fact, the Agency has not yet been asked to perform such a function; it has not sought the role of "umpire", nor is it certain that it would accept such an assignment.
- 90 These latter rights are specified in Statute Article IX. G, and the right to verify has regularly been reserved in all supply agreements (e.g., INFCIRC/32, Part I, Section 3(b)), excepting those relating to only very minor amounts of nuclear materials (*idem*, Section 3(c)). However, up to now, this right has only once been exercised, in connection with the natural uranium supplied by Canada for the Agency's first project: the JRR-3 reactor in Japan (GC(III)/73, para. 216), Section 17.2.2.1.
- 91 For example, INFCIRC/32, Part I, Sections 4 and 5.
- 92 For example, First NORA Supply Agreement (INFCIRC/29, Part I, Section 15); Section 17.2.2.4; the formal protection to the Receiving State (Norway) was in that case assured through the insertion of a special cancellation clause in the lease contract (*idem*, Section 8(a)(iv) and (v)); in the event, prices were not raised but twice unilaterally lowered (INFCIRC/29/Mod.1 and 2). For a similar clause in a sales contract to be executed in the future, see the Second Supply Agreement for the Yugoslav TRIGA Project (INFCIRC/32/Add.2, Section 5); Section 17.2.2.5.
- 93 For a horrible but representative example of such a provision, see the following extract from Section 3(e) of the [First] Supply Agreement for the Yugoslav TRIGA project (INFCIRC/32, Part I):
- "(e) Upon completion of the fabrication... Yugoslavia, at the request and on behalf of the Agency, shall arrange for a transporter who... shall transport and deliver the fuel material and the indicator material to the port of export at San Francisco, California. The Commission, at the request of the Agency, shall thereupon transfer possession to the Agency or, at the Agency's request and on its behalf, to Yugoslavia at such port of export and authorize the export of such material. The Agency or, at the Agency's request and on its behalf, Yugoslavia shall make arrangements, including the payment of all costs, for domestic and overseas transportation and delivery.... The Agency or, at the Agency's request and on its behalf, Yugoslavia shall accept possession of such material at such port of export and shall sign an appropriate written receipt therefor."
- 94 42 U.S.C. 2072. Though the 1964 Private Ownership of Special Fissionable Materials Act (P.L. 88-489, Sec.4; 78 Stat.603) repealed the strict rule that all special nuclear (fissionable) material within the United States was automatically owned by the United States (and thus title could not possibly pass within its jurisdiction to any national, foreign or international entity), the supply agreements concluded with the Agency as late as 1968 still continued the peculiar passage-of-title provision described in the text.
- 95 For example, INFCIRC/32, Part I, Section 3(f).
- 96 *Supra* note 92 (second sentence).
- 97 Discussed in Section 16.7.
- 98 For example, INFCIRC/32, Part I, Section 7.
- 99 For example, INFCIRC/37, Part I, Sections 9 and 10; see *infra* Sections 27.2.2.1 and 27.2.3.
- 100 For example, INFCIRC/32, Part I, Section 9.
- 101 For example, the Uruguayan URR Supply Agreement (INFCIRC/67, Part I, Sections 1, 2, 13 and 14); Section 17.2.2.12.
- 102 For example, INFCIRC/67, Part I, Sections 14(ii), 15 and 19. See also *supra* note 92 (first sentence).
- 103 For example, INFCIRC/67, Part I, Section 37. This provision is consequent on Article III of the general supply (Co-operation) agreement between the Agency and the United States (INFCIRC/5, Part III); Section 16.4.5.

- 104 For example, INFCIRC/67, Part I, Sections 20 and 32.
- 105 For example, Contract for the Transfer of Title [from the United States through the Agency to Argentina] to Enriched Uranium for a Research and Isotope Production Reactor (INFCIRC/62, Part I); Section 17.2.2.11.
- 106 For example, INFCIRC/83, Annex B.
- 107 INFCIRC/53, Parts II and I, Sections 16.5.1(b) and 17.2.2.3.
- 107A INFCIRC/40/Rev. 6.
- 108 Because of the very simplicity of these arrangements, which indeed are purely commercial instruments without any "political" provisions, they are not registered with the United Nations (Section 26.6.2) or generally published in the INFCIRC/ series (Section 34.2.2). One exception is the Contract whereby the Soviet "Techsnabexport" sold 100 grams of 20% enriched uranium to the Agency to supply to Romania (INFCIRC/95/Add.1, Part I, Annex); an exception in the opposite sense involved a gift by France of 1 gram of plutonium to the Agency for Romania, in which no supply contract at all was concluded (INFCIRC/95/Add.1, Part II, footnote 5).
- 109 INFCIRC/3, Part I, Section 17.2.2.1.
- 110 INFCIRC/37, Part I.
- 111 Section 32.2.2.
- 112 Statute Article XI.C.
- 113 INFCIRC/8/Rev.1.
- 114 AM.I/7, Appendix B; AM.V/3, Article III, Rules 3.01-03.
- 115 Section 17.2.2.1.
- 116 Section 25.7.2.
- 117 42 U.S.C. Sec.2074.
- 118 INFCIRC/5, Part III, Article II.B.
- 119 For the offer for 1969, see GC(XII)/OR.120, para.23.
- 120 For example, INFCIRC/24/Add.2, Section 6; similarly INFCIRC/32, Part I, Section 6.
- 121 The 1967 allocations, which were more fragmented than any before, are listed in GC(XII)/380, para.36, Table 8; for 1968, see GC(XIII)/404, para.73, Table 12.
- 122 The Board identified the US offer as one of two primary inducements for a State to request nuclear materials through the Agency (GC(XIII)/409, para.17).
- 123 INFCIRC/67, Part I, Sections 1, 2, 20 and 32; in the event, the United States did donate all the special fissionable material covered by the Supply Agreement.
- 124 Sections 25.1.4.5 and 25.7.2.
- 125 Supra notes 113 and 114.
- 126 AM.I/7, Appendix C, Section 19.2.4.
- 127 INFCIRC/13, Part I.
- 128 INFCIRC/13, Part II.
- 129 Section 25.5.1.
- 130 Section 12.6.2.3.
- 131 INFCIRC/13, Part I, para.2.
- 132 Offer of equipment by the Japan Industrial Forum, later sponsored by the Government of Japan.
- 133 See in particular the projects described in Section 17.4.
- 134 INFCIRC/13, Part II, paras. 2(a) and 3.
- 135 On the other hand, when the Soviet Union offered "40 000 roubles to be spent on fellowships" (GC(V)/OR.51, para.1 (75), and GC(V)/COM.4/OR.3, para.51), the Board declined to treat this as an offer of money, and at its 278th meeting accepted it instead (over strong Russian protests) as a gift of a service (i.e., Type II fellowships - Sections 18.2.2. and 18.3.4).
- 136 Section 16.2.2.1.
- 137 INFCIRC/5, Part I, Article 8, and Part III, Article II.E.
- 138 INFCIRC/5, Part III, Article IV.
- 139 For example, INFCIRC/32, Part II, Section 2.
- 140 GC(XIII)/419/Add.1. Toll-enrichment basically is the isotopic enrichment of uranium to the precise specification established by the customer, in principle using uranium supplied by the latter.

CHAPTER 17. AGENCY PROJECTS

PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Article XI, but also VIII.B, IX.D and J, XII, XIV.B.2 and E, XVIII.E.
Safeguards Document (INFCIRC/66/Rev.2), paragraphs 15(a), 19(a), 19(d)(i), 28(d), 79 and 82(a)
Health and Safety Document (INFCIRC/18), paragraphs 5, 17 and 18
Project and Supply Agreements, for example those relating to:
The Japanese JRR-3 project (INFCIRC/3 and /Mod.2)
The Finnish FIR-1 project (INFCIRC/24 and /Add.1-4)
The Finnish sub-critical assemblies project (INFCIRC/53)
The Norwegian NORA project (INFCIRC/29 and /Mod.2 and /Add.1-3)
The Congolese TRICO project (INFCIRC/37 and /Add.1 and 2)
Radiotherapy equipment for Morocco (INFCIRC/74)
Master Agreement for Assistance in Furthering Projects by the Supply of Materials, for example as concluded with Turkey (INFCIRC/83, Part I)

17.1. STATUTORY PROVISIONS REGARDING REQUESTS FOR ASSISTANCE

Corresponding to Articles IX and X of the Statute, which establish the procedure by which materials, services, equipment and facilities are supplied to the Agency, and to Article XIII according to which the Agency reimburses its suppliers – Article XI specifies how the Agency is to assist its Members in securing materials, services, equipment and facilities, and Article XIV.E provides for the consequent charges the Agency is to impose.

Unlike Article IX, which was radically recast during the evolution of the Statute, Article XI remained fundamentally unchanged from the first US Sketch, though from draft to draft it was elaborated, expanded and somewhat restructured.¹ Since no fundamental change in concept occurred during the several drafting stages, the final formulation is more clearly and logically arranged than the provisions relating to supplies.

The one misleading feature of Article XI is its title: "Agency Projects", which suggests that the activities dealt with are those within the Agency's own programme. Instead, these projects are initiated and conducted by one or more Member States, who merely approach the Agency for some particular assistance – and generally the Agency's participation is limited to acting as an intermediary (broker) in arranging for another Member to provide the required assistance, though the Agency may consequently also exercise certain controls (e.g., safeguards; health and safety) over the assisted activity.

In principle, Article XI covers all specific assistance granted by the Agency – as distinguished from the undifferentiated benefits flowing from its programmes for the generation and distribution of information. However, in popular parlance, Agency projects are principally those assisted

activities that require the supply of a nuclear facility or of substantial quantities of materials therefor – and it is indeed for those that the statutory provisions were designed. The present Chapter therefore relates mainly to such projects (and through 1969 all but one have been research reactors), with subsidiary accounts of projects for the supply of small quantities of nuclear and other materials or of certain equipment. The applicability of Article XI to technical assistance is analysed in Section 18.1.1.2.

The principal provisions of Article XI are the following:

- (a) Paragraph A provides for the submission, by one or more Member States, of requests for "assistance ... in securing special fissionable and other materials, services, equipment, and facilities" necessary for "any project for research on, or development or application of, atomic energy for peaceful purposes". These must be accompanied by an explanation of the purpose and extent of the project.
- (b) Paragraph B specifies that the Agency may assist in the securing of outside financing for the project but must not thereby "be required to provide any guarantees or to assume any financial responsibility for the project".² This, as well as Article XI.E.2, indicates that the basic financial responsibility for projects must be borne by the Member(s) concerned and not by the Agency. As a matter of fact, if the Agency supplies the assistance itself, then it must be reimbursed therefor by the assisted State in accordance with a uniform scale of charges.³ This burden can be removed from the State only by an outside source of financing (such as the World Bank) or by a Supplying State which may waive part or all of its usual charges;⁴ while the first alternative has not yet been tested,⁵ the second has been used frequently in respect of the relatively minor projects for which the Agency has secured assistance up to now.⁶
- (c) Paragraph C summarizes the two roles that the Agency can play in complying with requests: that of supplier (merchant) or intermediary (broker). In deciding on the function it is to perform, the Agency should consider the wishes of the requesting State(s).⁷ In fact the Agency has never yet been in a position to supply directly any material, equipment or facility – though it has been able to provide certain services. Consequently the only real question is whether the requesting State wishes to indicate which the Supplying State should be (as has been true in most projects), or instead asks the Agency to exercise this choice.
- (d) Paragraph D authorizes the Agency to send representatives into the requesting State to examine the project, who may, subject to the approval of the State, be drawn either from the Agency's staff or be employed on an ad hoc basis.⁸ While this right appears useful (and has in fact been used) it hardly seems to require separate statement in the Statute: until the Agency has all the information it requires, it need not approve the project – so the burden is on the requesting State to supply the information in a convincing form. However, Statute Article III.C prohibits the Agency from making its assistance subject to any political or other conditions incompatible with any statutory provisions, and Article III.D requires the due observance of the sovereign rights of

- States - thus in the absence of Article XI.D a State might argue that a demand for an in situ investigation falls under these prohibitions.
- (e) Paragraph E lists the factors that the Board is to consider before approving a project - these are discussed in Section 17.2.1.1.
 - (f) Paragraph F requires the conclusion between the Agency and the requesting State(s) of an agreement relating to the project (now known as a "Project Agreement"). The Statute lists the principal provisions these Agreements are to contain, which are discussed in Section 17.2.1.2.
 - (g) Paragraph G specifies that the other provisions of the Article shall also apply to requests made with respect to existing projects - which presumably merely means that the Agency may also assist a going enterprise.

17.2. REACTOR PROJECTS

17.2.1. Procedures

Up to now it has not been necessary to formulate any formal procedures for implementing Article XI with respect to reactor projects. Nor has the Board adopted or the Director General promulgated any relevant provisions of general applicability. Nevertheless, during the initial decade a regular though by no means rigid pattern of steps has evolved.⁹

Requests from Member States are of course received and initially processed by the Secretariat. The principal responsibility is usually assigned to a "project officer", who formerly was based in the Division of Technical Supplies and after its dissolution in the Division of Nuclear Power and Reactors. It is his responsibility to co-ordinate the work of the various Secretariat units concerned, so as to assure the progress of the request to the stage of Board approval and thereafter to make certain that the Agency takes all the steps required of it for the implementation of the project.

On receiving a request, the Director General enters into correspondence with the requesting Member (up to now no multi-State project has been submitted) in order to elicit the information required by the last sentence of Article XI.A, which is necessary to enable the Board to consider approval of the project in the light of the factors mentioned in Article XI.E.¹⁰ For this purpose the Agency may take advantage of the possibility foreseen by Article XI.D to send experts (up to now always staff members) to the country concerned to obtain some of the necessary information. Finally the Secretariat prepares an evaluation, dealing as far as appropriate with all the factors detailed in Article XI.E; the Director General presents this report to the Board together with his recommendations. It should be noted that the Statute does not require this report or recommendation, which thus do not have any particular legal standing - i.e., the Board is in no ways bound to accept them;¹¹ of course, in practice, the Board is unlikely to take any action on a project until the Director General is prepared to present it, and this lever is generally sufficient to cause the State concerned to adjust its request along lines suggested by the Secretariat.

17.2.1.1. Bases of Board evaluation

The Board is usually first informed of a request for assistance to a project through the Director General's periodic report. However, unless it makes a specific demand,¹² it only receives full information on the request when the Secretariat has completed its evaluation and the Director General is prepared to submit his recommendations on the project. The factors which the Board is then charged to take into account are specified in Statute Article XI.E:

- (a) The usefulness of the project, including its scientific and technical feasibility: Since most projects up to now have involved research reactors of standard design or minor variations thereon, their feasibility has been easy to establish. Usefulness is demonstrated by the work to which the reactor will be put: typically primarily for training, some research and perhaps isotope production. This criterion, as well as the two immediately following, will only become truly significant when assistance is requested for large power reactors.¹³
- (b) The adequacy of plans, funds and personnel to assure effective execution: In view of the relatively modest projects so far submitted, the Board has always been satisfied with a statement that the project is supported by governmental or semi-governmental funds; the Secretariat, in its contacts with the promoters of the project, sometimes takes the opportunity to point to any obvious inadequacies in the proposed budget or in the staffing plans.
- (c) The adequacy of the proposed health and safety standards: Since this requirement relates merely to the standards to be applied and not to the detailed measures¹⁴ (which are later specified in the Project Agreement), the Agency is satisfied with a mere statement that the State accepts the Agency's standards; if the State wishes to apply other standards, then the Secretariat requests their text and evaluates them to determine whether they are consistent with those of the Agency and equally effective.¹⁵
- (d) The inability of the requesting State to secure the necessary assistance otherwise: This statutory provision was evidently based on the thought that the Agency would be distributing scarce resources and therefore particular need for the assistance must be shown (even though it would also be paid for).¹⁶ In fact the Agency up to now never distributed any resources owned or entrusted to it, and its functions as broker have also not related to any genuinely scarce items, so that at most only a formal statement, if any at all, is made on this point.¹⁷
- (e) The equitable distribution of the resources available to the Agency and the special needs of the under-developed areas of the world: For the reasons indicated under sub-paragraph (d) above, no consideration has had to be given to these factors up to now.¹⁸
- (f) Other relevant matters: None have become apparent for the projects submitted up to date.¹⁹

With the assistance of the analysis submitted by the Secretariat, and because of the small magnitude of the projects considered up to now as well as the absence of the need to commit any Agency resources (or even

to agonize about distributing significant quantities of any scarce materials "made available" to it), the Board's consideration of projects has invariably been a short formality concluding with approval.

17.2.1.2. Project Agreements

Before assistance for an approved project can be implemented, it is necessary to negotiate and conclude two or more agreements. One or more of these are Supply Agreements to which the Supplying State(s) and either the Agency, or the Receiving State or both must be parties; the functions and possible forms of these arrangements are analysed in Section 16.5. The other instrument required is the Project Agreement mentioned in Statute Article XI.F; since that Article lists most of the points to be covered and since the agreements actually concluded follow the statutory pattern closely, it is convenient to examine the various provisions in roughly the same order:

- (a) The Preamble recites the background of the transaction and refers to all significant related instruments - in particular to the Supply Agreements.
- (b) The first article always defines the project - generally as the "establishment" or "operation" of a particular facility, whose name, location, operator and general description are stated.²⁰
- (c) If an export permit from the United States is needed for a particular facility, then the Project Agreement requires the Agency to make the necessary request under the Co-operation Agreement with that State.²¹
- (d) Pursuant to Article XI.F.1, the Agreement provides for the "allocation" to the project of the requested material²² - a formality which serves to recall that one of the primary concerns of the Statute was to specify how the Agency would divide up among its needy Members the scarce nuclear materials made available to it. The same section is usually also used to fulfil the requirement of Article XI.F.3 that each Project Agreement "set forth the terms and conditions, including charges", on which assistance is being provided by the Agency or by the Supplying State. If the Supply Agreement is being concluded in trilateral form, then this requirement is fulfilled by incorporating that instrument into the Project Agreement by reference "to the extent that it creates rights and obligations between the Agency and the [Receiving State]"²³; while it would appear to be simpler to combine the Project Agreement with the Supply Agreement whenever both the Agency and the Receiving State are parties to the latter, this is avoided so as not to make the Supplying State a party to the "political" terms that must be included in the Project Agreement - such as those relating to safeguards and to health and safety controls. If the Supply Agreement is concluded as a bilateral contract entirely between the two States, then the Project Agreement merely specifies what the principal terms of that contract should be (on the basis of the arrangements the Agency has made separately with the Supplying State), and requires the Receiving State to transmit a copy of it to the Agency as soon as it is concluded.²⁴ Only in the special case of a "mirror-image" agreement are the full terms of the supply arrangements, as set forth on the one hand in the bilateral Supply

Agreement between the Agency and the supplier, also set out correspondingly in the Project Agreement.²⁵ Of course, if the Agency would ever act as a merchant in any project arrangement, and not merely as broker, then the full terms of the supply would be set out solely and completely in the Project Agreement (as foreseen in the first clause of Statute Article XI.F.3).

- (e) Pursuant to Article XI.F.2, which requires that provision be made for the transfer of nuclear materials "under conditions which ensure the safety of any shipment required", it is usually specified that the shipment "be entrusted to a licensed public carrier ... or ... be accompanied by a responsible person designated by the [Receiving State]"²⁶. This provision, which was designed for the transfer of small reactor cores, will presumably have to be tightened if the shipment of really important quantities of materials is to be undertaken.
- (f) Pursuant to Article XI.F.4(a), a provision is included in every Project Agreement whereby the Receiving State undertakes that the particular assistance provided "shall not be used in such a way as to further any military purpose"; generally this commitment is also stated to apply to any special fissionable material that may be produced in or by the use of the items supplied.²⁷ In addition, except where the amount of nuclear material to be provided falls below certain exemption limits, provision is made pursuant to Article XI.F.4(b) for the application of the relevant safeguards procedures, through one or more of the following devices:
 - (i) By detailed specification in an annex to the Project Agreement, usually by reference to the Safeguards Document;²⁸
 - (ii) By providing for the application of the safeguards procedures set forth in another agreement between the Agency and the Receiving State;²⁹ or
 - (iii) By giving the Agency strictly circumscribed authority to prescribe such procedures unilaterally - especially if any of the conditions of the project should change significantly.³⁰
- (g) Also pursuant to Article XI.F.4(b) and to the final clause of Article XI.F.2, Project Agreements include a separate Article requiring the application of certain health and safety provisions, which are usually specified in another annex to the Agreement.³¹
- (h) In support of the safeguards and the health and safety provisions, each Project Agreement incorporates by reference the Agency's Inspectors Document as well as at least those provisions of the Agreement on the Privileges and Immunities of the Agency as may be applicable to Agency inspectors performing functions pursuant to the safeguards or the health and safety provisions.³² Recent Agreements also include a provision requiring the extension to Agency inspectors of the protection of any third-party nuclear liability system in force in the Receiving State.³³
- (i) Article XI.F.5 requires each Project Agreement to:

"Make appropriate provision regarding the rights and interests of the Agency and the member or members concerned in any inven-

tions or discoveries, or any patents therein, arising from the project;"

This provision was evidently designed with the thought that the Agency would take an active part in the implementation of projects through advice and assistance given by staff members, perhaps on a continuous basis.³⁴ Since in fact the assistance rendered by the Agency has up to now practically always been limited to help in securing certain nuclear items, the Agency has generally disclaimed all rights to inventions or discoveries arising from the execution of the project, though the possibility is left open that the Recipient State may voluntarily grant to the Agency licenses under any patents taken out.³⁵ Article VIII.B obliges each Member to "make available to the Agency all scientific information developed as a result of assistance extended by the Agency pursuant to Article XI".³⁶ Though this statutory provision is automatically binding, it has been thought best to incorporate it into each Project Agreement, both as a reminder and to make it clear that the Agency's disclaimer of possible patent rights does not waive its right to receive scientific information.³⁷

- (j) In support of the safeguards, health and safety, and information reporting provisions, all recent Project Agreements provide that "reports and other information should be submitted to the Agency in one of the working languages of the Board of Governors", i.e., in English, French, Russian or Spanish.³⁸
- (k) Article XI.F.6 requires each Project Agreement to include "appropriate provisions regarding the settlement of disputes".³⁹ For this purpose each Agreement provides for the establishment of a three-judge arbitral tribunal at the request of either party.⁴⁰ If the project also involves the conclusion of a trilateral Supply Agreement including an arbitration clause, then this may be incorporated by reference.⁴¹ In addition, every Agreement provides in substance that:

"Decisions of the Board concerning the implementation of [the Articles referring to safeguards, to health and safety, and to the Agency's inspectors] shall, if they so provide, be given effect immediately by the Agency and [the Receiving State], pending the final settlement of any dispute."⁴²

- (l) Project Agreements enter into force upon signature by the Director General (or his representative) and by a representative of the Receiving State - though of course if a Government should insist on a ratification procedure this would be provided for.⁴³ In practice, the Director General arranges that no signature is affixed for the Agency to the Project Agreement until it and the related Supply Agreement(s) have been signed by all the States parties to them, whereupon by his signature he brings into force the entire complex of agreements at the same time;⁴⁴ by this device the possibility is precluded of the Agency becoming bound by the Project Agreement to supply material which the

- Supplying State has not yet formally agreed to provide, or becoming bound by the Supply Agreement to accept and deliver material before the Receiving State has agreed to safeguards and other control provisions.
- (m) After the Project and Supply Agreements have entered into force, the Agency's task in arranging for the provision of the assistance that is the subject of these Agreements is usually soon accomplished, and generally this is done before the start of or during the early days of the operation of a project. While the Supply Agreement, if it provides for the sale and permanent transfer of title to the nuclear material (rather than for its mere lease), is thereby fully executed and practically no longer in force, the Project Agreement is not exhausted as easily; if the assistance supplied will stay in the possession of the Receiving State indefinitely, then the Agency's rights to exercise controls and to receive information must be of corresponding indefinite duration. Consequently no Project Agreement (except such as relates only to leased material to be returned within a stated period) includes any termination clause.⁴⁵ These Agreements are thus intended to remain in force until the items that are the object of the agreement (including materials produced in the project and thus also subject to the related controls) have been entirely consumed or destroyed. In this connection it should be noted that Statute Article XVIII.E provides that: "Withdrawal by a member from the Agency shall not affect its contractual obligations entered into pursuant to article XI ...".⁴⁶

Project Agreements, as well as those Supply Agreements to which the Agency is to be a party, are negotiated by the Secretariat, if possible by using the last previous similar instrument as a starting point. Though in respect of the first few projects these negotiations were not formally initiated until after the Board had either approved the project or otherwise authorized such consultations, the present practice is to start the negotiations as soon as the nature of the proposed arrangements has been clarified and to present the agreed texts to the Board for approval together with the Director General's report on the project proposal itself. Though Statute Article XI.E requires the Board's approval for the project itself, and Article XIII specifies that it is the Board that enters into Supply Agreements, Article XI.F makes no similar requirement with respect to Project Agreements. However, in view of the need to seek the Board's approval of these other aspects of the project, and in view of the Board's general authority to carry out the functions of the Agency, up to 1967 the texts of all reactor Project Agreements (no matter how repetitive of previously approved instruments) were presented to the Board for approval; only recently has the Board permitted the Director General to conclude such Agreements without submitting their texts, on the assurance that they will follow the text of an earlier, specified instrument.⁴⁷ On the other hand, the Board has freely delegated to the Director General the formulation and conclusion of those Project and Supply Agreements that do not require the application of any safeguards - i.e., those relating to the supply of small quantities of nuclear materials or of radiation equipment.⁴⁸

17.2.1.3. Implementation

The implementation of the arrangements relating to projects, insofar as this requires action by the Agency, has always been solely the responsibility of the Secretariat. With respect to most of the projects approved so far this activity, aside from the exercise of safeguards and health and safety controls, is normally restricted to some purely administrative tasks: notification must be sent to the Supplying and Receiving States, authority to transfer and to receive nuclear materials must be issued, and payments must be received and made.⁴⁹ Though the Agency always reserves the right to measure and test any significant quantities of nuclear materials to be transferred,⁵⁰ this right has up to now been exercised only once,⁵¹ since most transfers have been in the form of fabricated fuel elements, neutron sources or fission counters, whose characteristics present a sufficient guarantee of their nominal specifications and whose actual measurement would require destructive testing.

Even where certain steps required to be taken by the Agency have not been entirely ministerial, their execution has de facto been delegated to the Director General and the Board has not sought to intervene. It is true that the extent of the discretion involved has invariably been minor and entirely technical (e.g., the determination by the Agency that the Receiving State has complied with certain health and safety measures as a precondition for receiving delivery of certain parts of the assistance⁵²), and that whenever any change in an agreement was required the consent of the Board has been obtained.⁵³

Though Supply and Project agreements have almost always been closed-ended in form, i.e., they do not foresee the granting of any additional assistance to further the project in question, each project is in effect a living thing constantly generating new demands. Thus, some years after the reactor and the first charge of fuel elements were supplied for the Finnish FiR-1 project, the Government approached the Agency for assistance in securing additional fuel elements.⁵⁴ The NORA project, which originally involved merely the lease of certain fuel elements, was first extended to allow disassembly of some of these elements, then to provide for the sale of the fuel in these elements and for a short extension of the lease on the balance, then for the lease of another load of elements after the intact balance of the original fuel charge had been returned, and lately for a short extension of that second lease.⁵⁵ A year after the TRICO project accomplished the transfer to the Congo of title to the fuel elements for that reactor, the Board approved the Government's request for assistance in obtaining a donation of equipment from the United States for the purpose of converting the reactor to a more advanced type; five years later the Board approved an additional supply of fuel to complete the conversion.⁵⁶

In conformity with Statute Article XI.G, the request for the extension of an existing project is treated similarly to the request for a new project. However, in practice the procedure is simplified: instead of re-evaluating the entire project, only the need for the additional assistance is examined by the Secretariat and approved by the Board; though usually a new Supply Agreement must be negotiated and approved by the Board, often no change at all is required in the Project Agreement – or a minor amendment to it

may (somewhat irregularly) be made by means of a clause inserted into the new Supply Agreement.⁵⁷

The Agency's direct obligations to the Receiving State under most Project Agreements can be carried out relatively quickly - usually as soon as that State is ready to receive the assistance, the Agency can arrange for delivery and thereby substantially discharge this part of its duties. However, in relation to most projects there are continuing responsibilities, which the Receiving State owes to the Agency, or the latter to its membership:

- (a) The implementation of safeguards controls, pursuant to Statute Article III.A.5 - a function which the Agency is seriously carrying out in accordance with the procedures described in Section 21.7.
- (b) The implementation of health and safety controls, pursuant to Statute Article III.A.6 - a function which the Agency is not carrying out with any great intensity, for the reasons discussed in Section 22.3;
- (c) The securing, pursuant to Statute Article VIII.B, of all scientific information developed as a result of the assistance extended, and its distribution pursuant to Article VIII.C - a function which up to now has remained in abeyance, in part because the Agency has made no efforts to follow up on its rights to such data, but mostly because the projects it has supported up to now involved primarily training facilities in which at best a minimal amount of original research has been carried out.

17.2.2. List and description

Up to now the Board has approved only a score of reactor projects. In view of this relatively low number, of the fact that projects of this type, though larger in scope, were intended to be (and may still become) the principal work of the Agency, and in view of their individual characteristics, it appears worthwhile to note briefly the history and structure of each of them.

The principal distinctions among projects are based, on the one hand, on the nature of the activity to be assisted, and on the other on the type of assistance to be granted. While the form and elaborateness of the Project Agreement largely depends on the latter factor, its provisions may be varied from the usual "standard" form for a number of reasons: the nature of the supply arrangements; whether other Agency projects or special control arrangements (e.g., Safeguards Transfer Agreements) exist in or with respect to the same Receiving State and perhaps even the same facility; and the extent to which the Agency is to become involved in the actual operation of the project. Finally, certain differences merely reflect evolutionary factors, as the Agency's procedures and to some extent its legal instruments have been changed through usage.

17.2.2.1. Japanese JRR-3

The first reactor project which the Agency assisted related to the Japanese JRR-3 reactor; this is an example of an arrangement limited to the supply of nuclear materials, with no intrinsic complicating factors except for the novelty of the operation - some of the procedures used proved to be un-

satisfactory and were not repeated,⁵⁸ while others constituted precedents followed faithfully since.

On 23 September 1958 the Japanese Government requested the Agency to supply it with three or more tons of natural uranium of reactor grade in the form of metal ingots, which were to constitute approximately one half of the load of the 10 MW(th) JRR-3 heavy-water research reactor. The nature of the request, i.e., of a material relatively easily available on the world market and constituting only one half of the fuel required for the reactor, as well as statements by Japanese representatives, indicated that the objective was to set into motion the Agency's machinery for approving and implementing project requests.⁵⁹

Since offers to make natural uranium available to the Agency had been received from a number of Members, the Board decided on a general solicitation of tenders, as described in Section 16.6, which resulted in the acceptance of the offer of a donation from the Canadian Government. In the light of the desires of the Canadian and Japanese Governments, and of the Agency's initial conception of its proper role in this type of transaction, it was decided to conclude separate Supply and Project Agreements, whose commercial terms were to be mirror-images.⁶⁰

The Project Agreement⁶¹ differed from those used for later projects in several important respects. In the first place, the terms and conditions of the supply were set out in it fully, rather than through the incorporation of those in a separate supply agreement to which the Supplying State is a party. In the second place, the Agreement is formally open-ended, i.e., it foresees the provision of additional assistance⁶² (though up to now, none has been requested). In the third place, it did not prove possible to formulate in time the final safeguards and health and safety provisions for inclusion in the Agreement, since the Agency had not yet established any general principles with respect to these provisions and the project itself was not yet far enough advanced to make it convenient or necessary to negotiate detailed provisions at that stage; consequently a "blank cheque" type arrangement was resorted to with regard to both the safeguards and the health and safety provisions, which authorized the Board (subject to Article XII.A of the Statute and to any relevant general regulations that it might later adopt) to determine unilaterally the details of the application of safeguards (including health and safety) controls, after consultation between the Director General and the Government.⁶³

The initial safeguards and health and safety provisions to be applied to the project were adopted by the Board at the same time as the Project Agreement itself and were formally communicated to the Government by the Director General in a letter transmitted on the date the Agreement was signed.⁶⁴ After the promulgation of the First Safeguards Document, the Board cancelled all further safeguards against diversion with respect to the project, since the total amount of uranium supplied was below the exemption limit established in that Document.⁶⁵ Similarly, on the adoption of the Health and Safety Document, the Board cancelled the application of health and safety measures, since in its opinion the material supplied did not, within the meaning of that Document, "substantially assist in the operation ... or constitute a substantive component of" the JRR-3 reactor.⁶⁶

17.2.2.2. Finnish FiR-1

The project relating to the FiR-1 reactor in Finland constitutes the prototype of those relating to the simultaneous provision of a small research reactor and of the fissionable material (fuel and fission counters) therefor from the United States to another Agency Member. Though not an "open-ended" arrangement, it was later extended to additional supplies of nuclear materials for the reactor.

To meet the request of the Finnish Government for 13 kilograms of 20% enriched uranium fabricated into 70 fuel elements for a 100 kW(th) TRIGA Mark II reactor (a standard reactor manufactured in the United States), the Agency approached all three of the States that had offered to make enriched uranium available to it. Both the Soviet Union and the United Kingdom indicated that they could not conveniently fabricate TRIGA fuel elements, and thus the only offer received was from the United States.

The Supply Agreement was the first one concluded in trilateral form.⁶⁷ The Project Agreement, which incorporated the commercial terms of the Supply Agreement by reference, could consequently be restricted to the other points specified in Statute Article XI.F.⁶⁸ Since the Safeguards Document was still being formulated while the Agreements were being negotiated, a blank cheque clause similar to that in the JRR-3 Project Agreement was used once again. Pursuant to that clause the Board, soon after having adopted the first Safeguards Document, approved the safeguards provisions for the FiR-1 reactor and these were communicated to the Government in a letter by the Director General;⁶⁹ they are still in force, though, pursuant to their terms, the reactor has been exempted from the attachment (but not the application⁷⁰) of safeguards in view of its negligible power.

Some years later the Finnish Government requested approximately 300 milligrams of 95% enriched uranium for use in three neutron beam monitors for the FiR-1 reactor. This supply of additional materials to the project was accomplished by means of a "small quantities" supply agreement.⁷¹

Still later, the Government requested approximately 3750 grams of 20% enriched uranium fabricated into 20 additional fuel elements for the reactor. The necessary arrangements were included in the Second and Third Supply Agreements,⁷² which substantially follow the original Supply Agreement, and indeed incorporate large portions of it by reference. The Project Agreement was not formally amended, but each of the new trilateral Supply Agreements contains a clause recording the "understanding" of the Agency and the Finnish Government that the definition of "special fissionable material" in the Project Agreement is to include the material covered by the new arrangements.⁷³ In September 1969 the Board approved the supply of up to 23 750 grams of 20% enriched uranium and 3.4 grams of 90+% enriched uranium, to be delivered over a 5-year period pursuant to a Fourth Supply Agreement.⁷⁴

17.2.2.3. Finnish sub-critical assemblies FINN

The project relating to the Finnish sub-critical assemblies provides the first example of supply arrangements concluded directly between the Supplying

and Receiving States (without the Agency becoming a party to the Supply Agreement), and also was the first time when the safeguards provisions of one project were extended to another.

Simultaneously with its request for material for the FiR-1 reactor, the Finnish Government also applied for three kilograms of 10% enriched uranium fabricated into elements for a critical assembly. Though the Board approved this project in principle in 1960 and the Soviet Union indicated that it could supply the required material, the Finnish Government took no further action until 1962, when it revised its request to cover elements for a sub-critical rather than a critical assembly. The Board approved this revised project in February 1963.

The supply arrangements for this project are described in Section 16.5.1(b). Except as there indicated, the Project Agreement⁷⁵ is largely standard in form. However, no independent safeguards provisions are included, but those applicable to the FiR-1 reactor (i.e., those set out in the Agency's letter) were incorporated by reference as far as relevant.⁷⁶ Similarly, the procedure for the settlement of disputes was merely incorporated from the earlier Agreement relating to the reactor project.⁷⁷

17.2.2.4. Norwegian NORA

The project relating to the zero-power reactor NORA in Norway is up to now the only one in which the Agency's involvement goes beyond the mere role of broker of nuclear items and includes participation in the operation of a facility.⁷⁸ It is also the first project to which the fuel was supplied primarily on a lease basis. As originally established among the Agency and the Norwegian and American Governments, the full scope of the project foresaw:

- (a) That Norway would make available, for use in a joint scientific research programme in reactor physics, the NORA reactor and its existing fuel charges and would provide the services of the staff of the NORA facility; it would also pay all charges for leasing from the United States an additional reactor core consisting of 1000 fuel elements containing approximately 1400 kilograms of 3% enriched uranium.
- (b) The United States would lease the required fuel charge to the Agency for sub-leasing to Norway; it would also award the Agency a research contract, to be sub-contracted to Norway, for carrying out certain experiments within the joint programme⁷⁹ - the contractual payments approximately counter-balancing the lease charges for the fuel.
- (c) The Agency would lease and sub-lease the material and enter into the necessary research contracts with the two Governments; it would also assign scientists to work on the programme, to be paid from fellow-ship funds⁸⁰ or by grants from other Member States.
- (d) In order to administer the joint programme a Joint Scientific Programme Committee would be established, to which the Agency and the Norwegian Government would each appoint two members to serve under a jointly selected chairman.⁸¹ The NORA Committee would have responsibilities in connection with the appointments of the "Project Manager" and the "Head of Research" and for jointly selecting the non-Norwegian scientists who were to work on the project.

The First Supply (Lease) Agreement⁸² (as well as the several instruments that later modified, extended or succeeded it) had the trilateral structure characteristic of these contracts with the USAEC. The Project Agreement,⁸³ besides containing somewhat modified standard clauses, also set forth the arrangements for the administration of the joint programme; since the nuclear material was only to be supplied on a short-term basis, and would thus not stay in Norway, this Agreement is so far the only one of its kind with a termination clause. The research contract and sub-contract were substantially of the standard type described in Sections 19.2.2.2 and 19.2.5.

Before the expiration of the original leases, the Supply Agreement was amended to permit the disassembly of about 60 of the leased elements, to facilitate their use in certain experiments which the NORA Committee proposed to be carried out in sub-critical assemblies.⁸⁴

Later, but still before the expiration of the original Project and amended Supply Agreements, the Agency and the two Governments, on the recommendation of the NORA Committee, agreed to extend the joint programme, with some modifications relating to the supplied materials. Three new formal instruments were concluded:

- (i) The trilateral First Supply Extension Agreement, which extended the leases contained in the original Supply Agreement for some months and also accomplished the sale to the Norwegian Government of the enriched uranium contained in the 60 disassembled fuel elements.⁸⁵
- (ii) The Second Supply Agreement, which provided for the lease of a new fuel charge of approximately 1200 elements containing 1700 kilograms of 3.4% enriched uranium, conformed closely to the First Supply Agreement.⁸⁶
- (iii) The Project Extension Agreement, extending the original Project Agreement for three additional years;⁸⁷ provision was also made for co-ordinating the extended project with the NPY Agreement that had been concluded some time earlier between the Agency and the Norwegian, Polish and Yugoslav Governments.⁸⁸

At the same time, the USAEC awarded another research contract to the Agency, which the latter sub-contracted to the Norwegian operator of the reactor; thereby the lease payments to be made by Norway through the Agency to the United States were again approximately reimbursed.

Before the expiration of the renewed project another one-year extension was agreed to. This was accomplished by a single trilateral Second Project and Supply Extension Agreement, by which both the trilateral Second Supply Agreement and the bilateral Project Extension Agreement were extended, and the latter was also slightly amended.⁸⁹

17.2.2.5. Yugoslav TRIGA

The project relating to a TRIGA Mark II reactor in Yugoslavia is basically identical to the original Finnish FiR-1 project (except that the Yugoslav Project Agreement⁹⁰ contains a full safeguards clause, since the first Safeguards Document had meanwhile been promulgated by the Board).

Before all the fuel had been delivered, the Yugoslav Government discovered that it could have the conversion plate for the reactor fabricated more cheaply in Germany than in the United States (as had originally been foreseen). The Supply Agreement⁹¹ was therefore amended by a new trilateral instrument⁹² according to which the United States would transfer unfabricated enriched uranium to Germany under the bilateral agreement between those two Governments; on the completion of the fabrication, Germany (with the approval of the United States) would transfer the fuel plate to the Yugoslav authorities, who would accept it both as representatives of the Agency and also acting for themselves - thus preserving the formality of transfer through the Agency.

In 1967 Yugoslavia requested and the Board approved a supplementary supply of fuel for the reactor, the maximum power level of which had in the meantime been raised from 100 kW(th) to 250 kW(th). A Second Supply Agreement, similar to the corresponding instrument relating to the FiR-1 project, was concluded.⁹³

17.2.2.6. Other Yugoslav projects

In July 1960 the Yugoslav Government requested the Agency's assistance in obtaining 6.5 tons of heavy water for use in a zero power reactor.⁹⁴ After the Board approved this project in October 1960, five Governments were approached by the Agency for the supply of the heavy water, of which two answered positively. However, the Yugoslav Government later decided that it did not require this material and no agreements were ever negotiated.

In August 1961 the Yugoslav Government requested the Agency's assistance in securing two AGN 211P 15-watt pool-type reactors and the fuel for them (approximately 12 kilograms of 20% enriched uranium). A standard trilateral Supply Agreement was negotiated with the United States and Yugoslavia and a standard Project Agreement with the latter Government - both agreements covering the projects relating to both reactors. Though the Board approved both projects and the related Agreements,⁹⁵ these projects were later abandoned by the Yugoslav Government and the instruments were never signed.

Up to now, these three projects are the only ones aborted by the sponsoring Member after Board approval had been secured.

17.2.2.7. Pakistani Pinstech

The original arrangements for supplying from the United States to Pakistan approximately 5 kilograms of 90% enriched uranium fuel and 112 grams of plutonium for a neutron source for the 5 MW(th) AMF pool-type PINSTECH reactor closely follow those made in connection with the Yugoslav TRIGA project, except that full (rather than only nominal) safeguards were required in view of the large quantity of highly enriched material involved. In addition, since no "hazard report" had been received by the Agency before the approval of the project, the Supply and Project Agreements provided that no special fissionable material would be transferred to Pakistan before this report had been transmitted to the Agency and positively evaluated by the Secretariat.⁹⁶

After the reactor had been in operation with the supplied material for some years, an additional supply of fuel was arranged for by means of a Second Supply Agreement⁹⁷ following the pattern of the similar instrument relating to the Finnish FiR-1 project.

17.2.2.8. Congolese TRICO

The original arrangements relating to the Congolese TRICO reactor utilized the Agency in a unique politico-legal brokerage role among three of its Members. Later the Agency assisted the Receiving Member in improving the reactor that was the object of the initial agreements.

In 1958 the United States transferred to Belgium, under the bilateral Cooperation Agreement between those two States, a TRIGA Mark I reactor and the fuel therefor, for erection in Leopoldville (then capital of the Belgian Congo); that Agreement, like all similar instruments concluded by the United States, prohibited the transfer of the reactor and the fuel to any other State without the permission of the United States.⁹⁸ However, when the Congo became independent in 1960 it was not considered expedient to remove the reactor and the fuel either to Belgium or to the United States, while on the other hand the unsettled political conditions precluded the conclusion of a Cooperation Agreement between the Congo and the United States; consequently the United States could not, under the terms of its 1954 Atomic Energy Act,⁹⁹ authorize Belgium to transfer the items to the Congolese Government. In March 1962 the Congo, which had meanwhile become a Member of the Agency, requested its assistance in securing title to the available fuel, as well as in obtaining a supply of some additional fuel from the United States. To consummate these transactions the following instruments were concluded:

- (a) A Title Transfer Agreement, between the Agency, Belgium and the Congo, providing for the transfer of title to the fuel already in the Congo from Belgium to the Agency and thereafter from the Agency immediately to the Congo.¹⁰⁰ This transaction was authorized by the United States (by means of a separate communication simultaneously delivered to Belgium), on the basis of the Project Agreement (see (c) below) which constituted a legally acceptable alternative to a Cooperation Agreement with the United States.
- (b) A Supply Agreement, between the Agency, the United States and the Congo, providing in the usual form for the transfer of approximately 1 kilogram of 20% enriched uranium from the United States through the Agency to the Congo.¹⁰¹
- (c) A Project Agreement between the Agency and the Congo, relating to all the items covered by the Title Transfer and Supply Agreements.¹⁰²

A year later the Congo requested the Agency's assistance in converting the TRICO reactor from a TRIGA Mark I (50 kW(th)) to a Mark II (250 kW(th)) type. The United States offered the Agency \$50 000 worth of equipment which the Congo could use for the desired conversion, on the condition that the latter would secure the necessary plans and assistance from the manufacturer of the reactor. The Board approved this request for an extension of the pro-

ject and the Director General could consequently accept the American offer.¹⁰³ Some years later the Congo was able to fulfil the conditions attached to the original offer, and agreed with the Agency on an amendment to the original Project Agreement;¹⁰⁴ no new Supply Agreement was necessary at that stage, since only the transfer of equipment was involved (as to which an export license could be secured pursuant to Article IV of the IAEA/US Co-operation Agreement¹⁰⁵ while the arrangements relating to the American gift were made by correspondence). Still later, an additional supply of 400 grams of 20% enriched uranium, required to complete the conversion of the reactor, was agreed to by the Board and accomplished by means of an amendment to the earlier trilateral Supply Agreement (since no deliveries had yet taken place under it).¹⁰⁶

17.2.2.9. Mexican TRIGA

The arrangements concerning the Mexican TRIGA Mark III (1 MW(th)) reactor project¹⁰⁷ were exactly the same as those relating to the Yugoslav TRIGA project. However, the safeguards provisions of the Project Agreement have since been suspended by the Agency's Agreement with Mexico for the Application of Safeguards under the Treaty for the Prohibition of Nuclear Weapons in Latin America.¹⁰⁸

17.2.2.10. Mexican sub-critical assemblies

The two Mexican sub-critical assemblies, approved by the Board less than a year apart, each required the supply from the United States of fuel elements containing approximately 2.5 tons of natural uranium and of a neutron source containing approximately 80 grams of plutonium for a separate Nuclear Chicago Model 9000 sub-critical training assembly. Since Mexico wished to lease all these materials, and the United States was willing either to sell or to lease the uranium but would only sell the plutonium, each trilateral Supply Agreement¹⁰⁹ provides:

- (a) With respect to the uranium: a short-term lease, subject to renewal, and subject to the option of the Mexican Government to buy the material;¹¹⁰
- (b) With respect to the plutonium: a sale, with an option for the United States to donate the material under its annual offer of \$50 000 worth of material to the Agency.¹¹¹

The Project Agreements¹¹² are in standard form, except that no safeguards procedures are provided for since the entire material supplied (under both agreements, and taking into account the material supplied, under safeguards, to the TRIGA reactor) could be exempted under the Revised Safeguards Document.¹¹³

17.2.2.11. Argentine RAEP

The project relating to the Argentine RAEP reactor is an example of a transaction in which the Agency was involved solely to take advantage of the annual American offer of \$50 000 worth of free special fissionable materials.¹¹⁴

In 1964 the United States transferred to Argentina on a bilateral lease basis nearly 7 kilograms of 90% enriched uranium. To eliminate the lease charges, and the eventual obligation to return the material, Argentina requested the Agency to arrange to utilize the American free material offer for 1964 to support the project. Two agreements were entered into:

- (a) A trilateral Title Transfer Agreement providing for the transfer from the United States through the Agency to Argentina of title to approximately 3 kilograms of uranium with a value of \$35 331 (the unused balance remaining of the 1964 offer);¹¹⁵
- (b) A Project Agreement,¹¹⁶ in standard form, except for the omission of: the provision concerning the shipment of the material (which was already located in Argentina); detailed safeguards provisions, since it was considered simpler and more convenient to require the imposition of controls under the earlier Argentine/USA Safeguards Transfer Agreement,¹¹⁷ which already covered all American material in Argentina and thus continued to apply to the US-owned balance of the enriched uranium at the RAEP reactor.

A year later, when it was determined that approximately \$10 000 from the United States offer of free material for 1965 would not otherwise be used, a further transfer was arranged. For this purpose it was only necessary to conclude a Second Title Transfer Agreement,¹¹⁸ identical except for dates and amounts (about 1 kilogram of enriched uranium) to the previous one, and with an extra clause recording the understanding of the Agency and Argentina that the new material would also be covered by the Project Agreement.

17.2.2.12. Uruguayan URR

The project relating to the URR Lockheed reactor in Uruguay is another example of the Agency assisting in the completion of a transaction that had been commenced on a bilateral basis between Member States.

Early in the 1960s, the United States exhibited a 100 kW(th) Lockheed Nuclear Products training and research reactor in South America, and on the completion of the tour stored the reactor and the fuel elements in its Embassy in Montevideo. Uruguay thereupon decided that it wished to acquire the reactor and made the necessary arrangements with Lockheed; however, even though the items were located in Uruguay, it was still necessary to obtain the agreement of the United States to release the reactor from its custody and to sell or lease the USAEC-owned fuel in it, and this required either a Cooperation Agreement between the Governments or an Agency project. The latter alternative was chosen, but since Uruguay indicated that it was not in a financial position to buy the fuel at the time, the Supply Agreement provided for the lease of the fuel, with an option for the United States to donate all or part of it under its free materials offer for 1965 and an option for Uruguay to buy all or part of the material;¹¹⁹ in addition, the outright sale of minor quantities of special fissionable material and of some equipment was provided for, again subject to a possible

American decision to donate the material.¹²⁰ The Project Agreement¹²¹ was standard in form, notable only for being the first to base its safeguards provisions on the Revised Safeguards Document.¹²²

17.2.2.13. Philippine PRR-1

The project relating to the 1-3 MW(th) PRR-1 pool-type research and training reactor in the Philippines is the first example of the Agency arranging for the supply of supplementary fuel required for an operating reactor transferred and originally fueled under a bilateral agreement between Member States.

The supply arrangements relating to this project are notable only for the fact that they involve three separate deliveries, in successive years, each of 10 fuel elements containing approximately 1.5 kilograms of 93% enriched uranium. The transfers to take place in 1966 and 1967 are both covered by a single standard Supply Agreement;¹²³ the 1968 transfer is covered in a similar Second Supply Agreement.¹²⁴ The Project Agreement¹²⁵ is also standard, except that it provides for the suspension of its own safeguards provisions to the extent that safeguards are being applied under the Philippine/USA Safeguards Transfer Agreement.¹²⁶

17.2.2.14. Iranian UTRR

The project relating to the 5 MW(th) AMF pool-type Teheran Nuclear Center Research Reactor (UTRR) is another example of the Agency becoming involved in the nuclear materials supply for a previously bilateral arrangement – though in this case only the reactor had been supplied earlier and no fuel had yet been delivered.

The Supply and Project Agreements¹²⁷ are standard, except that the latter follows the example of the one relating to the Philippine PRR-1 project in suspending its own safeguards provisions in favour of those in the Iran/USA Safeguards Transfer Agreement.¹²⁸

17.2.2.15. Viet-Nameese VNR-1

This project and the related Agreements¹²⁹ are, except for the type of reactor involved and the smaller amount of material required (360 grams of 20% enriched uranium), identical to those relating to the Philippine PRR-1 reactor.

17.2.2.16. Israeli IRR-1

This "reactor project" was the first that did not involve the supply of any nuclear material, but merely of a low-temperature irradiation loop to an already operating (and Agency-safeguarded) reactor.

The instruments relating to this project are therefore based on those for the equipment supply projects described in Section 17.4. The Agency merely entered into a simple Project Agreement¹³⁰ with Israel, in which the principal terms of the Supply Agreement, to be concluded directly between the Supplying State (France) and Israel, were specified in general terms.

17.2.2.17. Spanish CORAL-1

The project relating to the CORAL-1 experimental zero-energy fast reactor in Spain merely involves the supply of fuel. Though the project approved by the Board allows the transfer of about 25 kilograms of 93.5% enriched uranium, the first trilateral Supply Agreement with the United States (and consequently the Project Agreement which incorporates the former's terms)¹³¹ only covers 11.5 kilograms of 90% enriched material.

17.2.2.18. Pakistani KANUPP

This project, which relates to a 137 MW(e) CANDU-type reactor, represents the Agency's first assistance to a power reactor. However, the assistance actually granted, amounting to approximately 16 kilograms of 10.5% enriched uranium to be used for "booster rods" to facilitate the operation of the basically natural uranium reactor, is so minor in both absolute and relative terms, that the Agency will not impose any health and safety measures and also expects to exempt the entire nuclear fuel supplied from safeguards.¹³²

The trilateral Supply Agreement¹³³ is unique in providing (though rather imperfectly) for the fabrication of the US-supplied material in Canada (by the manufacturer of the reactor) before its shipment to Pakistan; the temporary transfer to Canada (which is not a party to the Agreement) is to take place within the framework of the Canadian/USA Agreement for Cooperation,¹³⁴ and thus the transaction resembles the one relating to the conversion plate for the Yugoslav TRIGA reactor after the original Supply Agreement had been amended.¹³⁵ The Project Agreement¹³⁶ differs slightly from the standard pattern by its limited definition of the project as "the provision by the Agency of assistance in obtaining enriched uranium for use of control (booster) rods in the [KANUPP reactor];"¹³⁷ furthermore it is open-ended, i.e., it is to apply to "any additional supplies of enriched uranium through the assistance of the Agency for the project";¹³⁸ finally, there is no Health and Safety Annex since the Board decided that the reactor would not be "substantially" assisted by the Agency within the meaning of the Health and Safety Document.¹³⁹

17.2.2.19. Argentine RA-3

This project, approved in February 1969, is in substance identical to that relating to the Israeli IRR-1 reactor,¹⁴⁰ and the Board directed that a similar Project Agreement be concluded.

17.2.2.20. Argentine SUR-100

This project, approved in June 1969, is the first in which the Supplying State is the Federal Republic of Germany, which agreed to donate a Siemens SUR-100 zero-power training reactor to Argentina. The approximately 3750 grams of 20% enriched uranium will be bought by Germany from the United States (which will not become a party to the arrangements with the

Agency, since it is providing the material under its bilateral agreement with Germany) and will be fabricated by the former, free of charge, before shipment to Argentina.

Even though the transactions relating to this project involve several unprecedented features, the Board delegated the formulation of the sole instrument to be concluded, a Project Agreement, to the Director General, merely specifying that it should be adapted from the completely different Project Agreement relating to the Philippine PRR-1 project.¹⁴¹

17.2.2.21. Chilean HERALD

This project, approved in September 1969, involves the lease, from the United States to Chile, of approximately 10 290 grams of 93% enriched uranium, to be fabricated in the United Kingdom into 58 fuel elements for a British designed 5 MW HERALD-type research reactor.

The Board instructed the Director General to formulate the Supply and Project Agreements^{141A} along the lines of those for the Spanish CORAL-1 project.¹⁴²

17.2.2.22. Indonesian TRIGA

This project, approved in September 1969, closely resembles that relating to the Philippine PRR-1 reactor,¹⁴³ in that it involves the supply from the United States of approximately 18 025 grams of 20% enriched uranium to enable the continued operation of a TRIGA Mark II reactor originally supplied to Indonesia under a bilateral agreement.

The Board instructed the Director General to formulate the Supply and Project Agreements^{143A} along the lines of those for the Iranian UTRR project,¹⁴⁴ which had themselves been based on those for the PRR-1 project.

17.3. SUPPLY OF SMALL QUANTITIES OF MATERIALS

Aside from major quantities of nuclear materials to fuel reactors, Member States also require nuclear or related radioactive materials in small quantities to perform research, or for certain industrial processes. The quantities needed for such "projects" (and they must be characterized as such in view of the broad formulation of Article XI.A of the Statute and the absence of any other relevant statutory provisions) rarely exceed a few grams and may amount to as little as a few milli- or micrograms, with a value from a few hundred dollars down to a fraction of a cent and having no military potential. To turn the heavy searchlights and artillery of Article XI on these minor requests tends to caricature a procedure designed for the evaluation and implementation of power projects requiring tons of materials worth millions of dollars and already sufficiently demeaned by having been used for a decade in relation to only minor research reactors.

Attempts to simplify the granting of requests for small quantities of nuclear materials have been made along two lines: a streamlining of the

approval process and a simplification of the negotiation of the required agreements. On both these fronts only partial success has been achieved so far.

It should first be noted that no definition of "small quantity" exists in any Agency instrument. In relation to requests for assistance, it has generally been assumed that a quantity of special fissionable material is "small" if it is below the safeguards exemption limit established by the First Safeguards Document (i.e., 200 "equivalent" grams of plutonium or fully enriched uranium¹⁴⁵). However, after extensive debates the Board, desiring to avoid further controversy on this matter, specifically instructed the Secretariat not to characterize as "small" any request for nuclear materials communicated to the Board.

During 1962-63 the Director General several times suggested to the Board that if the Agency was to respond with sufficient speed to requests for research quantities of nuclear material it would be desirable for the Board to delegate to him the right to approve such projects and to request deliveries from Supplying States; this suggestion was coupled with one that he be given similarly limited authority to order materials for the Agency's Laboratory or for its research contracts. The Board did not accept these proposals, but agreed to consider such requests in a simplified manner: no advance notice need be given before placing requests on the agenda; the relevant data and recommendation may be presented in a short, summary form; special Board meetings may be called to avoid undue delay. In addition, the Board did not insist on seeing the texts of the required Supply and Project Agreements.

This latter concession to common sense has somewhat simplified the conclusion of the necessary instruments. The Secretariat realized that if the Agency is to develop any active business along this line, each transaction must not require elaborate negotiations with the supplier and the receiver. To reduce the scope of the necessary consultations, the device of "master" agreements was resorted to, i.e., general instruments spelling out all the standard provisions of these transactions (including options covering likely alternatives), with the residual individual details of each transaction (e.g., specifications and price of the material; delivery conditions) set out in supplementary instruments (to be concluded at a lower official level than the master agreements). As indicated in Section 16.4.12, one such agreement has been negotiated with a Supplying State: the 1962 "Master Contract for Sales of Research Quantities of Special Nuclear Materials" with the United States.¹⁴⁶

For the Receiving States, a model "Master [Project] Agreement for Assistance by the Agency in Furthering Projects by the Supply of Materials" was devised and has already been concluded with several of them.¹⁴⁷ This instrument contains all the terms of the usual reactor Project Agreement, except that the health and safety provisions are appropriately simplified and it is foreseen that normally the materials will be exempted from safeguards. It also requires that a separate "supplementary agreement" be concluded for each project,¹⁴⁸ which will, inter alia, specify the materials allocated to it and set forth the terms of their supply; it is specifically provided that these terms will in general be specified by incorporating into the supplementary agreement the provisions of the related instrument concluded

between the Agency and the supplier (the "Supply Instrument") and that the "[Receiving] Government shall perform on behalf of the Agency all obligations which the Agency assumes in the Supply Instruments, and the Agency and the [Receiving] Government shall have, with respect to each other, mutatis mutandis the same rights and obligations as are specified respectively for the seller and the purchaser in that Instrument".¹⁴⁹ Though the initial negotiation of such a Master Agreement with each State that is expected to receive over the years numerous small deliveries of nuclear materials may be somewhat cumbersome,¹⁵⁰ the procedure for complying with each individual request (i.e., the conclusion of a Supplementary Agreement) is much simpler and faster.

In spite of these efforts at streamlining, the Agency's procedures for dealing with minor requests for nuclear materials still remained complicated. This awkwardness was both the consequence of and the reason for the fact that through the end of 1967 less than a score of such projects had been implemented.

In September 1968 the Director General undertook a new initiative. He requested and received¹⁵¹ from the Board authority to assist Member States in obtaining small quantities of nuclear materials, for research and development or for use in neutron sources, under Master Agreements such as those that had already been concluded and published;¹⁵² it was understood that this authority is limited to quantities of materials that could be exempted from controls pursuant to the Revised Safeguards Document, since for larger transfers an agreement providing for the application of safeguards must be approved by the Board. While this move was calculated to facilitate the Agency's handling of such minor requests, and thus to stimulate their submission, at the same time the Director General made another proposal that may have the opposite effect: he requested and received authority to conclude special safeguards submission agreements with Member States¹⁵³ whereby these can submit to Agency safeguards nuclear materials received from other States subject to the requirement that there be such a submission. Though this authority too is limited to quantities that can be exempted, it is likely that many States that have not yet concluded Master Agreements with the Agency (and which do not happen to need American material - for which either a Project Agreement with the Agency or a Cooperation Agreement with the United States must exist) may prefer to conclude such proforma safeguards submission agreements with the Agency and thereupon obtain their materials on the basis of bilateral commercial contracts.

17.4. SUPPLY OF EQUIPMENT

Some Agency projects do not relate to reactors or other principal nuclear facilities, nor do they involve the supply of any nuclear materials. For the most part these relate to the supply of equipment from one Member State to another, for radiation laboratories or medical irradiation centres.

Frequently the request by the Receiving State, on which such a project is based, relates to a specific offer of such equipment made to the Agency and communicated by it to its Members. One series of such projects re-

sulted from an offer by eight Eastern European States announced at the Sixth General Conference: they proposed that the Agency establish in the developing countries, as part of its technical assistance programme, six medical centres (radio-diagnostic laboratories and radiological divisions in hospitals) plus six physics laboratories at higher educational establishments and scientific centres, for which they simultaneously offered to provide one-third of the required equipment.¹⁵⁴ Though the General Conference cautiously endorsed this proposal,¹⁵⁵ it was resisted in the Board on the ground that it would result in too large a distortion of the Agency's established programmes;¹⁵⁶ moreover implementation within the framework of technical assistance seemed inappropriate, since the assistance was to consist almost entirely of the supply of equipment and not in the transmission of knowledge and skills.¹⁵⁷ Ultimately the proposal failed to attain its projected scope because the non-socialist countries declined, in spite of some prodding by the Seventh General Conference,¹⁵⁸ to donate the matching two-thirds of the equipment. Nevertheless, after extensive "investigations" and elaborate behind-the-scenes negotiations, the original offerors later agreed to make equipment available for six radiological centres, as well as experts for their assembly and installation, and a number of the less-developed Members requested this assistance on a regular project basis.¹⁵⁹ For once the Board had to decide which of several competing requests to grant, taking into account the results of Secretariat contacts with WHO in connection with the medical facilities and also, informally, the preferences of the donors.¹⁶⁰

The Project Agreements relating to equipment projects generally follow those designed for reactor projects, though the formal undertaking of the Receiving State not to use the assistance to further any military purpose need not be supplemented by any safeguards provisions.¹⁶¹ Instead of the Agency becoming a party to the Supply Agreement, this is concluded on a bilateral basis between the Supplying and the Receiving States, with only the principal terms (e.g., the price or the cost-free basis, depending on the offer the supplier had made to the Agency) spelled out in the Project Agreement.¹⁶²

17.5. PEACEFUL NUCLEAR EXPLOSIONS

The Statute is entirely silent with respect to peaceful nuclear explosions; by itself this is not remarkable for that instrument makes only a single reference to any of the specific uses of atomic energy¹⁶³ and its various provisions are drawn broadly enough to permit it to further all such uses. It is, however, more noteworthy that no reference appears to have been made at all to peaceful explosions throughout the process of drafting the Statute, nor does the Preparatory Commission mention it in its otherwise complete and in some ways prescient report on the Initial Programme of the Agency. This omission could not have been due to total ignorance of any of the potential uses of such explosions (though some of the applications now under serious discussion had not been conceived of then), since certain of these had been mentioned from the first days of the nuclear era - indeed Vishinsky

had over four years before President Eisenhower's atoms-for-peace address already boasted of the accomplishment of gigantic construction schemes in the Soviet Union by means of nuclear explosives. The reason for this silence was therefore probably one of delicacy; at a time when nuclear bomb testing was reaching gradually unacceptable levels, no one was willing to state definitively that any such explosions would ever be unambiguously peaceful.

Because of these tensions and suspicions, the Agency's first brush with the peaceful explosion issue was negative and discouraged further immediate initiatives. In 1961, the USAEC arranged, at the start of its "Plowshare" programme, the so-called "Gnome" test to discover whether it would be possible to trap sufficient heat from an underground explosion to produce usable power. To this test the United States invited a number of observers from missions accredited to the United Nations, and also from the Agency. A senior official did indeed attend an initial briefing, but when this became known in Vienna the Soviet Governor threatened to convene the Board, accused the Secretariat of involving the Agency in a blatant military exercise, and thereby caused the withdrawal of the observer before the test was carried out.¹⁶⁴ It was not until 1964 that the Director General dared to respond favourably to the suggestion that the Agency might become involved in "using peaceful explosives in mining and civil engineering".¹⁶⁵

In the past several years, three major international treaties have been adopted that relate to the possibility of peaceful explosions, and one of these refers directly and one indirectly to the Agency in this connection.

- (a) 1963 Treaty Banning Nuclear Weapons Tests in The Atmosphere, in Outer Space and Under Water: The so-called "Partial Test-Ban Treaty" makes no direct reference to or distinctions in favour of peaceful nuclear explosions, but flatly prohibits the carrying out of "any ... nuclear explosion ... in any ... environment if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted".¹⁶⁶ While this ban does not affect explosions carried out totally underground, it appears to bar or at least seriously inhibit explosions close to the surface such as might be used in most construction projects.
- (b) 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America: The "Tlatelolco Treaty", while banning from its "zone of application" all "nuclear weapons", specifically allows its contracting parties to "carry out [or collaborate with third parties for this purpose] explosions of nuclear devices for peaceful purposes - including explosions which involve devices similar to those used in nuclear weapons".¹⁶⁷ According to other provisions of the Treaty, the IAEA is to be the principal means of controlling compliance with its provisions;¹⁶⁸ in particular, the Agency is to be informed in advance of the plans for any peaceful explosions, "may observe all the preparations, including the explosion of the device" and must be allowed unrestricted access for the purpose of ascertaining compliance with the Treaty.¹⁶⁹
- (c) 1968 Treaty on the Non-Proliferation of Nuclear Weapons: The "Non-Proliferation Treaty" on the one hand prohibits the receipt, manufacture or other acquisition by any non-nuclear-weapon State party to it

of any "nuclear explosive device", and foresees that the Agency will impose its safeguards to verify the implementation of this prohibition;¹⁷⁰ on the other hand, it provides that the

"potential benefits from any peaceful applications of nuclear explosions ... be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, [inter alia] pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States".¹⁷¹ (Emphasis added.)

With direct reference to the last-mentioned provision, the 1968 Conference of Non-Nuclear-Weapon States recommended "that the Agency ... initiate necessary studies that are deemed advisable on its possible functions" in the field "of nuclear explosions for peaceful purposes".¹⁷² However, views were also expressed at the Conference to the effect that a new international organization be established to deal with some or all aspects of peaceful explosions¹⁷³ – a suggestion that prompted a rejoinder by the Director General at the Agency's Twelfth General Conference.¹⁷⁴ That body thereupon requested him to initiate studies of the procedures that the Agency should employ in performing the role of the "international body" referred to in the Non-Proliferation Treaty, and the Board to review these studies and report to the Thirteenth Conference.¹⁷⁵ The UN General Assembly specifically noted this Resolution and requested the Director General to keep the UN Secretary-General informed of any consequent action;¹⁷⁶ to emphasize its concern, the Assembly also requested the Secretary-General to prepare "a report on the establishment, within the framework of the International Atomic Energy Agency, of an international service for nuclear explosions for peaceful purposes, under appropriate international control".¹⁷⁷

The Board of Governors first discussed this question in February 1969, on the basis of a preliminary analysis submitted by the Director General. It directed that this analysis be circulated to all Member States,¹⁷⁸ invited all Members to comment thereon, established an Ad Hoc Committee on the Use of Nuclear Explosions for Peaceful Purposes and invited all Members to participate in its work. Twenty-seven States responded by written comments and 28 attended the Committee's single meeting in June. On the basis of that body's recommendations, the Board submitted a report to the Thirteenth General Conference,¹⁷⁹ in which it concluded that:

- (i) Activities in relation to peaceful explosions are within the statutory functions of the Agency;
- (ii) Performance of the several international functions called for by Article V of NPT falls within the technical and statutory competence of the Agency – a conclusion which at least one Member felt contradicted that treaty provision;¹⁸⁰

- (iii) For the nonce, the Agency should approach this subject on an "evolutionary basis";
- (iv) Without immediately establishing any new basic unit, the Agency, through its Department of Technical Operations, can provide the appropriate and necessary services to Member States. Eventually these may include:
 - (a) Information exchange
 - (b) Services to requesting Member States
 - (i) Economic reviews
 - (ii) Safety reviews
 - (iii) Technical assistance
 - (iv) Feasibility study arrangements
 - (A) Technological aspects
 - (B) General health and safety aspects
 - (C) Radiological health and safety aspects
 - (D) Economic aspects and costs
 - (v) Intermediary arrangements
 - (c) Access to scientific by-products.

The General Conference also had before it several papers submitted by the Mexican Government;¹⁸¹ the burden of these was that, as Mexico had already argued in the CNNWS, as well as in the Board and its Ad Hoc Committee, the Agency as currently constituted was not the appropriate instrument for implementing Article V of NPT, and that instead a more properly representative body should be established under UN auspices. On the basis of a report by its PT&B Committee,¹⁸² the Conference adopted a Resolution by which it endorsed the Board's report, and requested the Director General and the Board to continue their studies, taking into account any observations by the UN General Assembly.¹⁸³ This Resolution was, with its supporting records, duly communicated to the General Assembly,¹⁸⁴ which in the meantime had also received:

- (A) A preliminary response on the Agency's reactions to the CNNWS recommendations;¹⁸⁵
- (B) The Secretary-General's study on the Contributions of Nuclear Technology to the Economic and Scientific Advancement of the Developing Countries, which recommended that these developments in nuclear explosion technology "be kept under constant review by IAEA in co-operation with those United Nations agencies which may be interested in their economic application and their effect upon the environment";¹⁸⁶ and
- (C) A report by the Secretary-General on the "Establishment, Within the Framework of the International Atomic Energy Agency, of an International Service for Nuclear Explosions for Peaceful Purposes Under Appropriate International Control"¹⁸⁷ in which the written comments of 40 governments¹⁸⁸ as well as the IAEA Board's report to the General Conference were reproduced and briefly analysed, to reach the following conclusion:

"The general conclusion of the Secretary-General, having regard to all the arguments presented, is that the technical expertise and statutory provisions of IAEA are convincingly supported, and favours the view that the Agency take on the role of the international service for the peaceful uses of nuclear explosions. He considers, however, that the specific functions to be included in the service would evolve gradually after continued international discussion, which should take place both within the framework of the IAEA, the United Nations and possibly other organizations."¹⁸⁹

The General Assembly at its Twenty-fourth Session thereupon adopted a Resolution which noted the Agency's conclusion as to its statutory role, and in that light requested the latter to continue to study and review this field and to report to the Assembly once more within a year, to enable the latter to consider this subject at its Twenty-fifth Session.¹⁹⁰

Liminal to any consideration of the Agency's role is the possible mutual incompatibility, at least with respect to some explosions (i.e., those carried out at or near the surface), of the three cited Treaties. The Agency's guideline will have to be Statute Article III.B.1, which charges it to conduct its activities in conformity with any international agreements entered into pursuant to United Nations policies furthering the establishment of safeguarded world-wide disarmament.¹⁹¹ Presumably, as long as the Partial Test-Ban Treaty was the sole expression of such a policy, the Agency was barred from supporting any peaceful explosions incompatible with that instrument, even if carried out by a Member State not party to that Treaty (for example, France). With the adoption by the UN General Assembly of the Non-Proliferation Treaty, this issue has become confused, for not only does the new instrument seem to permit some explosions that the Test-Ban Treaty would prohibit (and vice versa), but it may actually place a direct duty on the Agency to promote peaceful explosion projects, the promise of which plainly constitutes part of the consideration that the non-nuclear-weapon States expect in return for the renunciation they are to undertake in becoming parties to the new Treaty. Plainly these difficulties are beyond the competence of the Agency to resolve, and it can only be hoped that the parties to these instruments will be able to eliminate the differences among them¹⁹² so that the United Nations policy in this respect might reflect a clear consensus to guide the Agency.

Turning to the Agency's Statute, there should be no difficulty whatsoever in accommodating the promotion of peaceful explosions under its provisions.¹⁹³ As already pointed out, Articles IX, X and XIII provide an adequate framework for the Agency to receive from those of its Members that are nuclear-weapon States, the special fissionable materials, the equipment and the assistance required to carry out such explosions.¹⁹⁴ Article XI, which is the principal subject of the present Chapter, is equally applicable: a Member¹⁹⁵ desiring assistance in carrying out a project involving peaceful nuclear explosions need merely make an application in the usual form under Article XI.A, perhaps indicating a preference as to the supplier of the explosive in accordance with Article XI.C, and admitting any necessary project examiners to the site of the proposed explosion in accordance with Article XI.D; the Board would then evaluate the proposed project pursuant

to Article XI.E (whose considerations are largely applicable), and the Secretariat would, aside from advising the Board, negotiate a Project Agreement conforming to Article XI.F; the latter might provide for the payment of charges based on a scale previously established by the Board pursuant to Article XIV.E.¹⁹⁶ Thereupon the Agency would make the necessary bilateral or trilateral Supply Agreement with the chosen supplier of the nuclear device - who would almost surely insist on also providing the ancillary equipment and services in carrying out the explosion. The Agency in turn would, under the Project and Supply Agreements, carry out necessary health and safety as well as safeguards controls.

The Secretariat will of course have to acquire some expertise to enable it to advise the Board adequately as to the feasibility, under given circumstances, of particular peaceful explosions that may be proposed by Member States. In this connection it should be noted that the list of potential uses is an ever-growing one: massive civil works constructions, such as the digging of channels, harbours or lakes; the release of gas or oil trapped underground in rock formations or at depths beyond the range of conventional extraction; underground or strip mining of various ores; the construction of underground caverns for the storage of liquids or gases; the trapping of the energy of an explosion as a long-term source of power; the production of new elements and the carrying out of experiments through the unique radiation intensities produced in an explosion. As of 1968, some of these applications have not yet been tested and must therefore be considered as entirely speculative.

Finally, with respect to its control functions (which are discussed in other Chapters¹⁹⁷ and may as a matter of fact be imposed even with respect to explosions not sponsored by the Agency), the Agency will face problems and questions that do not arise in connection with more conventional uses of nuclear energy. However, if it is to carry out its promotional functions in this new field, the Agency will also have to solve satisfactorily the special challenges of assuring that explosions are safe to life, property and the environment, and do not enable unauthorized persons to secure either fissionable materials or data useful in producing nuclear weapons.

17.6. CHARGES FOR ASSISTANCE FURNISHED

The first sentence of Article XIV.E of the Statute provides:

"The Board of Governors shall establish periodically a scale of charges, including reasonable [sic]¹⁹⁸ uniform storage and handling charges, for materials, services, equipment, and facilities furnished to members by the Agency."

It is further specified that the scale is to be designed to produce revenues which will enable the Agency to meet the costs it incurs in obtaining these items and in providing these services, insofar as voluntary contributions are not available for this purpose.

The assumption on which this provision is based is that the Agency would act as a "merchant" of nuclear materials and other items, i.e., that

it would make purchases in those States that could furnish such items and would resell them to those Members that required them for approved projects. The purchases would be made at whatever price could be agreed to with each supplier (if no donation can be elicited) – but the resale would take place at uniform non-discriminatory prices to all receivers, whether the Agency thereby gained or lost on particular transactions. These resale prices were to be set so as to enable the Agency to recoup its outlay for the purchase and its overhead in storing and handling the material (but not the administrative or safeguards costs incurred in connection with projects);¹⁹⁹ they could be reduced if sufficient voluntary contributions were received and applied to this purpose; though profit would not be aimed at, if any resulted its disposition is provided for in Statute Article XIV.F.

This scheme implicitly assumed that the principal Supplying States would permit the Agency a practical monopsony in purchasing from them and a consequent monopoly in reselling on the world market. Whether or not this was ever a realistic assumption, for the reasons indicated in Chapter 16 the Agency has yet to assume the role of merchant. Since the Agency has not been able to "go into the market" or otherwise to acquire stocks of material or equipment it can dispose of, the setting of scales of resale charges has become both impossible and unnecessary.

Before this situation had fully developed, the Board made one tentative attempt to obey the statutory injunction. In deciding on the price to charge Japan for the 3 tons of natural uranium Canada had donated to the Agency for the JRR-3 project, the Board considered that the simultaneously received Belgian offer of \$34.00 per kilogram²⁰⁰ sufficiently reflected the world market price (at which Canada had required the material to be resold) and that consequently the price to be charged to Japan should be that amount plus an arbitrarily set \$1.50 per kilogram for the "reasonable uniform storage and handling charges" – though in fact none were to be incurred by the Agency in that particular transaction.

In all later transactions the Agency has merely charged the Receiving State exactly the price charged by the supplier, and if the latter donated the material this bounty was passed directly to the receiver.

Only in connection with certain standard services performed in the Agency's Laboratory and the sale of standardized samples has it been possible to establish a scale of charges. However, this has never been done by the Board; instead, the Director General from time to time circulates a proposed list of charges, and since no objection has ever been received from any member of the Board, these prices are then imposed by the Agency.²⁰¹

17.7. REPORTS ON AGENCY PROJECTS

Statute Article VI.J requires the Board to include in its Annual Reports to the General Conference information on "any projects approved by the Agency". This is done, with respect to reactor projects, in the year in which these are approved and sometimes also when they are implemented. Up to now no complete list has been prepared, either of all projects or even merely

of those relating to reactors, nor is information gathered and reported on the actual work done at facilities assisted as Agency projects.

Article IX.G requires the Agency to report to Member States periodically on the delivery of nuclear materials at its request. This is now done annually by means of document INFCIRC/40.²⁰² This data makes it possible to establish a list of those Agency projects to which nuclear materials have been delivered or allocated.

Finally, pursuant to the General Conference's requests to the Board to include in its Annual Reports an account of the operation of the safeguards system,²⁰³ each such report contains a mention and lately also a list of those projects that are currently subject to safeguards controls.²⁰⁴

17.8. POTENTIAL AGENCY FUNCTIONS

The central location of Article XI in the Statute (and, coincidentally, of the present Chapter in this study) illustrates the focal position conceived for Agency projects in the statutory scheme. On the one hand, the allocation of nuclear materials and related items to such projects gives meaning to the Agency's functions as a recipient of such items; on the other, projects were meant to be the primary basis on which safeguards controls would be imposed within Member States and perhaps spread to their other significant nuclear activities; even the provisions of the Statute relating to the exchange of information as well as many of its fiscal rules relate to the project concept. All this elaborate mechanism was established in the expectation that Supplying States would assist the Agency in attaining a monopoly or at least a dominant position in the nuclear materials market – i.e., that they would delegate to it their individual power as suppliers of essential nuclear items in the hope of multiplying, through a cartel-like Agency administered by a supplier-biased Board, the power that each could exert by itself in competition with the others; however, such monopoly power was not to be abused so as to impose unjust commercial terms on the Receiving States, but would merely help assure that certain controls would be exercised in the general interest: primarily safeguards against the proliferation of nuclear weapons, and health and safety measures to reduce the possibility of nuclear disasters.

During the Agency's first decade, almost all the assumptions on which the project-orientation of its Statute were based proved to be, at least temporarily, invalid: the advent of cheap nuclear power was delayed; source materials were found in plentiful quantities and well distributed over the globe; in view of this market glut and of other pressures no supplier moved towards making the Agency its exclusive distributing agent. Now that the advent of practical nuclear power has drawn much closer and potential shortages of nuclear materials are again foreseen, the Non-Proliferation Treaty may lead to widespread if not yet universal Agency safeguards; but even this development, though stimulating to the organization, harbors dangers for the project approach since if controls against proliferation are no longer to be primarily an adjunct to Agency assistance, then Supplying States may be less concerned to use the Agency as their chosen instrument and instead make arrangements with Receiving States on a bilateral basis, as these will automatically be controlled by the Agency.

On the other hand, some new forces may now press in the direction of emphasizing Agency projects. The Receiving States, having largely reconciled themselves to accepting safeguards controls through the Agency, now plan to use the organization as an intermediary for securing nuclear assistance on favourable terms from the Supplying States - and this assistance is not to relate only to nuclear power and to radioisotopes, but also to peaceful nuclear explosions.

If projects had developed into the central and dominant activity foreseen by the Statute, the Agency would automatically have exercised a number of ancillary functions. To the extent that the Statute provides for these functions at all, it does so in the context of Article XI projects; nevertheless, it is conceivable that the Agency might come to perform some of these tasks on a separate basis. To what extent it will actually do so depends on a number of factors: the growth of the nuclear energy industry; the prestige of the organization; and its relations to certain other international organizations.

(a) Advisory services

Whether and when to acquire a nuclear power plant, the selection of the optimum reactor and its location on a safe site, all require difficult technical decisions; the securing of favourable commercial terms and reliable contractual assurances requires different but just as vital experience in international procurement.²⁰⁵ Many of these considerations will apply equally to the utilization of peaceful explosions. Few developing countries have enough expertise - none, by definition, have the requisite experience. It would therefore be natural if they turned to the Agency for the necessary impartial advice, whether or not they wish to obtain the principal assistance (the reactor, the nuclear fuel or the explosive device) for a particular project from or through the Agency.

The Agency could provide such advisory services on several bases. If it is expected that the proposal will ripen into a regular Agency project, then the Agency might even cover any preparatory expenses from its Administrative (Regular) Budget, as foreseen in the final clause of Statute Article XIV.B.1(a). On the other hand, the provision of the required advice might in itself be such a massive undertaking, particularly if in situ technical investigations of the feasibility of the project are required, that this work may by itself be considered as an Agency project: the provision of a "service" by or through the Agency, at the request of a Member State. Indeed the Agency has already received such requests which it has handled so as to straddle both possible approaches: on the one hand, the Director General has granted the assistance without always obtaining the Board's approval under Statute Article XI.E, suggesting that this amounted to mere project-preparation; on the other, regular mini-Project Agreements were concluded with the recipient States and these were required to bear the cost of the assistance received.²⁰⁶

Depending on the type of advice requested and on the volume of these applications, the Agency might either comply by assigning Secretariat officials (perhaps from a service strengthened or even separately established for this purpose), or by engaging consultants on an ad hoc basis, or by as-

sembling international advisory teams to be engaged directly by the States concerned.

As a start, the Agency has announced that it is prepared to offer its Members advice in several areas, in particular in relation to "radiation and waste management". In this connection it has even indicated the type of information that interested States are to supply with their requests.²⁰⁷

(b) Licensing

Nothing in the Statute explicitly authorizes the Agency to "license" peaceful nuclear activities in its Member States. However, if the Agency should attain at least a dominant position in the nuclear market, or were to become a gateway to international financing (see paragraph (d) below), the Board's decisions on approving proposed projects would indeed have the effect of licensing measures.

The explicit criteria the Agency should apply in playing such a role, whether expressly or implicitly, would be based on the considerations listed in Statute Article XI.E, which are in part similar to those used by national authorities. Aside from those relating especially to Agency projects (paragraphs 4-6), the rest concern reliability, utility (especially relevant if scarce resources or concessionary financing are to be used), and above all the safety of the operation for the persons immediately involved, for the general public and for the world community. In particular the Agency can and should give broader consideration than any small country can to cumulative environmental factors: the discharge of radioactive gases into the atmosphere; waste disposal in the ground or into rivers and seas;²⁰⁸ "heat pollution" of international waters; etc.²⁰⁹

The Agency might engage in another type of licensing activity with respect to nuclear ships. Since it is not practicable for the authorities of every port that such ships are to enter to assure themselves in advance of the safety of each vessel, and since on the other hand these authorities might be reluctant to rely entirely on the licensing procedures of the flag State, the Agency (perhaps together with IMCO) might issue internationally accepted safety certificates to nuclear ships.

(c) Allocation

Statute Article XI.E.5-6 foresees that the Agency might have to allocate scarce nuclear resources among its Members. This function can be exercised when the Agency acts as merchant (whether or not as a monopolistic one), but is scarcely applicable to the role of broker; ultimately, however, to do so at all is only sensible if it is a scarce resource that is to be distributed.

For the present, there are no immediate shortages of either source or special fissionable materials, or probably even of nuclear explosive devices. But it is foreseeable that this condition of relative plenty will change in time: already the ratio of proven uranium reserves to projected annual usage is no longer as disproportionate as it appeared some years ago; though plutonium is still being produced at a faster rate than it can be used in reactors, and it is indeed likely that this condition will be temporarily aggravated by the introduction of breeders, it is also possible that at some

point plutonium-burning reactors will be introduced at a faster rate than the readily available fissionable material allows.

It is in the light of these considerations that the Non-Proliferation Treaty calls for the benefits of nuclear energy and especially of nuclear explosions to be made available on a non-discriminatory basis.²¹⁰ A similar concern was expressed by the Conference of Non-Nuclear-Weapon States, and there too it was proposed that in such allocations a distinct bias be introduced in favour of the underdeveloped parts of the world²¹¹ – a bias already anticipated by Statute Article XI.E.6. If a general consensus as to a desirable pattern of allocations should be achieved, it would be logical to assign its administration to the Agency – not only in relation to the projects it sponsors and the nuclear materials made available to it, but also in relation to all peaceful activities that require foreign supplies.

(d) Financial channel

Significant nuclear projects, reactors as well as nuclear explosions, are costly – beyond the financial capabilities of all but a relatively few countries. It was therefore recognized in Statute Article XI.B that even though the Agency itself would not have the financial resources to underwrite projects (and would be prohibited from calling on its Members to do so on an allocated basis), it should try to assist these in securing financing from outside sources. The Conference of Non-Nuclear-Weapon States called on the Agency "to secure finances from international sources for the creation of a Special Nuclear Fund (SNF) to be made available in the form of (a) grants and (b) low-interest bearing loans, repayable over long periods of time" for financing Agency projects;²¹² it also called on the United Nations to establish, within UNDP, a "'Nuclear Technology Research and Development Programme' to be executed as a matter of priority with the co-operation of the ... Agency for the benefit of the developing countries";²¹³ finally it called on the World Bank to establish "for the benefit of the developing countries ... a 'Programme for the Use of Nuclear Energy in Economic Development Projects' ".²¹⁴

At the Twelfth General Conference Pakistan, with special reference to the CNNWS recommendation, proposed a draft resolution on "Financing of Nuclear Projects" which would have invited the Director General to study the possible creation of a Special Nuclear Fund.²¹⁵ The Conference merely decided to refer this matter to the Board,²¹⁶ which in turn asked the Director General "to explore urgently any possible sources of additional funds";²¹⁷ meanwhile the Agency also filed with the UN Secretary-General an extensive response to the CNNWS recommendation.²¹⁸ The Thirteenth General Conference thereupon adopted a Resolution requesting the Director General "to make a comprehensive study of the likely capital and foreign exchange requirements for nuclear projects in developing countries during the next decade", of the possible sources of financing these and of the "constructive role the Agency could play in this regard", and requesting the Board to review this study and to report thereon to the Fourteenth Conference.²¹⁹ This Resolution was also duly reported to the UN General Assembly,²²⁰ which recommended that the Agency and the various "international and regional financing institutions ... co-operate in finding ways and means for financing meritorious nuclear projects".²²¹

Though it appears highly unlikely that all these apparently overlapping CNNWS proposals will be implemented,²²² or even that any of them will be realized in the disjointed form proposed by the Conference, it is probable that sometime in the future certain of the major international financial agencies, primarily the World Bank but also eventually the Inter-American, the Asian and the African Development Banks,²²³ will decide to support promising nuclear projects; since all these institutions customarily investigate (from a technical as well as from an economic and fiscal point of view) the projects presented to them for financing, some of them might, as an alternative to developing direct expertise in this specialized field, use the Agency as their technical arm to stimulate and to appraise nuclear projects – and perhaps even require that the Agency's imprimature be given in the form of a Statute Article XI.E project approval. In effect, the Agency already performs a somewhat analogous role in respect of UNDP/Special Fund projects in the nuclear area.²²⁴ A lesser goal for the Agency would merely be to assist Member States in preparing requests to the appropriate financial institutions.²²⁵

NOTES

- 1 Note No. 8 (op. cit. Chapter 2, note 7), Section III.B: WLM Doc.2, Articles XII and XIII. A, B; IAEA/CS/3, Article XI.
- 2 Article XI.B was added by the Conference on the Statute. The provision originally proposed (IAEA/CS/Art.XI/Amend.1) did not contain the qualifying language quoted in the text, which was evidently added to allay concerns that the Agency (and thereby probably also its Members) would be burdened by an obligation to support expensive national projects (IAEA/CS/OR.23, para.46).
- 3 Statute Article XIV.E.
- 4 The Soviet representative at the Working Level Meeting had unsuccessfully proposed that the Statute provide for the allocation of nuclear materials to underdeveloped countries at low or no cost (WLM Doc.14 (Rev.1), para.3B).
- 5 See, however, some recent proposals reported in Section 17.8(d).
- 6 See especially Section 16.7.
- 7 This requirement too was added by the Conference on the Statute (IAEA/CS/Art.XI/Amend.4/Rev.1, para.1).
- 8 The only implementing provision regarding such "project examiners" appears in Sections 18(b) and 23 of the Agreement on the Privileges and Immunities of the Agency (INFCIRC/9/Rev.2), which in effect equates them to safeguards inspectors (Section 21.4.3.3).
- 9 This procedure was outlined by Ole Pedersen in "The Supply of Nuclear Materials Through the IAEA", Legal Series No.5, IAEA, Vienna (1969) 197-205. A still shorter sketch appears in GC(XIII)/409, paras.11-16.
- 10 An outline of the information required to process the usual research reactor project appears in Annex VI of the Publication "IAEA Services and Assistance" (GEN/PUB/12, Vienna 1966).
- 11 The Statute does not require a formal evaluation report, such as is provided for in Article III, Section 4(iii) of the Articles of Agreement of IBRD (2 U.N.T.S. 134); nor have the small projects so far supported by the Agency justified or elicited the comprehensive "President's Reports" used by the World Bank in presenting loan proposals to its Executive Directors for approval.
- 12 Such demands were indeed made during 1959 when the initial tentative requests were being received.
- 13 Section 17.8(b).
- 14 A distinction explained in Section 22.2.1.
- 15 Section 22.3.1.1.
- 16 It was the apparent contradiction between the criteria in Articles XI.E.2 and 4 concerning the ability of the requesting State to finance the project that led to the proposal in the Conference on the Statute to add Article XI.B (IAEA/CS/OR.23, p.46).

- 17 If any of the items required are to originate in the United States, it is sometimes indicated that the requesting State has no bilateral Cooperation Agreement with that Government under which the assistance could be furnished directly.
- 18 Section 17.8(c).
- 19 Though two amendments introduced at the Conference on the Statute, to state explicitly that such other matters must be consistent with the Statute (IAEA/CS/Art.XI/Amend.2, para.1; /Amend.4/Rev.1, para.2) were defeated (IAEA/CS/OR.27, pp.7-10; /OR.28, p.6), it is clear that such a restriction must be understood to exist implicitly.
- 20 The Agency's practice is not entirely clear as to exactly what constitutes the project: initially it was described as consisting of the facility to which the assistance is to be supplied (INFCIRC/3, Part II, Annex A); usually it is the establishment or operation of that facility (e.g., INFCIRC/34, Part II, Section 1; INFCIRC/37, Part III, Section 1); sometimes it is a particular operation or programme to be carried out at the facility (e.g., INFCIRC/29, Part II, Section 1); and sometimes it is the assistance itself or the process of supplying it (e.g., INFCIRC/116, Part II, Section 1 - a text formulated in the Board as a substitute for the usual formula that had been negotiated by the Director General). Still more vaguely, at least one Agreement defines the project merely as "relating" to a particular reactor (INFCIRC/106, Part II, Section 1), and one omits any definition (INFCIRC/115, cf. first and last pre-ambular paragraphs).
- 21 Sections 16.4.9 and 16.8. E.g., INFCIRC/32, Part II, Section 2.
- 22 For example, INFCIRC/32, Part II, Section 3.
- 23 *Idem*.
- 24 Section 16.5.1(b). INFCIRC/53, Part I, Section 3.
- 25 Section 16.5.1(a)(i)(A). INFCIRC/3, Parts I and II.
- 26 For example, INFCIRC/32, Part II, Section 4. Of course no such provision appears in a Title Transfer Agreement (Section 16.5.3(a)(iii)), as, e.g., INFCIRC/62, Part I.
- 27 Section 21.5.4.1. E.g., INFCIRC/32, Part II, Section 6.
- 28 For example, INFCIRC/34, Part II, Section 6 and Annex A.
- 29 For example, INFCIRC/62, Part II, Section 5.
- 30 Sections 21.5.4.7, 21.5.5.1 and 21.5.7.1. E.g., INFCIRC/24, Part II, Article V.2, and INFCIRC/32, Part II, Section 7.
- 31 Section 22.3.1.2. E.g., INFCIRC/32, Part II, Section 8 and Annex B.
- 32 Sections 21.5.4.10 and 22.3.1.2. E.g., INFCIRC/116, Part II, Sections 8 and 9.
- 33 Section 29.2.5. E.g., INFCIRC/116, Part II, Section 10.
- 34 Section 31.1.1.
- 35 Section 31.1.4. E.g., INFCIRC/32, Part II, Section 10. Only in the NORA Project Agreement, in which the Agency's participation is greater and involves the supply of personnel and advice in establishing the programme (Sections 17.2.2.4 and 19.3.2.1), was a different patent clause included - one which in effect precluded either party from obtaining any restrictive patents (INFCIRC/29, Part II, Section 20).
- 36 Section 31.1.1.
- 37 For example, INFCIRC/37, Part II, Section 9.
- 38 Section 33.5. E.g., INFCIRC/116, Part II, Section 13.
- 39 Section 27.1.3.
- 40 Section 27.2.2.1. E.g., INFCIRC/29, Part II, Section 24.
- 41 Section 27.2.2.2.3. E.g., INFCIRC/116, Part II, Section 14.
- 42 Sections 21.5.4.13 and 27.2.2.2.1. E.g., INFCIRC/116, Part II, Section 15.
- 43 Sections 26.5.2.2-3. E.g., INFCIRC/32, Part II, Section 13; see also reservations attached to the Norwegian signature of the NORA Project Agreement, INFCIRC/29, Part II.
- 44 For some reason this precaution was not followed in signing the Agreements relating to the Iranian UTRR project (Section 17.2.2.14) as a result of which the Project Agreement (INFCIRC/97, Part II) entered into force a month before the Supply Agreement (*ibid.*, Part I), even though the preambles to both recite their alleged simultaneous entry into force.
- 45 Section 21.5.4.14. For a Project Agreement relating to a lease of nuclear fuel, see INFCIRC/29, Part II, Section 27.
- 46 Sections 6.3.1 and 13.3.2.
- 47 Decisions taken by the Board in June 1967 in relation to the Viet-Nameese VNR-1 and Spanish Coral-1 projects (Sections 17.2.2.15 and 17.2.2.17). By June 1969, the Board permitted the Director General

- to adopt, in relation to the Argentine SUR-100 project (Section 17.2.2.20), a quite differently conceived agreement.
- 48 Sections 17.3 and 17.4.
- 49 For example, INFCIRC/32, Part I, Sections 3(e), 4 and 5; Part II, Section 2.
- 50 For example, INFCIRC/32, Part I, Section 3(b).
- 51 In relation to the natural uranium supplied for the JRR-3 project (Section 17.2.2.1).
- 52 For example, INFCIRC/34, Part I, Section 3(e), and Part II, Annex B, para.3 (Section 17.2.2.7).
- 53 For example, INFCIRC/32/Add.1. The Director General's submission to the Board of this minor change in the method of supplying some of the nuclear material from the United States for the Yugoslav Triga reactor (Section 17.2.2.5) was criticized as being allegedly symptomatic of the restrictive effect of safeguards provisions; actually the need for this formality resulted from the precise American laws relating to the export of fissionable materials.
- 54 Section 17.2.2.2.
- 55 Section 17.2.2.4.
- 56 Section 17.2.2.8.
- 57 For example, INFCIRC/62/Add.1, Section 6.
- 58 One lesson learned was that the ad hoc formulation of the safeguards provisions of Project Agreements is an unsatisfactory procedure, leading to lengthy negotiations even in relation to minor projects; as a direct consequence, the Secretariat was instructed to prepare the first draft of a general safeguards document (Section 21.4.1.1.1).
- 59 GC(II)/OR.17, paras. 5-10.
- 60 Described in Section 16.5.1(a)(1)(A). The Agency had not yet reconciled itself to the role of broker and in this transaction still pretended to act as merchant.
- 61 INFCIRC/3, Part II.
- 62 Ibid., Article I. A somewhat similar provision appears in the Project Agreement relating to the Pakistani KANUPP reactor (INFCIRC/116, Part II, Section 3).
- 63 This general "blank cheque" clause was used just once more, in the Finnish FIR-1 Project Agreement (INFCIRC/24, Part II, Article V.2; infra Section 17.2.2.2), though there it only applied to safeguards. Only in a far more limited form (i.e., restricted to new provisions that might become necessary by changes in a project) has it appeared in many later Project Agreements (e.g., INFCIRC/34, Part II, Section 7). These clauses are analysed in Sections 21.5.4.7 and 21.5.7.1.
- 64 INFCIRC/3, pp.12-15.
- 65 Section 21.6.2.3.1; INFCIRC/26, para.32(a)(i), INFCIRC/3/Mod.2, Part I.
- 66 Section 22.3.1. INFCIRC/18, para.18(b), INFCIRC/3/Mod.2, Part II.
- 67 INFCIRC/24, Part I.
- 68 Section 16.5.1(a)(ii). INFCIRC/24, Part II.
- 69 INFCIRC/24/Add.1.
- 70 Section 21.6.
- 71 501 U.N.T.S. 213; IAEA Treaty Registration No.210.
- 72 INFCIRC/24/Add.2 and 3.
- 73 For example, INFCIRC/24/Add.2, Section 8.
- 74 INFCIRC/24/Add.4.
- 75 INFCIRC/53, Part I.
- 76 Idem, Section 7.
- 77 Idem, Section 13.
- 78 Section 19.3.2.1.
- 79 Section 19.2.2.2.
- 80 Section 18.3.4.
- 81 Section 11.2.1.
- 82 Section 16.5.3(a)(ii); INFCIRC/29, Part I.
- 83 INFCIRC/29, Part II.
- 84 INFCIRC/29, Add.1.
- 85 INFCIRC/29/Add.2, Part I.
- 86 Ibid., Part II.
- 87 Ibid., Part III.
- 88 Section 19.3.2.2; INFCIRC/55.

- 89 INFCIRC/29/Add.3.
- 90 INFCIRC/32, Part II.
- 91 INFCIRC/32, Part I.
- 92 INFCIRC/32/Add.1.
- 93 INFCIRC/32/Add.2.
- 94 This request was a result of the Vinča Dosimetry Experiment (Section 19.1.4).
- 95 GC (VI)/195, para.55.
- 96 INFCIRC/34, Part I, Section 3(e), and Part II, Annex B, para.3.
- 97 INFCIRC/34/Add.1.
- 98 235 U.N.T.S. 133, Article XI.C.
- 99 42 U.S.C. Secs. 2074 (first clause) and 2153(a)(4).
- 100 INFCIRC/37, Part I.
- 101 *Ibid.*, Part II.
- 102 *Ibid.*, Part III.
- 103 Pursuant to the Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities (INFCIRC/13, Part I, para.2; Section 16.8).
- 104 INFCIRC/37/Add.1.
- 105 INFCIRC/5, Part III, Section 16.4.9.
- 106 INFCIRC/37/Add.2.
- 107 INFCIRC/52.
- 108 INFCIRC/118, Section 29, Section 21.3.2.2.
- 109 INFCIRC/82, Part I, and INFCIRC/102, Part I.
- 110 *Idem*, Articles I-VII.
- 111 *Idem*, Articles VIII-IX, Section 16.7.
- 112 INFCIRC/82, Part II, and INFCIRC/102, Part II.
- 113 INFCIRC/66/Rev.2, para.21.
- 114 Section 16.7.
- 115 INFCIRC/62, Part I.
- 116 INFCIRC/62, Part II.
- 117 INFCIRC/79.
- 118 INFCIRC/62/Add.1.
- 119 INFCIRC/67, Part I, respectively Sections 1, 2, 32 and 20. It was thought that the latter option might be useful if the United States donated only part of the material, in which case Uruguay might wish to buy the balance. In the event, all the material was donated, whereby the complicated lease arrangements were automatically terminated.
- 120 *Idem*, Sections 25-26 and 30-32.
- 121 INFCIRC/67, Part II.
- 122 Section 21.5.5.5.
- 123 INFCIRC/88, Part I.
- 124 INFCIRC/88/Add.1.
- 125 INFCIRC/88, Part II.
- 126 Originally as in INFCIRC/69, replaced by text set forth in INFCIRC/120.
- 127 INFCIRC/97, Parts I and II.
- 128 INFCIRC/108.
- 129 INFCIRC/106.
- 130 INFCIRC/115.
- 131 INFCIRC/99, Parts I and II.
- 132 Following the precedent established with respect to the Japanese JRR-3 reactor (Section 17.2.2.1; INFCIRC/3/Mod.2, Parts I and II).
- 133 INFCIRC/116, Part I.
- 134 *Idem*, Section 3(a).
- 135 Section 17.2.2.5; INFCIRC/32/Add.1.
- 136 INFCIRC/116, Part II.
- 137 *Idem*, Section 1. This formulation was adopted as the result of an amendment proposed in the Board, in one of the rare instances when that body has changed the text of a negotiated agreement submitted to it.

- 138 *Idem*, Section 3.
- 139 INFCIRC/18, para. 18(b). Section 22.3.1.1.
- 140 Section 17.2.2.16.
- 141 Section 17.2.2.16; INFCIRC/88, Part II.
- 141A INFCIRC/137 and /Corr.1.
- 142 Section 17.2.2.17; INFCIRC/99, Parts I and II.
- 143 Section 17.2.2.13.
- 143A INFCIRC/136.
- 144 Section 17.2.2.14; INFCIRC/97, Parts I and II.
- 145 INFCIRC/26, para. 32(b). Section 21.6.2.3.1.
- 146 INFCIRC/83, Annex A, Section 26.3.3.
- 147 For the text as concluded with the Government of Turkey, see INFCIRC/83, Part I.
- 148 For example, INFCIRC/83, Part II; also INFCIRC/95, Part II, and INFCIRC/95/Add.1, Parts I and II.
- 149 INFCIRC/83, Part I, Section 2.
- 150 See Section 16.5.1(a)(i)(B).
- 151 GC(XIII)/404, para. 72. The Director General was required to keep the Board informed of his exercise of this authority, which he has proceeded to do by means of his periodic reports (Section 32.1.1).
- 152 The Director General cited the Master Agreement concluded with India, INFCIRC/94, Part I.
- 153 The sample Safeguards Submission Agreement cited was that concluded with Romania, INFCIRC/117.
- 154 GC(VI)/COM.1/67/Rev.1.
- 155 GC(VI)/RES/131.
- 156 It was suggested that the proponents wished to confirm the then all too prevalent image of the "International Radioisotope Agency", and distract it from its awkward concerns with matters like safeguards.
- 157 Section 18.3.3.
- 158 GC(VII)/RES/152.
- 159 GC(VII)/INF/67; GC(VIII)/INF/76; INFCIRC/61, Annex III; GC(IX)/299, Annex V, Part A.
- 160 GC(IX)/299, Annex V, para.4; GC(X)/330, Annex V, para.1; GC(XI)/355, Annex III, para.2. Scheinman, *op. cit.*, Annex 5, No.54, at p.29, gives a short account of the competition between Algeria and Morocco (won by the former) for a cobalt teletherapy unit offered by Czechoslovakia.
- 161 For example, INFCIRC/74, Article III.
- 162 *Idem*, Article II.
- 163 Article III.A.3 specifically mentions "the production of electric power".
- 164 Section 15.1.2.1(e).
- 165 GC(VIII)/OR.90, para.68.
- 166 480 U.N.T.S. 43, Article I.1(b). The accommodation of peaceful explosions to this Treaty is discussed in UN doc. A/CONF.35/DOC.3, part 1.1 (prepared for the CNNWS).
- 167 Article 18(1), (*op. cit.*, Chapter 15, note 61). The accommodation of peaceful explosions to this Treaty is discussed in UN doc. A/CONF.35/DOC.3, part 1.2.
- 168 *Idem*, Article 13; see also Article 12(2)(c).
- 169 *Idem*, Article 18(2), (8).
- 170 UNGA/RES/2373 (XXII), Annex, or INFCIRC/140, Articles II and III.1, 4.
- 171 *Idem*, Article V.
- 172 CNNWS Resolution H.IV, reproduced in UN doc. A/7277, para.17. A more drastic proposal, calling on the UN General Assembly to convene "a special conference to consider the establishment within the framework of the International Atomic Energy Agency of an International Service for Nuclear Explosions for Peaceful Purposes . . .", was reported out by Committee II of the Conference (A/7277, Annex V, para.15, draft resolution G), failed of adoption in the Plenary, but was later reflected in UNGA/RES/2456(XXIII), para.C.1.
- 173 Proposals by Italy (UN doc. A/CONF.35/C.2/2) and by Mexico (A/CONF.35/DOC.15).
- 174 GC(XII)/OR.119, para.52.
- 175 GC(XII)/RES/245.
- 176 UNGA/RES/2457(XXIII), paras. 2-3.
- 177 UNGA/RES/2456(XXIII), Part C.
- 178 Under cover of Circular Letter O/452-6 of 13 March 1969.
- 179 GC(XIII)/410, reproduced in UN doc. A/7678, part III.
- 180 GC(XIII)/410, para.3. See also GC(XIII)/411, for the reason for the Mexican disagreement with this position, which is explained in the following paragraph of the text.

- 181 GC(XIII)/411, part of which also appears in UN doc. A/7678, part II.
- 182 GC(XIII)/425.
- 183 GC(XIII)/RES/258.
- 184 INFCIRC/134, paras. 2-4 and Annex; UN doc. A/7678/Add.2.
- 185 GC(XIII)/INF/110, paras. 66-72, reproduced in UN doc. A/7677, Annex.
- 186 UN doc. A/7568, para.231.
- 187 UN doc. A/7678.
- 188 *Idem*, part II; these comments, though in large part similar to those that had been submitted to the Agency, had been addressed directly to the Secretary-General; later these were augmented by five additional responses(UN docs. A/7678/Add.1 and /Add.3). In part these comments related also to the potential role of the Agency in carrying out the "appropriate international observations" of peaceful nuclear explosions that are also called for by Article V of NPT (Sections 21.13 and 22.3.2.5).
- 189 UN doc. A/7678, part I, para.17.
- 190 UNGA/RES/2605.B (XXIV).
- 191 Section 15.1.2.3.
- 192 A proposal to this end is the subject of Resolution L of the Conference of Non-Nuclear-Weapon States (UN doc. A/7277, para.17).
- 193 GC(XIII)/410, paras. 4-5, 13(a).
- 194 Section 16.8 (final paragraph).
- 195 A slight difficulty might arise here, since assistance under Statute Article XI is restricted to Members of the Agency (Section 13.3.1), while under Article V of the Non-Proliferation Treaty any non-nuclear-weapon State party to that instrument should be entitled to impartial aid in benefiting from peaceful explosions.
- 196 Section 17.6.
- 197 Sections 21.13 and 22.3.2.5
- 198 The English text is confusing: it could mean "reasonably uniform ... charges" or "reasonable, uniform ... charges". The French and Spanish texts make it clear that the latter is meant, i.e., that the charges must be reasonable and uniform.
- 199 These are to be covered by the Administrative(Regular) Budget, in accordance with Statute Article XIV, B.1(b); Sections 25.2.1 and 25.2.4.1.
- 200 Section 16.6.
- 201 Section 25.7.2.
- 202 Section 32.2.2.
- 203 For example, GC(IV)/RES/71, para.4.
- 204 For example, GC(XII)/380, para.115 and Table 18.
- 205 C. Northcote Parkinson, *Parkinson's Law and Other Studies in Administration* (1957), Chapter 3.
- 206 For example, the agreements with Switzerland (concluded by means of exchanges of letters on 13 and 26 June 1959 and on 26 October and 4 November 1959 - IAEA Treaty Registration Nos. 22 and 30) for assistance in evaluating the health and safety hazards of, respectively, the "research and material-testing reactor (DIORIT) at Wuerenlingen" and the SUISATOM, KONSORTIUM and ENUSA power reactors"; also the agreement with Finland (exchange of letters on 29 February and 5 March 1960 - IAEA Registration No.35) for the participation of the Agency in studies on the application of nuclear power in Finland.
- 207 IAEA Services and Assistance (GEN/PUB/12, Vienna 1966), Part IV, E.1 and Annex IV.
- 208 A responsibility already proposed for the Agency by the 1958 UN Conference on the Law of the Sea (Section 23.3.)
- 209 Arrigo Massera gives a brief account of the "Technical Basis of Reactor Licensing" in Legal Series No.5, IAEA, Vienna (1969) 183-186.
- 210 UNGA/RES/2373(XXII), Annex, Articles IV and V.
- 211 UN doc. A/7277, para.17, Resolutions H.III and J (preamble and parts A.1 and B.1).
- 212 *Ibid.*, Resolution I.
- 213 *Ibid.*, Resolution J.A.1.
- 214 *Ibid.*, Resolution J.A.2.
- 215 GC(XII)/COM.1/108.
- 216 GC(XII)/396, para.8; GC(XII)/DEC/10.
- 217 GC(XIII)/404, para.16.

- 218 GC(XIII)/INF/110, paras. 73-107.
- 219 GC(XIII)/RES/256, adopted on the basis of a PT&B Committee report, GC(XIII)/423, para.4.
- 220 INFCIRC/134, Annex.
- 221 UNGA/RES/2605.A (XXIV), para.4.
- 222 For the negative responses of the World Bank and UNDP to the CNNWS recommendations, see UN docs. A/7327 and A/7364. But, in spite of these, the UN Secretary-General's Report on "Contributions of Nuclear Technology to the Economic and Scientific Advancement of the Developing Countries", UN doc. A/7568, suggests that both these institutions should play a greater role in this field (paras. 244-247, 260:UNDP; paras. 254-256, 262:World Bank).
- 223 Ibid., para.256.
- 224 Section 18.2.4.
- 225 As suggested in the Secretary-General's Report, op. cit. supra note 222, para.257.

CHAPTER 18. TECHNICAL ASSISTANCE

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III. A.1-4, III. B.3, XI, XIV. B.2, XIV. E-F
Relationship Agreement with the United Nations (INFCIRC/11, Part I), Article XV
Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency (GC(IV)/RES/65, Annex; GEN/PUB/12, Annex II)
UN Resolutions on technical assistance (principally, ECOSOC/RES/222.A (IX) (establishing EPTA); ECOSOC/RES/704 (XXVI) (participation of IAEA in EPTA); UNGA/RES/2029 (XX) (merger of EPTA and Special Fund); ECOSOC/RES/1250 (XLIII) and UNGA/RES/2279 (XXII) (new programming procedure))
Resolutions and decisions relating to the provision of equipment for technical assistance projects (GS(IV)/RES/64; Board decision of 25 February 1964; GC(XI)/RES/230, para.1)
Executing Agency Agreement with the Special Fund (INFCIRC/33)
Preliminary Rules to Govern the Award of Scholarships and Fellowships by the Agency (approved by Board on 11 March 1958), and resolutions and decisions relating to the fellowship programme (approved by Board on 17 June 1963)
Criteria for the Examination of Requests for the Provision of Technical Assistance in Scientific Documentation (GC(VIII)/INF/72, Annex II)
EPTA Revised Standard Agreements (e.g., with Uganda, 466 U.N.T.S. 346)
Agreements extending EPTA Revised Standard Agreement to the IAEA (e.g., with Israel, 496 U.N.T.S. 356)
Supplementary Agreements for the Provision of Technical Assistance by the IAEA (e.g., with India, 19 October 1964)
Letters of Agreement for the Purpose of the Operation of the Mobile Radioisotope Laboratory (e.g., with China, 29 August 1960)
Administrative Manual, Parts AM.I/7 (Appendix F), AM.IX/2-4
Provisional Staff Regulations and Staff Rules Governing the Conditions of Service of Technical Co-operation Experts (3 May 1965)

During the Agency's first decade, its principal function and that of greatest interest to most of its Members, was the supply of technical assistance. As that expression is used in this study, technical assistance refers to a range of activities and programmes whose general characteristics are:

- (a) They are designed to transfer knowledge from the developed States to those less developed;
- (b) Since most of the under-developed¹ States are poor, the assistance is generally supplied free of at least foreign currency costs.

18.1 LEGAL INSTRUMENTS

18.1.1. The Statute

18.1.1.1. Authority

The founders of the Agency did not initially foresee technical assistance as one of the principal functions of the organization they were planning. However, as the group of States involved in the drafting of the Statute was

widened, first in the Working Level Meeting and then in the Conference on the Statute, it became obvious that at least in the early years the provision of technical assistance would be of greater interest to most prospective Members than the supply of fuel for reactor projects or the safeguards and the health and safety functions.

It is therefore noteworthy that the expression "technical assistance" does not appear in the Statute, especially since at the time of its formulation this term had already gained currency and was well accepted within the UN system.

For want of a more explicit statutory directive, the Agency's technical assistance programmes have been based on Articles III. A. 1-4 and III. B. 3 of the Statute. Articles III. A. 3 and 4 in particular authorize the Agency to foster the exchange of scientific and technical information and to encourage the exchange and training of scientists and experts — these being classical technical assistance activities. This reliance solely on the general provisions of Article III implies that that Article is broader in scope than Articles VIII-XII, which spell out how certain principal functions are to be carried out.

The Preparatory Commission had no doubt that the Agency had statutory authority to supply technical assistance, and included a number of proposals and recommendations relating to that function in its Report on the Initial Programme and Budget of the Agency.² In particular the Commission urged the Agency to undertake, already during its initial year, a limited fellowship programme to be financed from voluntary contributions.³

18.1.1.2. Procedures

Having found statutory authority to conduct a technical assistance programme, it is still necessary to determine whether the Statute contains any binding procedural requirements governing this activity. The only provision that appears to be directly applicable is Article XI ("Agency Projects"); though plainly designed primarily with a view to the supply of fuel to reactors and other nuclear facilities, its wording is broad enough to permit its application to all types of assistance granted by the Agency at the request of its Members.

In spite of the apparent feasibility of applying Article XI to technical assistance, and of the absence of any other relevant statutory standards, both the Secretariat and the Board have from the very beginning doubted whether it is necessary, convenient or even possible to apply all the requirements of Article XI to all types of technical assistance, in particular to that granted from EPTA and Special Fund (now UNDP⁴) resources. This question has never been explicitly resolved. In general, every attempt has been made to conform technical assistance activities as closely as possible to Article XI, in order to avoid any direct confrontation with this issue and thereby reaching either a positive or a negative decision. A comparison of the obligatory provisions of Article XI with the technical assistance practices described in the Sections below, yields the following picture:

(a) Requests

Article XI.A requires that each project be initiated by a governmental request addressed to the Agency. Every technical assistance activity is indeed based on an official request, but in the case of UNDP/TA and UNDP/SF projects this request is addressed not to the Agency but to the Administrator of that Programme.⁵

(b) States eligible

Article XI.A also requires that project requests originate with one or more Members of the Agency. While assistance under the Agency's Regular Programme⁶ is granted only to Members (though certain special missions have also visited non-Members⁷), the Agency has also administered UNDP projects in favour of non-Member States.

(c) Source of financing

Article XI, and in particular its paragraph B, foresees that the required assistance should be financed either by the requesting State itself or from some external source — but not by the Agency. Excepting expenditures for items or services that can be procured locally technical assistance is typically not financed by the assisted State: UNDP projects are clearly financed externally, and this procedure might be said to be covered by the first sentence of Article XI.B; but assistance under the Agency's Regular Programme is largely financed from the Agency's Operating Fund II, though it might be argued that, since these resources are obtained from voluntary contributions made primarily with a view to maintaining the technical assistance programme, the Agency only serves as channel for the flow of the resources of the donating countries into approved projects. In the early years of the Agency, when Preliminary Assistance Missions were dispatched to Member States to identify projects that might be suitable for technical assistance, their costs were considered as "administrative" on the ground that their purpose was to prepare "Agency projects", a function covered by Statute Article XIV.B.1(a).

(d) Examination by the Board

Article XI.E appears to require the Board itself to examine all requests made pursuant to Article XI.A — though it can be argued that the charge is not sufficiently specific to exclude all possibility of delegation, in particular with respect to minor projects and subject to strict guidelines. The Board in fact examines all expert and equipment projects in the Regular Programme and also proposals to dispatch Preliminary Assistance and other large Missions. However, the Board does not itself consider any fellowship grants (even under the Regular Programme) or the dispatch of smaller missions, having in effect delegated the power of examination and approval to the Director General. Nor does the Board

examine any UNDP projects, though here the Board's power and duty to approve (assuming Article XI to be applicable) are delegated to the Governing Council of that Programme.

(e) Standards of examination

Article XI.E.1-7 specifies the objective criteria according to which Article XI projects are to be examined. However, on the one hand these are so vague and general, and on the other they were designed with a view to major nuclear fuel projects,⁸ that it is difficult to determine to what extent these considerations are applicable and actually applied to the evaluation of technical assistance requests.

(f) Agreements

Article XI.F requires the Agency to conclude a Project Agreement with respect to every approved project. As explained in Section 18.1.5, a technical assistance agreement fulfilling all the essential and relevant requirements of Article XI.F.1-7 is indeed concluded with respect to every project for the provision of experts and equipment (whether under the Agency's regular programme or UNDP), as well as for every training course or use of either Mobile Radioisotope Laboratory.⁹ No formal agreements are concluded with respect to the grant of fellowships or the dispatch of missions, but before any such grant is implemented the Secretariat ascertains that the requesting Governments will comply with certain relevant conditions (e.g., the re-employment of fellowship holders).¹⁰

(g) Safeguards, and health and safety measures

Article XI.F.4 requires that Project Agreements provide for the subjection of the project to safeguards (including also health and safety measures). The Agency's technical assistance agreements indeed always contain the minimal health and safety provisions that are necessary. A commitment against any military use of the assistance is also exacted, but the application of safeguards measures has never yet been found relevant to any technical assistance project.

In general it might be concluded that expert and equipment projects under the Agency's Regular Programme have generally been treated as falling under Article XI of the Statute; the same can be said of most other types of Regular Programme activities, if it is accepted that the Board is authorized to delegate to the Director General, subject to specified conditions and limitations, its power to examine and approve projects. As a matter of fact, it is not possible to establish a strict dividing line between these projects and those discussed in Chapter 17; generally speaking, projects involving the supply of substantial quantities of nuclear materials and/or which involve substantial payments by the Receiving State fall into the latter

category — while those that largely consist of the grant of fellowships or the supply of experts free of charge are usually classified as technical assistance.

It is somewhat more difficult to characterize UNDP projects as falling under Article XI, for it is necessary to explain away three negative indicia: the requests relating to the projects are not addressed to the Agency but to UNDP, which, after approving them, assign their execution to the Agency (of course with the latter's consent); the projects may assist States that are not Members of the Agency; finally, the power to approve projects is not exercised by the Board or by any organ of the Agency to which it might delegate such authority, but rests with the competent organs of UNDP.

18.1.2. Technical assistance rules

18.1.2.1. Development of the Guiding Principles

During the Agency's first two years, technical assistance projects were considered and approved by the Board on an ad hoc basis. As operations expanded a more ordered solution had to be found and in September 1959 the Board adopted, with respect to the 1960 programme, the Interim Principles to Govern the Provision of Experts, Equipment and Supplies for Technical Assistance Projects. These Principles were communicated to the General Conference¹¹ which, on the recommendation of its Administrative and Legal Committee,¹² passed a Resolution noting them and requesting the Board to establish more permanent rules, in which account should be taken of a number of points specified by the Conference.¹³

After extensive consideration during 1960 of a series of drafts proposed by the Director General, the Board approved the Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency. The principal controversial issues faced by the Board in the formulation of these principles were:

- (a) The Board's function in connection with the approval of EPTA projects — which was finally resolved by delegating to the Director General as much of the power of decision regarding these projects as was retained by the Agency under EPTA rules and procedures;¹⁴
- (b) The extent to which equipment and supplies were to be provided as part of technical assistance projects within the Agency's Regular Programme — which was resolved by deciding to rely largely on EPTA practice, but "bearing in mind the special character of the Agency's operations" and the consequent need for the flexible application of any formal rules.¹⁵

These Guiding Principles were reported to the Fourth General Conference,¹⁶ pursuant to the request made at the third session. They were extensively discussed in the Administrative and Legal Committee of the Conference,¹⁷ where controversy focused on the equipment issue. Finally the Committee agreed that the Conference should note the Principles but at the same time request the Board:

"to give special and sympathetic attention to providing, in the framework of technical assistance projects, equipment to those States which desire it."

The Plenary adopted both of the Resolutions recommended to it.¹⁸

The Guiding Principles have not been changed since their adoption. In February 1964, and again in 1966 and 1967, the Board considered whether to revise them, but agreed that no changes were required. In doing so in 1964 it again emphasized the need for interpreting as flexibly (i.e., as liberally) as possible the limitation on the provision of equipment and supplies.

18.1.2.2. Scope and provisions of the Guiding Principles

The Guiding Principles are designed to relate generally to all types of technical assistance provided by the Agency, whether financed from its own resources or from EPTA. However, most of the specific provisions are not relevant to Special Fund projects, nor to fellowships from whatever source these may be financed.¹⁹ The Principles cover the following subjects:

- (a) The application by the Agency to its technical assistance activities of the EPTA principles and criteria,²⁰ to the extent these are in accord with the Statute.
- (b) A definition of the eligibility of States to receive assistance, in which a difference is established between that provided from Agency resources (only to Member States, whether or not "under-developed") and that from EPTA (to any "economically under-developed" member of the United Nations or any specialized agency).
- (c) The requirement to provide all technical assistance on the basis of an agreement between the Agency and the Receiving State, concluded along the lines of the EPTA Revised Standard Agreement.
- (d) The co-ordination of technical assistance activities with the United Nations and the specialized agencies.
- (e) In providing equipment and supplies from its own resources the Agency is to follow EPTA principles, but should bear in mind the special character of the Agency's operations.
- (f) Separate sets of operating rules are provided with respect to the regular programme and EPTA financed projects, covering the procedures for the:
 - (i) Elaboration of the programme;
 - (ii) Approval of programme changes;
 - (iii) Execution of projects expected to extend over several years;
 - (iv) Planning time tables.
- (g) A general annual review of all the Agency's technical assistance activities, to be conducted by the Board on the basis of reports submitted by the Director General.

18.1.2.3. Other rules

In addition to the Guiding Principles, the Board or the Director General have adopted special provisions relating to the granting of fellowships, to the use of the Mobile Radioisotope Laboratories, and to the examination of requests for documentation projects; these are discussed in Sections 18.3.3, 18.3.4 and 18.3.6. UNDP/TA and UNDP/SF rules apply to the financing of projects from that Programme; the former are of course also incorporated by reference into the Guiding Principles.

18.1.3. Participation in EPTA

18.1.3.1. Controversy concerning participation

Even though the UN's Expanded Programme of Technical Assistance became one of the principal pillars of the Agency's technical assistance programme, the question of the Agency's participation in EPTA was neither politically obvious nor legally uncomplicated. In fact, the decision to join EPTA was one of the most seriously controverted questions before and during the initial year of the Agency's operation. The following points were advanced:

(a) Advantages cited:

- (i) The Agency would receive funds through EPTA to supplement its own technical assistance resources.
- (ii) The organs of EPTA, in particular the Technical Assistance Board (TAB) and its Secretariat would assist the Agency in co-ordinating its technical assistance activities with those of the other participating organizations, in accordance with its obligation under Article XV of the UN Relationship Agreement.²¹
- (iii) The Agency would benefit from the accumulated administrative experience of the other organizations.
- (iv) The Agency would be able to make use of EPTA's field service — in particular of the TAB resident representatives.

(b) Objections raised:

- (i) Participation in EPTA and membership in TAB would undesirably assimilate the Agency to the specialized agencies — with the consequent devaluation of its special status in the UN system.²²
- (ii) Since the allocations of EPTA's resources were ultimately decided by the Technical Assistance Committee (TAC), an ECOSOC Committee with which the specialized agencies had much better established relations than the Agency, the latter's interests would not be sufficiently secure.
- (iii) The Agency's programme would lose its identity by merger into or even by mere association with EPTA.
- (iv) Member States would reduce their voluntary contributions to the Agency if it also administered funds contributed by the same States for EPTA.
- (v) The Agency could, in any case, secure only a modest share of EPTA funds, in view of the positions established since 1950 by the other participating organizations, and in view of the likelihood that Governments would initially direct only a small share of their requests to the new types of projects which the Agency could administer.

18.1.3.2. Accomplishment

The Agency's participation in EPTA was first debated in the Preparatory Commission in connection with the formulation of the UN Relationship Agree-

ment.²³ The formula that was ultimately adopted was a compromise designed to leave the question of participation open for decision by the organs of the Agency: it was merely provided that the United Nations and the Agency would "take such action as may be necessary to achieve effective co-ordination of their technical assistance activities within the framework of existing co-ordination machinery. . . ." and the Agency agreed "to give consideration to the common use of available services as far as practicable";²⁴ EPTA was not named explicitly. Only in its Report on the Initial Programme did the Preparatory Commission go so far as to say that "the Agency may also consider the desirability of seeking participation in [EPTA]".²⁵

During the debate on the approval of the Relationship Agreement at the first special session of the General Conference, a Resolution was proposed in the Administrative and Legal Committee by which the Conference would recommend to the Board an examination of the desirability of applying for membership in UNTAB.²⁶ This Resolution was accepted by the Committee unanimously²⁷ and approved by the Plenary²⁸ on the understanding, stated by several representatives, that such an examination would not imply a commitment to participate in EPTA.²⁹

After authorizing the Director General to make a cautious and non-committal approach to the TAB Secretariat and after lengthy discussion of his consequent reports, the first Board finally decided to recommend to the General Conference that the Agency should participate in EPTA.³⁰ This proposal was welcomed by ECOSOC, which unanimously expressed the hope that the General Conference would approve this recommendation.³¹ The General Conference, which of course did not share one of the Board's concerns about participation (the minimal influence that the Board would be able to exercise on the approval of EPTA projects), followed the reluctant recommendation of the Board and the more positive one of ECOSOC and decided that the Agency should seek to participate in EPTA.³²

After the Agency's decision was communicated to the United Nations it was still necessary for ECOSOC to amend the Resolution by which it had established EPTA in 1949, since that only provided for the participation of the United Nations and of the specialized agencies.³³ ECOSOC therefore approved an amendment opening EPTA to full participation by the Agency,³⁴ a step later explicitly welcomed by the UN General Assembly.³⁵

Though the Agency was consulted and the Director General gave certain comments on the proposal to merge EPTA and the Special Fund to form the United Nations Development Programme, when that merger was accomplished by the General Assembly no formal action was taken by the Agency to signify its assent to the revised arrangements. Its participation in the UNDP Inter-Agency Consultative Board is thus based merely on the General Assembly resolution establishing that organ,³⁶ and on the Agency's implied agreement indicated through its representation at the meetings of the new body.

18.1.3.3. Source of authority

The Agency's participation in EPTA was thus achieved by the several decisions taken by the Board, the General Conference, ECOSOC and the General Assembly; it is not recorded in any formal agreement.

After the Board had decided that the Agency should seek participation in EPTA the question was raised whether such participation also required the concurrence of the General Conference. While it was recognized that the Resolution passed by the Conference at its first session was not intended to and did not provide authority for the Board to take a definite decision on this subject, the possibility was considered of the Board acting under its plenary authority under Statute Article VI.F. However, the Director General and some members of the Board considered that participation in EPTA in effect constituted a relationship agreement within the meaning of Statute Articles V.E.7 and XVI.A and thus required the approval of the General Conference. This conclusion took account of the fact that it was not proposed that any written instrument be concluded concerning such participation; nevertheless, it was felt that the term "agreement" in the Statute was meant to cover such unwritten engagements as the one by which the Agency would undertake to conform to the rules and practices of EPTA in administering assistance funded from that source.³⁷ Since this point was not resolved explicitly, it should be noted that the Board's submission to the Second Conference of the Agency's participation in EPTA could well have been based on Article V.F.1 of the Statute.³⁸

18.1.3.4. Inclusion of Agency in Revised Standard Agreement

On the admission of the Agency to participation in EPTA it became desirable, indeed necessary, that it should become a party to the Standard Agreements that had been or were being concluded between the Government of each potential Receiving State and all the participating organizations.

After studying the "Revised Standard Agreement" currently in use in 1959, the Board requested TAB to make only minimal changes in the standard instrument to allow for the Agency's participation:

- (a) Inclusion of the Agency's name in the several places where the participating organizations were listed.
- (b) Provision for covering the Agency by the Convention on the Privileges and Immunities of the United Nations as long as the Agency did not have a similar instrument of its own, and by the Agreement on the Privileges and Immunities of the IAEA as soon as it had been adopted by the Board.³⁹

It was considered inappropriate and futile for the Agency to insist that its special concerns (e.g., safeguards; health and safety controls) be referred to in an instrument to which all participating organizations are parties, especially if concluded with a State not yet intending to apply for Agency assistance; instead it was decided that these special concerns would be reflected in separate subsidiary agreements with each State to which assistance through the Agency would be provided.

After TAB had considered the changes proposed by the Agency, it decided that certain additional amendments concerning other issues should also be introduced into the Revised Agreement at the same time and submitted proposals to all the participating organizations. The Board con-

sidered these and requested the Director General to respond favourably on behalf of the Agency.

Since TAB adopted the new form of the Revised Standard Agreement,⁴⁰ it has concluded agreements in that form with Governments not yet parties to any instrument of that type;⁴¹ if a Government is already party to the Agreement in an older form, either a superseding or an amending agreement is concluded to bring the former instruments into line with the new ones.⁴² All these instruments are negotiated and signed by the TAB Secretariat in the name of all the participating organizations, and these organizations (including the Agency) are not consulted in advance either about the provisions of individual agreements (which sometimes differ slightly from the standard form) or even about the desirability of concluding an agreement with a given State; such agreements are also concluded with States not Members of the Agency⁴³ and with States not intending to apply for assistance in the field of nuclear energy. Though the mere conclusion of a Standard Agreement does not commit the Agency to take any particular action (since the execution of each project must still be accepted by the organization concerned), it should still be noted that the Agency thus becomes a party to an international agreement without any explicit decision by any of its organs; in effect the Board has implicitly delegated the authority to conclude such agreements to TAB — a delegation resulting directly from the Agency's decision to participate in EPTA.⁴⁴

18.1.3.5. Influence on the Agency's Regular Programme

In deciding to participate in EPTA the Agency implicitly agreed to conform to EPTA rules and procedures in relation to EPTA financed projects. In fact, once that decision had been taken the Agency concluded that it should also conform its own programme as closely as possible to that of EPTA — in part to avoid unnecessary discrimination between projects financed from these two sources, and in part because through such automatic conformity the Agency would benefit most completely from EPTA's experience.

The General Conference therefore asked the Board to establish the rules for the provision of technical assistance with, inter alia, a view to: "the need for harmonizing the administrative and financial management of technical assistance under the Expanded Programme of Technical Assistance and under the Agency's regular programme".⁴⁵ Guiding Principle No.1 consequently provides that:

"The Agency shall apply to its technical assistance activities the guiding principles and criteria set forth in Annex I to resolution 222A(IX) of the Economic and Social Council of the United Nations (ECOSOC) of 15 August 1949, to the extent that they are in accordance with its Statute."

Guiding Principle No.3 requires that before any technical assistance (i.e., whether or not financed through EPTA) is provided, an "agreement... on the lines of the revised standard agreement of TAB shall be concluded...".⁴⁶ In addition, the Revised Standard Agreement is also used as the model for certain specialized technical assistance agreements, such as those relating to the Mobile Radioisotope Laboratories.⁴⁷

Guiding Principle No. 5 provides, subject to a number of qualifications, that even in "providing assistance from its own resources the Agency shall follow TAB's practice... and shall be guided... by the criteria developed under EPTA for the appropriate level of the equipment component of technical assistance...".

By a separate Board decision, referred to in Section 18.3.4, a State's eligibility to nominate candidates for Type I fellowships is specifically related to its current eligibility to receive EPTA assistance.

On the administrative level, the Agency uses the TAB Resident Representatives as its agents for communications with Governments concerning technical assistance, and also as the channel for most communications and certain payments to experts in the field.

Under the "integrated programming" approach now used by the Agency,⁴⁸ full account is taken, in evaluating requests for assistance from the Agency's own resources, of all assistance currently being granted or requested from EPTA. In fact, except for accounting purposes, no strict separation between the Agency's Regular Programme and EPTA is maintained, and sometimes projects are split so that part is financed through EPTA and the balance from the Agency's own resources.

18.1.4. Special Fund Executing Agency Agreement

The establishment of the UN Special Fund⁴⁹ coincided with the earliest years of the Agency, and the question of co-operation with that organ was under consideration at the same time as the proposed participation in EPTA. Such co-operation was, however, viewed with less suspicion by the Agency precisely because the Special Fund was new and thus did not require the Agency to contend against any established positions of the senior specialized agencies; indeed the Agency might be at an advantage, for nuclear projects would more likely be of the type and size which the Fund would support than those of the older organizations.

Thus, when the decision was made to participate in EPTA, it became almost certain that the Agency would seek co-operation with the Special Fund. As soon as the Fund became operational the Board authorized the Director General to negotiate an Executing Agency Agreement with it. The Agreement ultimately concluded does not differ substantially from the similar agreements concluded between the Fund and several of the specialized agencies, except that, in deference to the Agency's safeguards obligations, a provision was included permitting the Agency to apply sanctions (i. e., to terminate and withdraw assistance) if required to do so pursuant to its Statute;⁵⁰ as had been decided in connection with the EPTA Standard Agreement, it was agreed that the other special concerns of the Agency (application of safeguards, health and safety measures) could be included in the individual Plan of Operations which would be concluded in relation to each Special Fund project to be administered by the Agency.

On 22 September 1961 the Board approved the Executing Agency Agreement and at the same time noted the standard form of agreement that the Fund proposed to conclude with recipient States and to which reference is made in the Agreement with the Agency. Since it was considered that the Executing Agency Agreement was a relationship agreement within the

meaning of Statute Article XVI.A, the Board requested the approval of the General Conference pursuant to Article V.E.7.⁵¹ On the recommendation of its Administrative and Legal Committee,⁵² the Conference gave its approval on 5 October 1961.⁵³ The Agreement was signed and thereby entered into force on 29 November 1961.⁵⁴

18.1.5. Technical assistance agreements

18.1.5.1. Obligation to conclude

Guiding Principle No.3 states:

"Before technical assistance is provided, the Agency and the Government concerned shall agree on the type of assistance and the terms under which it is to be given. An agreement for this purpose on the lines of the Revised Standard Agreement of the Technical Assistance Board (TAB) shall be concluded by an exchange of letters between the Agency and the Government; it shall set out the terms and conditions under which each specific project shall be implemented."

This Principle is consistent with the approach that technical assistance projects should be considered as falling under Article XI of the Statute, and thus require the conclusion of an Article XI.F Project Agreement.

In actual practice, agreements are required for the supply of experts or equipment, the conduct of training courses, the dispatch of a Mobile Radioisotope Laboratory and for Special Fund projects. For practical reasons this requirement has never been considered as applying strictly to fellowship grants and special missions, but either in the applications for the assistance or in the correspondence relating thereto the Agency always makes sure that the State concerned undertakes certain minimum obligations.

18.1.5.2. Form

As pointed out above, though the use of the EPTA Standard Agreement is only required of the Agency in connection with EPTA projects, the Board in the Guiding Principles has directed that agreements for the supply of experts and equipment under the Regular Programme should also be based on the EPTA form. However, as the EPTA Standard Agreement does not include all the provisions considered necessary by the Agency, Guiding Principle No.3 provides for an "exchange of letters". Working on the assumption that technical assistance might be considered as falling under Statute Article XI or that at least the pattern set out in Article XI.F is worth following, these "exchanges" contain, in addition to an incorporating reference⁵⁵ to the Revised Standard Agreement (see paragraph below), the following provisions:

- (a) An undertaking against military use, patterned on Article XI.F.4(a) of the Statute; sometimes the possibility is foreseen that actual safeguards controls might also be required (but these must be provided for

- in a separate agreement, which would only be necessary in the rare instance that the assistance provided might have some military use);
- (b) The obligation by the State to apply health and safety measures;⁵⁶
 - (c) For the settlement of disputes.⁵⁷

No provision on patent rights is included, since it was not expected that under technical assistance projects any patentable inventions would be developed.⁵⁸

Depending on whether or not the Agency and the assisted State are both parties to an EPTA Standard Agreement, different incorporating clauses are used in the exchanges of letters:

- (i) If the Agency and the State are both parties to a particular EPTA Agreement, it is merely necessary to incorporate it by reference.
- (ii) If the State is party to a Standard Agreement in which the Agency is not named as a participating organization, then this Agreement is incorporated by reference and a special provision is added whereby its existing privileges and immunities clause is superseded by a reference to the Agreement on the Privileges and Immunities of the Agency.⁵⁹
- (iii) If the State is not party to any EPTA Agreement, then the latest standard form is incorporated by reference to an appropriate UN document.

Though the requirement that before assistance is provided an agreement be concluded between the Agency and the Government seems fitting and simple to comply with, in fact it has proven to be most difficult to secure a timely, unambiguous and formal commitment from States scheduled to receive assistance:

- (A) In the beginning the Agency addressed separate ad hoc letters to States in connection with each project, in which reference was made to the appropriate Standard Agreement (paras. (i)-(iii) above), the assistance was defined and the special terms required by the Agency were included.⁶⁰ However, even with the assistance of the TAB Resident Representative often no answer or no sufficient answer was received by the time the assistance had to be dispatched. Since by that time an expert had been recruited and was expecting to assume his post, the assistance was usually provided anyway, and often the related agreement was only concluded while the assistance was being provided or sometimes afterwards — and all too frequently no agreement was ever concluded.⁶¹
- (B) In an effort to improve this situation, the Agency developed a printed form agreement in which only the particular assistance to be provided for the indicated project had to be specified particularly.⁶² It was hoped that after a State had once gone through whatever elaborate domestic procedures were necessary to agree to the terms stated in the first such instrument, it would be able to act more quickly to accept similarly worded instruments submitted later with respect to new projects.⁶³ Though improvement was achieved by the use of this device, still numerous projects had to be implemented without an agreement.
- (C) The present approach is to conclude with each State a supplemental agreement to whatever Revised Standard Agreement it is a party.⁶⁴ (Even if the State is not party to any such agreement, a similar

instrument is concluded into which the current standard form of the EPTA Agreement is incorporated by reference — though of course in that case the agreement with the Agency must stand on its own and the incorporation of the Standard Agreement has constitutive rather than merely descriptive effect.) These supplemental agreements contain all the additional clauses required by the Agency, but no description of any particular assistance to be provided. Instead, these instruments are so drafted that the Agency can grant assistance to a particular project by dispatching a letter referring to the State's request and describing the assistance in question (and any special health and safety measures relevant thereto) — to which letter no reply need be given.⁶⁵ Unfortunately, up to 1968 less than half of the States receiving assistance had entered into such agreements with the Agency.

Special Fund projects are administered by the Agency pursuant to trilateral agreements, called Plans of Operations, concluded among the Special Fund, the Agency and the States concerned.⁶⁶ Each Plan is in form supplementary on the one hand to the Executing Agency Agreement between the Special Fund and the Agency,⁶⁷ and on the other to general agreements concluded by the Special Fund with each of these States in anticipation of any assistance that might be granted to them by the Fund.⁶⁸ The Plan of Operations specifies the nature and details of the project to which it relates, the respective contributions to be made by the Special Fund and by the beneficiary States, as well as the work to be performed by the Agency and the compensation it is to receive therefor. In addition, there may be included any special provisions required by the Agency, such as the means for the application of the Agency's health and safety standards, and in appropriate cases safeguards provisions or clauses relating to the disposition of patent rights.

18.2. HOW ASSISTANCE IS GRANTED AND FINANCED

The technical assistance granted by the Agency may be classified into two orthogonal categories: according to the type of assistance, or according to the source of financing. The legal formalities relating to the provision of assistance relate in part to both these factors — but the connection is closer to the latter. For that reason, the methods of deciding on grants (i.e., the identification of the decision-making authorities) are described in this Section in terms of the origin of the resources.

18.2.1. The Operational Budget

Since technical assistance is not explicitly mentioned in the Statute there is also no indication of how it should be financed. However, the restrictions on the use of the Regular (or Administrative) Budget, which is assessed on Member States, are such that almost no technical assistance can be financed from that source.⁶⁹

Because technical assistance cannot be financed from assessed contributions, the device was developed of paying for the Agency's Regular Programme of assistance largely from voluntary contributions of money to the General Fund. The precise statutory basis of this device is not entirely clear: one might consider the cost of technical assistance as an Article XIV.B.2 expense relating to the cost of materials, services, equipment and facilities provided by the Agency under agreements with one or more Members — for which it should be reimbursed in accordance with the scale of charges foreseen in Article XIV.E, except to the extent that this scale is reduced by the use of any voluntary contributions applied for this purpose by the Board of Governors. Alternately, and more simply, one might consider the financing of technical assistance to be merely one of the uses to which the General Fund established by Article XIV.F may be put.

The budget for the Regular Programme of technical assistance is therefore established as follows:

- (a) A target for the voluntary contributions to be solicited during the fiscal year in question is established by the General Conference on the recommendation of the Board.⁷⁰
- (b) On the basis of the target it has recommended and of any other funds in or expected to flow into the General Fund, the Board proposes to the General Conference how these resources should be allocated. Each year the larger fraction of these funds is directed into Operating Fund II, out of which the Technical Assistance Programme is financed.⁷¹ That Programme is itself sub-divided into several activities, of which the principal ones are: the supply of experts and equipment, and the provision of fellowships and training.
- (c) At the beginning of the fiscal year in question, when most of the pledges for that year have been received, the Director General requests the Board to authorize him to make transfers from the General Fund to the Operating Funds, in accordance with the actual income flow expected.⁷² Since the pledges received invariably fall considerably short of the target on which the budget is based, the Board can only authorize the implementation of an appropriate fraction of the Programme, each component of which is generally scaled down roughly proportionately from the budgeted amount. The fact of this chronic shortfall from a target which has not been changed in almost a decade and the consequent regular (and by now anticipated) reduction of the approved technical assistance programme has become one of the constant features and recognized scandals of the Agency, apparently impervious to appeals by the Director General⁷³, the Board⁷⁴, the General Conference⁷⁵ and even the UN General Assembly⁷⁶; recently the Conference of Non-Nuclear-Weapon States has added an oblique plea⁷⁷ echoed by a group of experts appointed by the UN Secretary-General.⁷⁸
- (d) Unrestricted voluntary contributions are accepted by the Director General pursuant to the Rules Regarding the Acceptance of Voluntary Contributions of Money to the Agency.⁷⁹ The few contributions restricted to particular types of technical assistance activities are accepted either pursuant to certain standing Board decisions relating to these activities, or are submitted to the Board for ad hoc decisions.

The Agency's Regular Technical Assistance Programme covers the provision of experts, visiting professors, equipment, fellowships, training courses and the use of the Mobile Radioisotope Laboratories. The rules, procedures and practices relating to these various types of assistance are for the most part described in Section 18.3. The procedures according to which technical assistance projects under the Regular Programme are approved differ according to the type of project:⁸⁰

- (i) With respect to fellowships, the Board has delegated to the Director General the authority to make individual awards, subject to the Rules and Resolutions mentioned in Section 18.3.4. The Board thus decides only on the total amount of funds to be devoted to fellowships, but takes no decision either on individual fellowship applications or on the numbers to be allocated to any given Member State. The only exception is that certain agreements approved by the Board include undertakings by the Agency to make available a stated number of fellowships to specified joint programmes.⁸¹
- (ii) Expert and equipment projects are approved individually by the Board in accordance with the following procedure:
 - (A) Governments submit requests⁸²— which frequently have been developed with the aid of Agency experts working either from Headquarters or participating in a special mission sent for that purpose — and indicate their priorities among these.
 - (B) The governmental requests are evaluated by the Secretariat. In particular each request is considered both by an area official of the Technical Assistance Division⁸³ to determine how it fits in with other current or projected technical assistance activities (UNDP projects, fellowships, etc.) in the country — an essential element of "integrated programming"⁸⁴—and by the appropriate scientific Division to determine technical appropriateness and feasibility.
 - (C) On the basis of these evaluations, consultations are conducted with each Government in order to eliminate some of the projects (as funds are never available to finance all that have been submitted), to reduce the scope of others, and to establish an order of priorities.
 - (D) A proposal for a consolidated programme (within the expected budgetary capabilities of Operating Fund II) is then prepared and submitted by the Deputy Director General for Technical Assistance and Publications to the Interdepartmental Committee on Technical Assistance (ICTA).⁸⁵ The programme recommended by the Committee is then submitted to the Director General.
 - (E) The Director General then submits the consolidated programme to the Board's Technical Assistance Committee (which is designedly balanced between developed and under-developed States)⁸⁶ in December of the year preceding that to which the programme relates. He indicates with respect to each project whether it is to be financed from the funds actually expected to be available, or only from funds left over after the necessary amounts have been earmarked for all projects in the first category. The Committee examines each project as well as the programme as a whole.

- (F) The approval of the Committee constitutes informal but accepted authority for the Director General to start implementing the programme on 1 January, even before the Board itself has given final approval.⁸⁷
 - (G) The Board considers its Committee's report and approves the programme at its first meeting during the calendar year (usually late in February).
 - (H) If a Government submits any extraordinary request to be implemented during a year for which the comprehensive programme has already been approved by the Board, that request must be submitted to the Board. However, minor adjustments to approved projects may be authorized by the Director General.⁸⁸
 - (I) The Board has now given the Director General standing authority to cancel, in consultation with the Government concerned (which, however, rarely agrees), any project for which no allocations have been made (i. e., for some reason no start has been made in providing the approved assistance) during a period of two years after their initial approval, and to apply the funds thus released to other approved projects.
- (iii) The provision of visiting professors, the arrangement of training courses and other regional projects, and the use of the Mobile Radioisotope Laboratories are decided by the Director General, within an overall budgetary limit established by the Board for all these activities, but without consulting it as to specific projects. Within the Secretariat all such projects are evaluated by both the Technical Assistance Division in relation to all other projects carried out in the country or region affected, and by scientific Divisions with respect to technical feasibility and desirability.

18.2.2. Gifts in kind

Gifts in kind are an important source of resources for the Agency's Regular Technical Assistance Programme. These gifts are offered, usually by Member States, pursuant to Article X of the Statute and in accordance with the possibility foreseen in Article XIII that the Agency and the Member may agree that the Agency need not pay reimbursement for items furnished to it.⁸⁹ If, as is usually the case, the offer is made after the Board has approved the technical assistance project for which the item in question can be used, the Director General can accept it under paragraph 2 of the Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities;⁹⁰ however, if at the time the offer is made there is no approved project for which it can be used, the Director General must submit to the Board either the acceptance of the offer pursuant to paragraph 3 of the Rules, or the approval of projects for which the gift might be used.

Unlike voluntary contributions of money, for which an annual target is set on the basis of which the Operational Budget is established, the possibility that voluntary contributions will be received in kind is never explicitly reflected in the budget nor are offers solicited systematically (for fear of encouraging the substitution of these for cash⁹¹). Instead, any gifts received are used to reduce the cash outlay for Regular Programme projects, whereby funds are released to finance further projects whose original priority was too low to receive a cash allotment in the first instance.

Gifts in kind take several forms:

- (a) Free experts, provided either entirely cost-free (the Government paying all costs, including travel and per diem) or on a compensation-free basis (the Government covering the expert's salary and the Agency meeting all other costs — usually those requiring convertible currencies);
- (b) Free fellowship positions (whose conditions are of course set by the donor State and which may differ in whether or not travel costs and certain allowances are included) used by the Agency for the grant of Type II fellowships;
- (c) Equipment or materials.

18.2.3. UNDP/Technical Assistance

The UN Development Programme is the principal source of additional funds for supporting projects of the same type as are included in the Agency's Regular Programme, i. e., the supply of experts, visiting professors, equipment, fellowships and training courses. However, a completely different procedure is used both with respect to the approval of individual projects and to establish the total budget of the projects administered by the Agency. Since these procedures are not peculiar to the Agency's practice⁹² they are only described briefly here in order to indicate how the important decisions are made outside of the Agency and the extent to which any influence exerted by the Agency is exercised by the Secretariat rather than by the Board.

18.2.3.1. Country projects

The largest part of the funds available for UNDP technical assistance are assigned by the UNDP Administrator, to the States eligible to receive assistance, through the establishment of quotas (the so-called "country targets"). Within its quota each country can propose projects (originally on an annual, later on a biannual and as of 1968/69 on a "continuous programming" basis) to be administered by any of the organizations participating in UNDP, and consisting of any combination of experts, equipment (subject to certain limits⁹³) and fellowships. The participating organizations, such as the Agency, can initially influence this process by submitting projects for consideration by Governments and by assisting them in developing proposals.⁹⁴ After the governmental requests have been submitted, each organization is informed of all the projects which it will be expected to administer. During a rather limited period of a few weeks each summer the organizations must evaluate these projects from a technical point of view (which in the Agency is done on the same basis as are regular budget projects — i. e., by the area officers in the Technical Assistance Division and by the appropriate scientific Division). The organizations then forward their recommendations on technical feasibility to the UNDP Secretariat; though an organization may, on technical grounds, refuse to take responsibility for administering a project, this rarely occurs. The Administrator then reviews the projects with the Inter-Agency Consultative Board, on which the Agency is represented, and then establishes a final consolidated programme covering all States and thus all the UNDP/TA-financed projects of the participating organizations. This programme is then approved by

the intergovernmental Governing Council, which reports to ECOSOC. Thus the total size of the UNDP country programmes administered by the Agency depends primarily on the sum of the decisions made by individual governments on the use of their quotas of the funds allocated to them, as evaluated and approved by several UNDP organs with the advice of the organizations concerned.

It is therefore not surprising that one of the principal controversies concerning the participation of the Agency in EPTA (the predecessor of UNDP/TA) involved the diminution of the Board's authority over the technical assistance programme. This loss is due both to the minimal influence that the Agency as a whole exercises on the approval of projects and to the limited time (almost precluding Board consideration) during which the Agency must decide on whether or not to refuse to administer a technically doubtful project. Ultimately the Board reluctantly decided, in Guiding Principle No. 9, that all the functions of the Agency in connection with the evaluation of EPTA projects are to be performed by the Director General under its policy guidance; the Director General was merely required to report periodically to the Board on both the total extent of the Agency's participation in EPTA and on the individual projects which it administers.

UNDP assistance is not restricted to Members of the Agency. Thus any Non-member eligible to receive such assistance (as an under-developed member of the United Nations or of any specialized agency) can request the Agency to administer a nuclear project in the same way as it would for a Member.⁹⁵ The Agency of course requires the conclusion of an agreement, which is in all respects identical to those relating to Members and even incorporates by reference the Agency's Privileges and Immunities Agreement (which by itself is not open to accession by Non-members).⁹⁶

18.2.3.2. Regional programmes

A certain fraction of the total funds available to UNDP has been assigned to the participating organizations for regional projects.⁹⁷ Though the difficulty of effective Board intervention with respect to such projects is not as apparent as in the case of country projects, according to established practice these are also not submitted to the Board for approval. Instead, these projects are decided on by the Director General, on the basis of the interest shown and requests made by the States in the area concerned. In this the practice conforms to that relating to regional projects financed under the Regular Programme, which, unlike country projects, are also not submitted to the Board.⁹⁸ Only when the use of UNDP funds is part of a larger joint programme is the Board asked to take a decision: thus in authorizing the Agency's participation in the Middle Eastern Radioisotope Centre, the Board specified that for each year of the Agency's participation a portion of the funds available to it for EPTA regional projects was to be allocated to the Centre.⁹⁹

18.2.4. UNDP/Special Fund

Special Fund projects are based on requests by one or more States approved by the Governing Council of UNDP. The Agency's sole function in this pro-

cess is the advice that it may give to the States in preparing and justifying their request and later to participate in the UNDP Secretariat's evaluation on which the recommendation to the Council is based.

The Agency's participation in a Special Fund project is based on and governed by its signature, together with that of UNDP and of the State(s) concerned, of the Plan of Operations.¹⁰⁰ Though at the time the Board was considering the Executing Agency Agreement with the Special Fund it was envisaged that Plans of Operation would be examined by the Board in conformity with Article XI of the Statute, none of the five such Plans signed by the Agency through 1969¹⁰¹ has been submitted to the Board. In fact the texts have never been transmitted to the Board, nor had the intention to conclude them ever been communicated to it before the fact. Thus the pattern established for EPTA projects has been followed — though those are individually much smaller and considered under much greater time pressure. The Board's abstention from reviewing the Agency's participation in Special Fund projects is thus not based on necessity but more likely on the fact that these are approved by an intergovernmental organ: the Governing Council of UNDP.

In addition to its function as executing agent for certain Special Fund projects, the Agency has more frequently acted as sub-contractor to organizations administering other such projects.¹⁰² In such cases a contract is concluded between the two organizations, providing for the Agency to perform specified tasks (usually involving the use of radioisotopes) and to be reimbursed for the costs it incurs. The Agency itself, in executing certain projects, has sub-contracted part of the work to other international organizations or to commercial enterprises. None of these sub-contracts have been submitted to the Board.

The Fund allocates to the executing agency of each project a certain fraction of the total cost borne by UNDP, from which the agency can cover its administrative and overhead expenses.¹⁰³ Thus, in principle, the administration of these projects does not cause an increased burden on the Regular Budget of the Agency.¹⁰⁴ However, no overhead is paid to sub-contractors.

18.2.5. The Regular Budget

Article XIV of the Statute prevents the financing of any of the technical assistance programme from the Regular (Administrative) Budget, which is funded from the contributions assessed on Member States. In 1960, the Board proposed to the General Conference an amendment of the Statute in order to permit such financing, but the Conference declined to take any action thereon.¹⁰⁵

In spite of this statutory principle, there are certain marginal but significant examples of technical assistance costs charged to the Regular Budget:

18.2.5.1. Administration and overhead

All the administrative and overhead expenses incurred in connection with the Agency's Regular Technical Assistance Programme are borne by the Regular Budget. This follows from an interpretation of Statute

Article XIV.B.1(a) to the effect that the only staff costs that need to be charged to the Operational Budget are those incurred for persons employed specifically in connection with items or services to be provided by the Agency to Member States, and therefore need not include the costs of staff members occupied with the administration of the technical assistance programme.¹⁰⁶

Since an important part of the Agency's technical assistance programme is financed by UNDP, it can be assumed that an approximately proportionate part of the administrative and overhead costs of the programme is attributable to projects financed from this source. Indeed both branches of UNDP reimburse such costs to the Agency according to certain set formulae.¹⁰⁷ Though at present these reimbursements are in effect credited to the Regular Budget, and thus reduce the amounts that must be assessed on the Members, for 1960 and 1961 the Board and the General Conference decided that the Administrative and Operational Service (AOS) costs reimbursed to the Agency by EPTA would be used to increase the amount of technical assistance granted¹⁰⁸ — a procedure which amounted to an indirect use of Regular Budget funds for technical assistance purposes, and which was frankly adopted on the ground of expediency and in spite of the statutory doubts raised.¹⁰⁹

The Agency is similarly to be reimbursed for the overhead costs incurred in administering the projects financed by Sweden.¹¹⁰

18.2.5.2. Special missions

The costs of special missions,¹¹¹ whose functions relate primarily to the technical assistance programme, have uniformly been charged to the Regular Budget. The first such visitations were called Preliminary Assistance Missions (PAMs) and the ostensible but by no means uncontroverted ground for charging their costs to the Regular Budget was that one of their purposes was the preparation of Agency projects (an expense recognized as administrative by Statute Article XIV.B.1(a)) by aiding Member States in formulating requests for technical assistance.

In the Budgets for 1959 and 1960 the allocation of the costs of these Missions to the Regular Budget was still made on a tentative basis (supposedly subject to adjustment on the basis of experience with actual visits),¹¹² but in later years no such proviso was made and in fact no charge was made to the Operational Budget even when the nature of the missions changed so that some of them in effect became direct means of granting assistance; thus certain later missions (called by descriptive names such as: Power Survey Mission, Training Survey Mission, Library Workshop Mission, etc.) were without objection paid from the Regular Budget. The possibility of allocating part of their costs to the Operational Budget has more recently only been raised twice: When it was proposed to send missions to Non-member States it was pointed out that no Article XI projects could be prepared for these (except if they were stimulated to join the Agency) and therefore there no longer was any colourable excuse for using the Article XIV.B.1(a) exception; however, the solution agreed to did not involve a charge to the Operational Budget but merely a charge to "duty travel of staff", another Regular Budget item. When it was proposed to dispatch Follow-up Missions to evaluate the results of projects initiated by earlier PAMs and carried out since, it was again suggested that this did not fall under the "preparation

of projects" exception; however, as the majority of the Board would not accept this distinction, these Missions have also been charged to the Regular Budget.¹¹³

18.2.5.3. Assistance by staff members

A by no means negligible amount of technical assistance is rendered directly by staff members, working either at Headquarters or visiting in the field. Regardless of the functions they perform, their emoluments generally continue to be charged to the Regular Budget and only their travel and subsistence costs may be charged to the Operational Budget;¹¹⁴ only if the assignment falls under a Special Fund project can the salary be covered from Executive Agency Overhead Cost (EAOC) payments from UNDP/SF.¹¹⁵

18.2.6. Assisted States

One of the classical characteristics of technical assistance is that the recipients should not be required to incur any expenses payable in foreign currency. However, it is almost equally accepted that the assisted State should, in general, pay for all costs that can be covered in local currency (e.g., costs of local travel; subsistence allowances). This principle is embodied in the EPTA Revised Standard Agreement,¹¹⁶ and thus is applied by the Agency both to UNDP and to Regular Programme projects. Only for very poor countries does UNDP occasionally waive the requirement of the payment of local costs, but if it does so the Agency usually follows suit. Thus the assisted State must generally pay the local costs in connection with both expert and equipment projects; with respect to fellowships, the State nominating a candidate is required to ensure the continued support of the fellow's dependents and to pay his passport, visa, medical examination and other fees, and generally his international travel expenses¹¹⁷; the local costs of visiting missions must also be paid.

Pursuant to the Revised Standard Agreement, assisted States are also required to hold harmless the Agency and its experts in case of any claims arising in connection with assistance provided, except in the case of wilful misconduct.¹¹⁸

The principle that local costs are to be borne by the assisted State is also applied by the Special Fund, which usually insists that its own contribution be at least matched by expenditures to be incurred by the assisted State for the same project — and indeed the extent of these expenditures is specified in the Plan of Operations.¹¹⁹

In some cases the Agency has proposed that assisted States should also bear certain non-local costs. Thus, as mentioned in Section 18.3.6, the Agency once asked Member States using the Mobile Radioisotope Laboratories to share the costs of international transport.

Some States, though industrially and particularly nuclearly under-developed, do not lack convertible currencies but still wish to benefit from technical assistance. With these it is possible to negotiate a "funds-in-trust" arrangement, which resembles a regular technical assistance project proposed by the State and accepted by the Agency on the basis of a satisfactory

technical evaluation - with the difference that the necessary funds are then paid by the State concerned rather than from the Operational Budget of the Agency or from UNDP.¹²⁰ These projects, like the UNDP projects which they resemble (in that the Agency is not required to expend its own resources), are not submitted to the Board.

18.2.7. Other States

In September 1969 the Board of Governors approved an agreement with the Government of Sweden, whereby the latter would furnish, through the Swedish International Development Authority (SIDA), funds to implement agreed projects of assistance in developing Member States.¹²¹ These projects are to be selected by the Agency in accordance with its usual rules and procedures, but before implementation must be approved by SIDA.

The technical assistance agreements relating to these projects are to follow the normal patterns, though provisions are to be included allowing Sweden to assume the Agency's obligations vis-à-vis the recipient State and also to inspect the project. The Agency will administer the projects according to its normal practices. The funds-in-trust received from Sweden will be used to meet all expenses, including the Agency's administrative overhead (calculated as an agreed percentage of the total project cost).

18.3. TYPES OF ASSISTANCE

18.3.1. Experts

The supply of experts is one of the principal ways in which technical assistance is granted. They may be provided under Board-approved "Regular" technical assistance projects (paid either from the Operational Budget or made available on a cost-free basis by a Member State) or under UNDP/TA projects. In addition, some regular staff members are on occasion detailed to provide expert assistance while their salaries continue to be paid from the Regular Budget.

Experts are normally employed as staff members and are subject to the Provisional Staff Regulations and to the special Staff Rules Governing the Conditions of Service of Technical Co-operation Experts.¹²² Those engaged for only very short periods or those whose services are made available on a cost-free basis are given Special Service Agreements.¹²³

The supply of an expert to a Member State, either under the Regular Programme or from UNDP, should always be covered by a specific instrument ("exchange of letters") based on the applicable Standard Agreement. Only occasionally, when a regular staff member is sent as an expert on a very short visit, is no attempt made to comply with this formality.

Experts submit periodic and final reports to the Agency and to the assisted State. The final reports are routinely made available to other Governments, unless the State concerned objects within two months.¹²⁴

18.3.2. Exchange arrangements - visiting professors

Visiting professors provided under "exchange arrangements" are for all practical purposes experts provided on the same basis as those mentioned in the previous Section. In practice the only difference is that exchange arrangements under the Regular Programme are not submitted to the Board for approval in the same way as expert projects are.

18.3.3. Equipment

The extent to which equipment should constitute part of technical assistance projects has been the subject of chronic controversy - not only in the Agency but within the UN system generally. The developed States (which largely control the Board) make available both the bulk of the actual assistance as well as most of the voluntary contributions (to the Agency's General Fund as well as to UNDP) from which the assistance is provided, and desire to focus the technical assistance programme on the transfer of skills (e. g., through the provision of experts and the training of fellows) - with equipment to be provided only as an ancillary part of such training projects (e. g., for demonstrations); equipment to be used for other purposes should be obtained from capital development funds. The receiving countries (which can control the General Conference) on the other hand often see in technical assistance the potential of supplementing their scarce development resources (particularly those of foreign currency) by obtaining items of permanent value - even though thereby the amount of training and expert advice they receive is reduced. These contradictory views are particularly sharp in relation to the Agency's programme, since atomic energy projects typically require expensive and complicated equipment.

Under EPTA principles (now followed by UNDP/TA) the equipment component of technical assistance projects should in principle be limited to 25% of the cost of all projects administered by an organization within the country in question, or to US \$15 000 if that is greater.¹²⁵ However, in 1955 the Technical Assistance Committee of ECOSOC requested the organizations participating in EPTA to give special attention to "providing adequate amounts of equipment and supplies as integral parts of technical assistance projects".¹²⁶

In the resolution by which the General Conference first requested the Board to establish rules for the provision of technical assistance, it called attention to this ECOSOC request and also asked the Board to take account of "the special character of the Agency's operations".¹²⁷

The Board, after extensive consideration, formulated the following Guiding Principle No. 5:

"In providing assistance from its own resources the Agency shall follow TAB's practice of providing equipment and supplies under EPTA as an integral part of a technical assistance project, and shall be guided, so far as possible, by the criteria developed under EPTA for the appropriate level of the equipment component of technical assistance, bearing in mind the special character of the Agency's operations and the need for a corresponding degree of flexibility."

In a footnote to that Principle the EPTA limits are recited, and the above-mentioned TAC/ECOSOC recommendation is referred to.

The General Conference, in "noting" the Guiding Principles, did not recommend any changes. However, after extensive consideration of the equipment issue in the Administrative and Legal Committee,¹²⁸ the Conference simultaneously passed a Resolution by which it requested:

"... the Board of Governors to give special and sympathetic attention to providing, in the framework of technical assistance projects, equipment to those States which desire it."¹²⁹

In February 1963 the Board, in deciding that no revision of the Guiding Principles was required, once more emphasized the necessity for a "flexible interpretation" of the above-quoted Principle.

The Long-Term Programme for the Agency's Activities¹³⁰ proposed a re-examination of the question whether the Agency should "under appropriate conditions ... supply equipment without sending an Agency expert".¹³¹

The "equipment issue" once more loomed prominent in the "Review of the Agency's Activities" prepared for the Eleventh General Conference.¹³² After considering that report, the Conference reached only a single substantive conclusion, which it embodied in a Resolution by which it requested:

"... the Director General to give particular attention to requests for the supply of equipment in the framework of technical assistance projects, without necessarily requiring any formal relationship between the provision of equipment and the provision of expert services."¹³³

The issue of the proportion that equipment should form of the Agency's total technical assistance programme and of individual projects is perennially raised in several different fora: in the Board's Technical Assistance Committee when it is considering the Agency's Regular Programme for the following year, in the Board in considering the report of the Committee, again in the Board when reviewing the previous year's technical assistance activities, and in the Programme, Technical and Budget Committee of the General Conference.¹³⁴

Under UNDP/TA projects the Agency can only indirectly influence the proportion of equipment to be provided, since in the first instance the distribution of the assistance to be provided is determined by each requesting Government, subject only to a possible veto by UNDP if the applicable guidelines are too flagrantly disregarded. With respect to its Regular Programme the Agency's "flexibility" (i.e., that of the Secretariat, as controlled by the Board) in considering requests for equipment is manifested in practice by:

- (a) The occasional grant of equipment to a project in considerable excess of the EPTA limit; informally a \$30 000 limit appears to have been adopted (i.e., one twice as high as the similar EPTA limit);¹³⁵
- (b) Some "all equipment" projects have been approved, i.e. projects in which no expert assistance at all is granted (it is these that were specifically proposed by the Long-Term Programme and were also, though somewhat obscurely, supported by the above-quoted Conference Resolution).¹³⁶

One type of "all equipment" project of which several have been approved relates to the supply of scientific documentation (books, back-number periodicals, current subscriptions to periodicals), and ancillary equipment (micro-card and film readers). At the request of the Board the Director General, after consultations with UNESCO, established a set of Criteria for the Examination of Requests for the Provision of Technical Assistance in Scientific Documentation.¹³⁷

A variable proportion of the equipment supplied by the Agency to technical assistance projects is received by it in the form of gifts. Since usually these offers are only made and accepted after the technical assistance projects for which they can be used have been approved, these gifts cannot be budgeted for. At the Sixth General Conference a number of Eastern European States proposed that the Agency, within the framework of its technical assistance programme, should provide a number of medical and physical science research centres to under-developed Members; they also offered to make available one-third of the required equipment;¹³⁸ however, as described in Section 17.4, these offers, in modified form, were ultimately utilized through a series of Article XI equipment projects considered and approved by the Board outside the framework of the technical assistance programme - principally because the majority of the Board was reluctant to create precedents for substantial all-equipment projects (even from donated items) lest pressures develop for using an ever-increasing portion of the Agency's operational cash resources in the same manner.

The Agency usually retains title to any equipment it supplies under technical assistance projects during the execution of the project - i. e., as long as the expert in support of whose work the items were supplied is active in the receiving country.¹³⁹ At the end of that period, title to equipment is almost always transferred to the Government by means of an exchange of letters, by which the State is required to assure the continued peaceful use of the equipment, its availability for future technical assistance projects, and the application of health and safety measures.¹⁴⁰

18.3.4. Fellowships

Fellowships are provided both from UNDP/TA and UNDP/SF funds and from Agency resources within its Regular Programme, and in the latter case both from funds and from gifts in kind (i. e., offers of scholarships). Fellowships paid for in cash (whether from UNDP or Agency funds) are called Type I; those made available by Member States are called Type II (even if the Agency must supplement them by paying certain ancillary costs).

The fellowship programme is based specifically on Statute Article III. A. 4, by which the Agency is authorized to "encourage the exchange and training of scientists and experts in the field of peaceful uses of atomic energy". The Preparatory Commission specifically recommended an early start of this programme¹⁴¹ and it was the only technical assistance activity included in the first Programme and Budget.¹⁴²

In March 1958 the Secretariat proposed a set of Preliminary Rules to Govern the Award of Scholarships and Fellowships by the Agency. These established the differentiation between Type I and Type II fellowships, indi-

cated the several types of training that the Agency would support, established the requirement that nominations must be received through governmental channels, and included guidelines for the payment of travel costs. The Board immediately approved these Rules.¹⁴³

In September 1961 the Board requested its Technical Assistance Committee to study the procedures for awarding fellowships. Thereupon the Director General circulated a memorandum on "The Procedure for Awarding Fellowships", in which he set forth the Agency's policies for selecting fellows, described the relevant procedures, and indicated the practice relating to the payment of travel costs. After these were debated in the Committee, the Director General presented a revised memorandum to the Board. In June 1963 the Board adopted two resolutions and a series of decisions:¹⁴⁴

- (a) The resolution on "The Award of Type I Fellowships" instructed the Director General to be guided by the principle that these fellowships should be reserved for students from Member States currently receiving assistance in the form of country programmes under EPTA.¹⁴⁵ In the event that the funds allocated for Type I fellowships cannot be fully used in that way, he is to recommend to the Board how such funds can be re-allocated for other types of technical assistance.
- (b) The resolution on the "Payment by the Agency of the Travel Expenses of its Fellows" provisionally reaffirmed the existing arrangements and thus left it to the discretion of the Director General whether travel expenses should be paid for individual Type I and Type II fellows.
- (c) In a separate decision the Director General was asked to give his Inter-departmental Committee on Technical Assistance (ICTA)¹⁴⁶ wider functions in connection with the award of fellowships, and to be guided by a number of considerations including:
 - (i) The award of fellowships should be spread more thoroughly among the Members eligible to receive this type of assistance so as to achieve a more equitable pattern of awards.
 - (ii) While normally Type I fellowships should not be granted for more than one initial year, fellowships of up to three years duration may be awarded to enable a student to obtain a doctorate; fellowships may also be awarded for on-the-job training, to technicians, and exceptionally (and only of Type II) for undergraduate study.
 - (iii) The Secretariat should elaborate a set of minimum standards for Type II fellowships, and should negotiate with any Government whose offers did not reach these standards.

The 1958 Preliminary Rules and the 1963 resolutions and decisions, as well as the several Secretariat "standards" formulated pursuant to their requirements, still constitute the legal framework of the fellowship programme. However, these provisions have only in part been formally consolidated¹⁴⁷ and they have never been reported to the General Conference. The Conference itself has never taken any action on fellowship procedures.

The procedure for granting fellowships is the following:

- (i) Applications must be submitted through governmental channels,¹⁴⁸ on a form provided by the Agency.¹⁴⁹ Though ordinarily a candidate is expected to have the nationality of the Government that nominates him, this is not a rigid rule and in effect it is only required that the candidate's connection with the nominating Government be close enough so that the latter will be in a position to fulfil the various required undertakings mentioned in paragraph (A) below.
- (ii) The number of fellowships to which a Government is entitled:
- (A) Under the Regular Programme no formal governmental quotas are established – though the Secretariat endeavours to distribute fellowships on an equitable basis. Within those flexible limits, grants are made to the best-qualified candidates, though taking into account the respective needs of the countries that nominated them.¹⁵⁰
- (B) Under UNDP/TA each Government is entitled to fellowship awards in accordance with the amount of funds whose allocation for that purpose it has requested within the limit of its total quota.¹⁵¹
- (C) Under UNDP/SF the Plan of Operations for each Special Fund project indicates to what extent and how funds are to be used for fellowships.
- (iii) Within the Secretariat applications are processed as follows:
- (A) Initial consideration by three separate units:
- (1) The Fellowship and Training Section of the Technical Assistance Division of the Department of Technical Assistance and Publications, which performs all administrative processing;
 - (2) The appropriate Area Office of the Technical Assistance Division, which considers each application in relation to the total technical assistance programme of the country;
 - (3) The appropriate scientific Division of the Secretariat, which considers the value of the proposed programme of study and the suitability of the candidate.
- (B) The consolidated recommendations of these Divisions are passed to the Fellowship Selection Panel of the Division of Technical Assistance, which also takes account of the priority granted to each nomination by the Government concerned.
- (C) The recommendation of the Panel is referred to ICTA.
- (D) The recommendation of ICTA is referred to the Director General, who makes the final decision on each award.
- (iv) The decision that an award is to be granted is notified to the nominating Government. At the same time the Secretariat corresponds with one or more potential host States in order to place the candidate. If placement can be effected to one of the cost-free places offered by a Government, then this is done and a Type II fellowship is awarded; otherwise a place is sought to which the candidate can be sent on a Type I basis.
- (v) When, in agreement with a host State, a place has been found, both the candidate and his Government are informed and are requested to indicate their acceptance of the placement.

- (vi) Once both acceptances have been received the Agency arranges for the candidate to travel to the host State and to commence his studies.
- (vii) Most fellowships are granted to students for periods of up to one year, though extensions may be considered; in exceptional cases two- or three-year fellowships (subject to periodic review) are granted to advanced degree candidates, and a few long-term (four- to six-year) Type II fellowships are available. Established scientists may be awarded "scientific visits" (usually no longer than two months) or research fellowships of six to nine months.¹⁵²

The following points of legal significance should be noted:

- (A) Though no technical assistance agreement is concluded with the nominating Government, in endorsing an application it undertakes:
 - (1) To ensure that any salary the candidate is currently receiving is continued throughout the period of the award;
 - (2) To pay any passport, visa and similar fees;
 - (3) To assure that on his return home the fellow will be employed for at least two years in the field of peaceful uses of atomic energy.¹⁵³

The Government must later also indicate its acceptance of the placement arrangements made with respect to those of its nominees to whom awards have been granted.
- (B) No formal agreement is concluded with the fellow, though he too is bound by certain undertakings set forth in the fellowship application (which include the requirements to make certain reports to the Agency, to return home on the completion of the fellowship and to work there for at least two years in the field of peaceful uses of atomic energy)¹⁵⁴ and by his formal acceptance of the placement.
- (C) No formal agreement is concluded with the host State, though in the case of Type II fellowships an agreement might be implied through the Agency's acceptance of the offer of a gift in kind.

A number of joint projects and similar arrangements in which the Agency participates contain its undertaking to allocate a certain number of fellowships to the project - either in order to facilitate the supply of outside personnel to the project or the exchange of persons among the participating States; these fellowships sometimes constitute the principal material contribution made by the Agency to the project.¹⁵⁵

The Agency also grants fellowships for study in some of its own activities, such as the Laboratory¹⁵⁶ or the Theoretical Physics Centre.¹⁵⁷ In that event there of course is no "host State".

18.3.5. Regional projects

Regional projects, such as training courses, study teams, regional advisers or seminars, may be financed from the Agency's Regular Technical Assistance Programme or more usually from funds for regional projects made available

by UNDP/TA.¹⁵⁸ Proposals for such projects may originate within the Agency's Secretariat or with Member States in a particular region. In either case, the plans for any such project are communicated to all States in the region. Under EPTA principles, which are now applied by UNDP and were always applied to the Agency's Regular Programme, a regional project is only carried out if substantial support is shown - evidenced by indications of expected participation from a State willing to be host and from several other States.

No Board approval is sought for these projects, either under the Regular Programme or UNDP. After a particular regional project has been approved, a "Host Agreement" is concluded with the Government concerned, in which the respective contributions of that Government and the Agency are detailed and standard provisions are made for the application of privileges and immunities, the settlement of disputes, etc.¹⁵⁹

18.3.6. Mobile Radioisotope Laboratories

Early in 1958 the United States donated to the Agency two Mobile Radioisotope Laboratories designed for the conduct of small courses in the uses of radioisotopes. These facilities were housed in trucks which could be shipped over large distances or travel overland under their own power within a country or region.

In March 1959 the Board, acting on a recommendation of its Technical Assistance Committee, approved a model form of agreement to be concluded with States in which one of these Mobile Laboratories was to be used; it was based as closely as possible on the EPTA Revised Standard Agreement in use at the time.¹⁶⁰ Originally the model foresaw that all costs of transporting the Laboratory to a country from its last previous location, and all costs of movement within the country, would be borne by its Government. When this formula did not prove acceptable to the potential recipients, the Director General in 1960 proposed a modification by which the Agency would pay the costs of transportation to a new area (i. e., sub-continent) and each country would only be charged for the cost of intra-area and intra-country movements; but, even these provisions proved to be too onerous, and as a result the Laboratories were for some years rarely used and had to be stored for extended periods. In 1964 the Director General proposed a further change according to which the Agency would even cover part of the intra-area transportation; on this basis the Laboratories again saw more extensive service. However, at present both have been withdrawn from the task for which they were originally prepared and are used for other Agency activities.¹⁶¹

Decisions concerning the dispatch and use of these Laboratories were always made solely by the Director General.

18.3.7. Special missions

One type of technical assistance financed for the most part from the Regular Budget of the Agency (occasionally supplemented by minor contributions from UNDP) is the variety of special missions dispatched on various technical

assistance assignments. Over the years there have been sent: Preliminary Assistance Missions (designed to establish contacts, and to perform the first evaluation of the resources and needs of a Member with respect to nuclear energy); Power Survey Missions; Training Survey Missions; Isotope Missions; Library Survey Missions; Follow-up Missions (dispatched some years after a Preliminary Assistance Mission, and charged with evaluating the impact of projects that had been carried out on the basis of the report of the earlier group). Each such mission is made up of a group of experts, consisting in part of Agency staff members and in part of consultants, either hired ad hoc or made available on a cost-free basis by Member States. Depending on the type of mission, the field of expertise may be wide (Preliminary Assistance or Follow-up Missions) or narrowly concentrated (e. g., Library Survey Missions). The stay in a given country may range from a few days up to two weeks.

The purpose of each mission is to give some direct assistance (in so far as this is possible in the limited time available), to identify fields and areas where the Agency's programme might be expanded, eliminated or improved, and primarily to stimulate the States visited to present requests for technical assistance (or perhaps regular Article XI) projects to the Agency directly or through UNDP. It is on the ground of the latter function that these missions have been financed from the Regular Budget.¹⁶²

No formal agreements are concluded with States to be visited on a mission, though in the prior correspondence an undertaking is obtained from each host to pay certain locally incurred costs.

The Board's approval is obtained for the dispatch of every Preliminary Assistance Mission and of most other major missions. However, the Board has not objected to the Director General's claim that he is authorized to dispatch minor missions, within the budgetary resources available to him.

Formal reports are prepared on every Preliminary Assistance Mission and copies of these are made available to every Member State.¹⁶³ In addition, summaries of these reports are presented to and considered by the Board. The reports relating to other types of missions are generally not considered by the Board, nor are they distributed as widely unless they are of such general interest that their publication in the Technical Reports Series is justified.

18.4. REPORTS AND REVIEW

Guiding Principle No. 20 requires the Board to review annually the entire technical assistance programme of the Agency, regardless of how funded, on the basis of a report submitted by the Director General. The consideration of these reports, which are further described in Section 32.2.1, by the Board in June of each year constitutes the only systematic review of any component of the Agency's activities, such as recommended by the UN's Ad hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies.¹⁶⁴

Each of these reports by the Director General is also submitted to the following General Conference for information.¹⁶⁵ Though not on the agenda, these studies are used to supplement the more concise data in the Board's Annual Reports (which, however, are not on a calendar year basis and are thus not fully comparable to the technical assistance reports), and may thus form the background for the consideration of technical assistance issues during the General Debate and in connection with the Programme and Budget.

NOTES

- 1 The term "under-developed" is the one that appears in Statute Articles III, A.2, III, B.3 and XI, E.6, since it was current at the time that instrument was formulated. Later the adjectives "less-developed" or "developing" gained currency, and these too are used interchangeably in this study. While in principle all these terms, in the context of the Agency, should refer to all the States that are backward in the nuclear sciences, which is a different and somewhat broader group than those considered under-developed for other purposes, in practice this distinction has rarely had any operational consequences.
- 2 GC.1/1, paras.13, 38, 49, 69-79, 121-123, 187.
- 3 Idem, paras.171 and 187.
- 4 In November 1965 the UN General Assembly consolidated the Expanded Programme of Technical Assistance (EPTA) and the Special Fund (SF) into the new UN Development Programme (UNDP) (UNGA/RES/2029(XX)). In this study, all ongoing relationships have been referred to UNDP; however, where the context requires a historical reference, EPTA or SF are mentioned as appropriate.
- 5 Sections 18.2.3-4.
- 6 The Agency's "Regular Programme" of technical assistance consists of the projects financed from the Agency's own resources: Operating Fund II (funded from voluntary contributions of money to the Agency— Section 18.2.1) and gifts in kind — as opposed to the projects conducted from UNDP and other external resources. The term is somewhat confusing, because the regular technical assistance programme is not financed from the Agency's Regular (i.e., Administrative) Budget (Section 25.2.1) but from the Operational one.
- 7 Sections 13.3.1 and 18.3.7.
- 8 Section 17.2.1.1.
- 9 Section 18.3.6.
- 10 Section 18.3.4(A).
- 11 GC(III)/86, Annex I, and GC(III)/90.
- 12 GC(III)/100.
- 13 GC(III)/RES/46.
- 14 Section 18.1.3.1.
- 15 Section 18.3.3.
- 16 GC(IV)/113.
- 17 GC(IV)/137.
- 18 GC(IV)/RES/64 (the "equipment" Resolution) and GC(IV)/RES/65, (to which the text of the Guiding Principles was annexed and to which they are most frequently cited); the Principles are also reproduced in Annex II to the booklet "IAEA Services and Assistance" (GEN/PUB/12, Vienna 1966).
- 19 The Board's annual review of technical assistance activities, required by paragraph 20 of the Guiding Principles, extends to all such activities carried out by the Agency, whether or not explicitly covered by the Principles (Sections 18.4 and 32.2.1).
- 20 Though the specific reference is to the EPTA principles and criteria in force at the time the Guiding Principles were formulated, the purpose of the provision (the smooth co-ordination of all the Agency's activities in this field) can only be accomplished by interpreting the reference to apply to the rules as amended from time to time by ECOSOC. The interpretation has indeed always been in that sense, even after EPTA was merged into UNDP.
- 21 INFCIRC/11, Part I.A.
- 22 Sections 12.1 and 12.2.1(v).
- 23 IAEA/PC/OR.20, p.4; /OR.21, p.9.
- 24 GC.1/3 — now INFCIRC/11, Part I.A, Article XV.

- 25 GC.1/1, para.73.
- 26 GC.1(S)/COM.2/11.
- 27 GC.1(S)/24, para.3.
- 28 GC.1(S)/RES/10.
- 29 GC.1(S)/COM.2/OR.7, paras.3-4.
- 30 GC(II)/44.
- 31 ECOSOC/RES/694,E(XXVI), Part II, communicated to the General Conference in GC(II)/51, Appendix.
- 32 GC(II)/69, paras.23-24; GC(II)/RES/34.
- 33 ECOSOC/RES/222.A(IX), Annex I, first paragraph.
- 34 ECOSOC/RES/704(XXVI); Section 12.1.4.2.
- 35 UNGA/RES/1255(XIII).
- 36 UNGA/RES/2029(XX).
- 37 It should be noted that under this interpretation the participation in EPTA should have been registered with the Agency under Article XXII.B of its Statute (Section 26.6.1.1.1), since it must be assumed that the term "agreement" in Articles XVI.A and XXII.B are equivalent; however, no such registration was undertaken, evidently because of the lack of a registrable instrument.
- 38 Sections 7.2.2(d)(vi) and 8.3.3(b).
- 39 Section 28.3.5.2 and 28.4.2. See Article V.1 of the Standard Agreement.
- 40 UN doc. TAB/1/Rev.2, Suppl., part II, or TAB/R.251/Add.1.
- 41 For example, agreement with the Central African Republic, 480 U.N.T.S. 180.
- 42 For example, exchange of letters with Korea, 472 U.N.T.S. 406.
- 43 Section 3.3.4.
- 44 Sections 26.2.1.6, 26.5.2.2.1. Of course, under Article VI.3 of the Standard Agreement, the Agency always could terminate the Agreement with respect to itself by giving sixty days notice.
- 45 GC(III)/RES/46, para.2(a)(ii).
- 46 This Guiding Principle was adopted even though the Revised Standard Agreement had just been altered, under pressure from some of the participating organizations, to provide explicitly for the possibility of excluding from its terms any assistance supplied under the regular programme of such an organization (e.g., Agreement with the Central African Republic, 480 U.N.T.S. 180, at p.193, Article VI.2).
- 47 Section 18.3.6.
- 48 Section 18.2.1(B) and note 84 thereto.
- 49 UNGA/RES/1240(XIII).
- 50 INFCIRC/33, Article 1.3.
- 51 GC(V)/167.
- 52 GC(V)/180.
- 53 GC(V)/RES/96.
- 54 INFCIRC/33.
- 55 Section 26.4.2.
- 56 Based on Statute Article XI.F.4(b), which incorporates, inter alia, Article XII.A.2. Section 22.3.2.4.
- 57 Based on Statute Article XI.F.6. Section 27.1.3.
- 58 Based on Statute Article XI.F.5. Section 31.1.1.
- 59 INFCIRC/9/Rev.2. Section 28.3.5.2.
- 60 For example, agreement with the Philippines, concluded by means of letters signed on 26 September and 10 November 1960 - Agency Registration No.50.
- 61 GC(VIII)/INF/72, para.14.
- 62 For example, Technical Assistance Agreement No.TA/AGR/CEY/3, concluded with Ceylon on 26 April and 23 May 1963 - Agency Registration No.156.
- 63 GC(VII)/INF/72, para.14.
- 64 For example, Supplementary Agreement on Provision of Technical Assistance by the International Atomic Energy Agency to the Government of India, signed on 24 June and 19 October 1964 - Agency Registration No.262; this Agreement incorporates the Revised Standard Agreement with India of 31 August 1956 (249 U.N.T.S. 158), which was extended to the Agency by an exchange of letters of 19 June and 3 October 1963 (480 U.N.T.S. 342). Ha Vinh Phuong, "The IAEA Supplementary Agreement to the UNDP Revised Standard Agreement on the Provision of Technical Assistance", Legal Series No.5, IAEA, Vienna (1969) 243, Annex 1 to which contains the text of the "Draft Model Agreement" while Annex 2 gives a list of 31 States with which Supplementary Agreements in some form had been concluded by April 1968.

- 65 GC(IX)/INF/80, para.18, GC(X)/INF/87, para.14, GC(XI)/INF/93, para.25, and GC(XII)/INF/100, para.42.
- 66 For example, Plan of Operation for UN Special Fund project in Turkey, signed on 23 September (for IAEA) and 4 November (for Turkey and for Special Fund) 1966 - Agency Registration No.434.
- 67 INFCIRC/33, Article 1.1.
- 68 INFCIRC/33, Appendix, Article 1.2.
- 69 Sections 18.2.5 and 25.2.1.
- 70 For example, GC(XII)/RES/243, para.1, setting a target of \$2 million. Sections 25.2.2 and 25.5.2.
- 71 For example, GC(XII)/RES/243, para.3, allocating \$673 000 to Operating Fund I and \$1 839 000 to Fund II. Section 25.2.4.2.2.
- 72 Section 25.2.4.2.1.
- 73 For example, GC(XI)/OR.111, paras.38-39.
- 74 For example, GC(XI)/362, para.15(a).
- 75 GC(V)/RES/100.
- 76 UNGA/RES/1531(XV), para.2.
- 77 CNNWS Resolution H.II, reproduced in UN doc.A/7277, para.17.
- 78 "Contributions of Nuclear Technology to the Economic and Scientific Advancement of Developing Countries", UN doc.A/7568, paras.43 and 241.
- 79 INFCIRC/13, Part II. Sections 25.5.1.2, 25.5.3.
- 80 An early description of these procedures appears in ACABQ's report on "Administrative and Budgetary Co-ordination" between the UN and the IAEA, UN doc.A/4135, paras.36-39, 42-43, 52-56.
- 81 For example, the NPY Project Agreement (Section 19.3.2.2), INFCIRC/55, Section 3(a); in line with a later policy against such reservations of fellowships, this obligation was considerably weakened when the Agreement was extended, INFCIRC/55/Add.1, Section 2.
- 82 The procedure for submitting such requests and in particular the information to be submitted is outlined in Annex I to the booklet "IAEA Services and Assistance" (GEN/PUB/12, Vienna 1966).
- 83 Formerly of the Programming Division of the Department of Technical Assistance, until the 1968 re-organization of that Department (SEC/NOT/147, para.2).
- 84 Described in GC(XII)/INF/100, Part I.B.
- 85 AM.1/7, Appendix F. Section 9.4.4.1(f).
- 86 A claim explicitly asserted in GC(VI)/203, para.13.
- 87 Section 25.2.4.2.3.
- 88 TA Guiding Principles Nos.10 and 11.
- 89 Section 16.8.
- 90 INFCIRC/13, Part I.
- 91 GC(XI)/362, paras.15(b) and 16. However, a monetary value is assigned to these gifts in certain Agency reports, e.g., GC(XII)/INF/100, Annex I, para.4, and GC(XII)/384, Schedule G.
- 92 See Budgetary and Financial Practices of the United Nations, UN doc. ST/ADM/L.4, para.216. UNDP Procedures are described and analysed in great detail in R.G.A. Jackson's "A Study of the Capacity of the United Nations Development System", UN Publication DP/5 (Geneva, 1969), Vol.II, Chapter 5.
- 93 Proposed by ECOSOC/RES/1250 (XLII) and adopted by UNGA/RES/2279 (XXII). This new procedure is described in GC(XII)/INF/100, paras.35-41.
- 94 In one of its first reports, the UN's Joint Inspection Unit (Section 25.8.3) indicated that certain organizations abused this process by "pressurizing" countries to choose projects administered by these agencies; the IAEA thereupon informed the Unit that it never induced governments to request nuclear projects.
- 95 Section 13.3.1.
- 96 Sections 13.3.4 and 28.3.5.2.
- 97 As of 1971 this practice will be discontinued, and regional projects will require individual approval by the UNDP Administrator (up to US\$200 000) or the Governing Council, as for country projects (GC(XIII)/INF/111, paras.15-16).
- 98 Section 18.2.1(iii).
- 99 Section 19.3.1.3. INFCIRC/3B, para.2(c).
- 100 For example, Plan of Operation for UN Special Fund project in Yugoslavia, signed 3 April 1963 - Agency Registration No.147; amended 19 October 1966 - Agency Registration No.433.
- 101 Philippines (Pre-investment Study on Power, including Nuclear Power, in Luzon), Yugoslavia (Nuclear Research and Training in Agriculture), Central America (Eradication of the Mediterranean Fruit Fly), Turkey (Pilot Study for Radiation Disinfestation of Stored Grain); India (Nuclear Research in Agriculture)

- GC(XIII) 406, Part III, para.43; for the amounts allocated to two of these projects, see GC(VIII)/INF/72, para.22.A. A report on the Philippine project was published by the Agency in Technical Reports Series, No.3, "Prospects of Nuclear Power in the Philippines" (STI/DOC/10/3).
- 102 GC(VIII)/INF/72, para.22.A; GC(XII)/INF/100, Annex III.
- 103 GC(XII)/384, Part III, para.46, and Part IV, Statement X.B.
- 104 GC(X)/331, Part III, para.39. Section 18.2.5.1.
- 105 Section 25.1.1.1.2.
- 106 Sections 25.1.1.2.2 and 25.2.1.
- 107 As pointed out by the External Auditor in 1966, there are, however, significant differences in the methods of accounting for the reimbursement from these two UNDP functions, GC(X)/331, Part II, paras.14-16. See also ECOSOC/RES/737 (XXV III), /855 (XXXII) and /1060 (XXXIX) for the special allocation provisions set for the Agency under EPTA.
- 108 GC(IV)/119 and GC(IV)/RES/81.
- 109 Section 25.2.1(iv).
- 110 Section 18.2.7, INFCIRC/138, Section 8.
- 111 Section 18.3.7.
- 112 GC(II)/36, para.23; GC(III)/75, para.27.
- 113 Section 25.2.1(iii).
- 114 The significance of this development is recognized and approved in an expert report recently published by the UN Secretary-General (op.cit.supra note 78), para.242.
- 115 Sections 18.2.4 and 18.2.5.1.
- 116 Articles III and IV.
- 117 Section 18.3.4(A).
- 118 Article I.6. Section 29.2.4.
- 119 INFCIRC/33, Appendix, Article IV.1.2.
- 120 GC(VIII)/INF/72, paras.10 and 21; GC(VIII)/277, Part III, para.27, and Part IV, Statement V.
- 121 INFCIRC/138, Section 25.7.4.2.
- 122 GC(X)/INF/87, para.15. Section 24.1.5.2.3.
- 123 Sections 24.3.1.4 and 24.3.3.
- 124 This practice is apparently based on Revised Standard Agreement, Article II.2.
- 125 TA Guiding Principle No.5, footnote.
- 126 UN doc.E/2779, para.8 (ECOSOC Off.Rec. (20th sess.), Annexes).
- 127 GC(III)/RES/46, para.2(a)(v) and (vi).
- 128 GC(IV)/137, paras.1, 4 and 5.
- 129 GC(IV)/RES/64.
- 130 Section 15.3.1.3.
- 131 INFCIRC/50, para.159.
- 132 Section 15.4.
- 133 GC(XI)/RES/230, para.1.
- 134 In 1969, to disarm anticipated criticism, the Board reported that the equipment component of the Agency's Regular Technical Assistance Programme had risen from 18.7% in 1964 to 23.7% in 1969 (GC(XIII)/404, para.18). This actually represents the highest proportion yet attained (GC(XIII)/INF/111, Annex I, Table 4, column (3) - which shows the rather fluctuating growth of this item).
- 135 No such limit has ever been formally promulgated. However, in connection with the proposed amendment to Statute Article XIV whereby certain technical assistance activities were to be financed from the Regular Budget (Section 25.1.1.1.2), the Board tentatively adopted a Financial Regulation which included that limit (GC(VII)/236, Appendix B).
- 136 GC(XII)/INF/100, para.13.
- 137 GC(VIII)/INF/72, para.7 and Annex II.
- 138 GC(VI)/COM.1/87/Rev.1.
- 139 AM.IX/4.
- 140 A Specimen Letter of Transfer is set forth in AM.IX/4, Annex.
- 141 GC.1/1, paras.70, 72, 73.
- 142 GC.1/1, para.171; GC.1(S)/RES/6, para.1.
- 143 GC(II)/39, para.127.
- 144 GC(VIII)/INF/72, para.11.

- 145 This provision was strongly opposed by the Eastern European States, since they had been receiving a number of fellowships but were generally not on the EPTA-eligible list and would thus be eliminated from consideration for further grants. However their charge that this constituted a violation of Statute Articles III.C (imposition of conditions incompatible with the Statute) and IV.C (sovereign equality of all Members), was refuted by the Legal Adviser who pointed out that Articles III.A.2, III.B.3 and XI.E.6 required special consideration for the under-developed States and that Article XV of the UN Relationship Agreement (INFCIRC/11, Part 1.A) made it appropriate for the Board to adopt the UN's (i.e., EPTA's) classification of which these States are. The strong controversy is reflected in the oddly convoluted Board resolution, which in para.1 establishes a binding rule (subject to review in two years) in favour of EPTA-eligible States, and in para.3 requests the Director General to defer the implementation of para.1 "pending a further communication from the Board...but in the meantime be guided by the spirit of this resolution and the views expressed in the Board'on this question"; there has been no further communication from the Board - nor any review of the rule.
- 146 Section 9.4.4.1(f); AM.1/7, Appendix F. This decision is unusual in that the Board takes direct note of a Secretariat Committee and assigns a particular function to it; the purpose was to make sure that Secretariat officials of any particular State or area should not dominate the selection procedure.
- 147 In AM.IX/3.
- 148 AM.IX/3, para.4. This principle had already been proposed by the Preparatory Commission (GC.1/1, para.19(b)).
- 149 "IAEA Services and Assistance" (GEN/PUB/12, Vienna 1966), Annex I, para.3.
- 150 AM.IX/3, para.9.
- 151 Section 18.2.3.1.
- 152 AM.IX/3, paras.6-8.
- 153 AM.IX/3, para.20.
- 154 See "Guide for IAEA Fellows" (2nd revision June 1966), paras.22, 27 and 28.
- 155 For example, the NPY Project Agreement, supra note 81.
- 156 In compliance with GC(V)/RES/108. Section 19.1.1.
- 157 Section 19.1.3. GC(XII)/INF/100, para.10.
- 158 AM.IX/3, para.12; Section 18.2.3.2 and note 97 thereto.
- 159 Section 26.2.1.2.
- 160 Neither the Model Agreement nor any of the actual instruments concluded were ever published, or registered with the United Nations (Section 26.6.2.2); however, these agreements were registered by the Agency (Section 26.6.1.2.1), e.g., Agreement of 13 April 1960 for the Use of the IAEA Mobile Radioisotope Laboratory in Mexico - Agency Registration No.37.
- 161 INFCIRC/81; GC(X)/330, para.32.
- 162 Sections 18.2.5.2 and 25.2.1(iii).
- 163 These are published for "Limited Distribution" in the Agency's STI/DOC/...series.
- 164 UN doc.A/7124, Annexes I and XII, Recommendation 30.
- 165 For example, the report on the 1967 activities, GC(XII)/INF/100.

CHAPTER 19. RESEARCH ACTIVITIES

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III. A. 1, III. A. 7, IX. I. 4

General Conference Resolutions relating to Laboratory:

Establishment and functions (GC(II)/RES/25, Part B, paras. 3 and 4)

Use for training (GC(V)/RES/108)

Employment of additional staff (e. g., GC(X)/RES/211, para. 4)

Board decisions relating to Laboratory:

Establishment and construction (decisions of 8 and 17 April 1959)

Certain functions (decision of 21 January 1960)

Allocation of Laboratory costs: Programme and Budget for 1963 (GC(VI)/200), paras. 41-54

Monaco Laboratory Agreement (INFCIRC/27 and/Add. 1; INFCIRC/129)

Trieste Centre Agreement (INFCIRC/51, INFCIRC/114)

Vinča Dosimetry Experiment Agreements (STI/DOC/10/6, Annexes I-VII)

Proposals relating to the administration of the Research Contracts Programme (Memoranda to the Board on 29 May 1959, 13 December, 1960, 22 March 1961, 2 May 1962 and 18 June 1965)

Financial Regulation 5.03 (INFCIRC/8/Rev. 1)

Master Contract for US Financing of Agency Research (INFCIRC/89 and Add. 1)

Committee for Contractual Scientific Services (AM. I/7, Appendix C)

Middle Eastern Radioisotope Centre Agreement (INFCIRC/38 and /Add.1/Rev. 1)

Joint Project Agreements, e. g.:

NPY Project (INFCIRC/55 and Add. 1)

Fruit Irradiation (INFCIRC/64)

Administrative Manual Sections AM. I/4 and 5, AM. IX/6

The very first "function" assigned to the Agency by its Statute is to "encourage and assist research on... atomic energy for peaceful uses".¹ The Preparatory Commission's Report on the Initial Programme of the Agency similarly highlighted this part of the proposed activities.² However, both the Statute and the Report foresaw that the Agency would primarily stimulate and co-ordinate research carried out by its Members and only secondarily would it perform such work itself.³ This ranking is also apparent in the Long-Term Programme,⁴ in which three types of research activities are listed in the following order:⁵

- (a) Stimulating and co-ordinating research carried out in Member States without cost to the Agency;
- (b) Contracting for particular research to be carried out in Member States;
- (c) Carrying out research in facilities owned or controlled by the Agency.

This Chapter deals with the entire range of the Agency's research activities as sketched in the Long-Term Programme. However, the sequence of presentation is the reverse of the stated priorities, since from the legal point of view those activities are the most significant in which the Agency has the

greatest involvement. It should also be recognized that most of the activities discussed under this heading have a dual function: aside from research, there almost always is a significant training aspect; thus the presentation of some of these activities here, rather than in Chapter 18, merely reflects the fact that within the Agency their supervision is under the Department of Research and Isotopes or of Technical Operations, rather than under the Department of Technical Assistance and Publications.

19.1. DIRECT RESEARCH

19.1.1. Headquarters and Seibersdorf Laboratories

19.1.1.1. Statutory basis

Article III, A. 7 of the Statute, whose elimination was strongly urged at the Conference on the Statute,⁶ authorizes the Agency:

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

Moreover Article IX, I, 4 requires the Agency to establish or acquire as soon as practicable and necessary:

"Control laboratories for the analysis and verification of materials received."

The Preparatory Commission referred to these provisions in recommending that the Agency should at an early date examine the need for the establishment of laboratory facilities at its headquarters.⁷

19.1.1.2. Establishment

Almost as soon as the Grand Hotel in Vienna had been selected as the site of the Temporary Headquarters, the Director General proposed and the Board approved in June 1958 the conversion of part of its basement into a temporary laboratory, with equipment to be purchased from Regular Budget funds. Though originally conceived of as only the initial location of certain research work which would be moved to a functional laboratory once one had been established near Headquarters, even after such a laboratory was in full operation the Agency's basement laboratory was maintained there for reasons of convenience and also on technical grounds (low background radiation). But, since administratively these facilities are treated as part of the main Laboratory discussed in the balance of this Section, the facilities at Headquarters need not be given any further separate consideration.

The Second Conference amended the Resolution relating to the Operational Budget for 1959 to recommend to the Board and the Director General

the establishment, after consultation with SAC, of a laboratory with specified, limited functions.⁸ The Director General thereupon communicated certain Secretariat proposals to SAC at its first series of meetings, and on the basis of its advice submitted an appropriately modified report to the Board. On 8 April 1959 the Board approved the construction of a laboratory. As soon as that decision was taken the American representative formally announced that his Government was prepared to donate US \$600 000 for the construction and equipment of such a laboratory - an offer which the Board accepted a week later.⁹

19.1.1.3. Arrangements with Austria

Section 5 of the Headquarters Agreement¹⁰ authorizes the Agency to "establish and operate research and other technical facilities of any type", subject to agreed measures to prevent hazards to health or safety. In its Resolution approving the establishment of a laboratory the Board also authorized the Director General to conclude with the Austrian authorities any agreement necessary for the construction.

Pursuant to this authority the Director General concluded a lease with the Austrian Studiengesellschaft für Atomenergie (SGAE) of a plot of land adjoining that on which SGAE had constructed a reactor at Seibersdorf, a few kilometers from Vienna. This proximity was sought because it was considered that both parties would benefit from close collaboration - which has indeed developed.¹¹

Negotiations were also started with the Austrian Government for the inclusion of the Laboratory within the definition of the Headquarters seat in accordance with Section 6 of the Headquarters Agreement. However, these negotiations were inconclusive and the exact status of the Laboratory vis-à-vis the Government has thus never been formally defined, though apparently both parties regard it as part of that seat.

19.1.1.4. Functions and activities

The functions of the Laboratory are not specified in any single instrument.¹² Certain specifications, or more often limitations, are contained in a number of resolutions of the General Conference and decisions of the Board. The actual range of activities is determined from time to time by the Director General within the framework of the approved Programme and Budget for the period in question.¹³

The Resolution passed by the Conference at its second regular session called for a Laboratory whose functions should not exceed five specified types of activities,¹⁴ In the memorandum on the basis of which the Board approved the establishment of the Laboratory, the Director General listed, following advice he had received from SAC, eleven particular activities, within the limits established by the Conference, for which the facility should be particularly equipped.

In January 1960, responding to requests from a number of Member States and to enquiries from UNSCEAR, the Board gave the Director General strictly circumscribed authority to undertake, solely at the request of

Members or of organizations in relation to the Agency, certain measurements relating to the level of environmental contamination, and to train scientists from the less developed countries in such work. The caution with which this potentially important activity was treated reflected the consideration that such studies necessarily relate to the desirability of a nuclear test ban - at that time a politically controversial subject.¹⁵

The Fourth General Conference requested the Director General to explore the possibility of world-wide co-operation in the preparation and distribution of radiation and neutron standards - a type of work in which the Laboratory was particularly qualified to participate.¹⁶ The Fifth Conference requested the Director General to make available the facilities of the Laboratory and so to organize its work that as many scientists as possible from the less developed areas might receive training in it.¹⁷

In 1963 Pakistan proposed in the Board and later tentatively to the General Conference that the programme of the Laboratory should be more clearly planned and be formally approved by SAC.¹⁸ However, the Board took no action on this proposal and Pakistan withdrew it from consideration by the Conference before it had been included in the definitive agenda.¹⁹

The activities of the Laboratory are reported in annual, unrestricted reports on "IAEA Laboratory Activities".²⁰

Three major reviews of the work of the Laboratory have been carried out by groups of outside experts, in March 1964, November 1966 and October 1968, the results of which were reported to the Board but not otherwise published.

19.1.1.5. Financing

The construction of the Laboratory was largely financed by the initial gift of the United States of America. However, later additional funds were required (because of mistakes in the original estimates and rising construction costs) and these, in accordance with Statute Article XIV, B. 2,²¹ were supplied from the Operational Budget.

The equipment was purchased in part from voluntary contributions made for that purpose by Member States, and in part from appropriations from the Regular and the Operational Budgets, depending on the use to which particular items were to be put. Finally, a substantial amount of equipment has been donated in the form of gifts in kind.²²

The running costs of the Laboratory are financed largely from the Budget of the Agency. Whether the funds are drawn from the Regular or the Operational Budget depends on the nature of the activity. In practice, all expenditures are first charged to Operating Fund I, and later that Fund is credited from the Regular Budget for the cost of the "administrative" work that had been carried out.²³ Initially, this credit was based on a rough estimate, but in 1962 the Board required that this determination be made on the basis of detailed cost accounting. An elaborate statement of the basis on which costs have since been allocated appears in the Programme and Budget for 1963.²⁴ Though that report indicates the degree of detail and precision achieved by dividing the Laboratory's work into more than thirty sub-areas (some of which are assigned entirely to one Budget or the other,

while others need to be further sub-allocated), the basic criterion according to which this allocation is made represents at most a rough and ready interpretation of Statute Article XIV, B:

- "(i) Items of general interest to the Agency's membership as a whole should be charged to the Regular Budget; and
- "(ii) Items of limited interest, that is, of interest to one Member or small group of Members, such as a regional project, should be charged to the Operational Budget." ²⁵

From an original charge of 40% of expenditures assigned to the Regular Budget, based on estimates, the more refined analysis (and presumably the changing nature of the work of the Laboratory) led, by stages, to an increase in Regular Budget contributions to 75%. In 1968 the Board indicated that it might soon recommend that this fraction be further increased "because a larger part of the work performed in the Laboratory might now reasonably be considered as of benefit to the membership at large".²⁶ In 1969, without giving any further justification than a desire "to relieve the Operational Budget gradually of the burden of laboratory charges", the round sum of US \$60 000 of expenditures were simply transferred to the Regular Budget.²⁷

When the Laboratory performs a service or supplies an item (such as a radiation standard) to a State, organization, institution or private person, it normally requires payment therefor.²⁸ Though from time to time consideration has been given to having the Board establish a "scale of charges" as foreseen in Statute Article XIV.E this has never been done, implicitly on the ground that the statutory provision was meant to relate primarily to the furnishing of substantial quantities of nuclear materials to Member States while the Laboratory supplies minor amounts of other assistance to both States and individuals. Instead, the Director General periodically promulgates price lists, prepared on the basis of studies of the practices of public and other non-profit institutions and after some consultation with SAC; these prices have in no case been officially considered by or even reported to the Board.²⁹

19.1.2. Monaco Laboratory

19.1.2.1. Establishment

Consequent on an offer by the Government of Monaco, the Director General, upon authorization by the Board, in March 1961 entered into an agreement with the Government and the Oceanographic Institute of Monaco for the undertaking of a research project, under the Agency's auspices, on the effects of radioactivity in the sea.

The original Agreement Concerning Research on the Effects of Radioactivity in the Sea³⁰ was in form an instrument for establishing a joint project;³¹ however, since the research was to be conducted by the Agency itself, the Agreement at the same time established a regional activity and thus partook of some aspects of a host agreement.³² In the first sense it speci-

fied the contributions to be made by each of the parties, disposed of the rights to intellectual property and established an advisory committee; the research programme itself was set out in an annex.³³ In the second sense the Agreement required the application of the Agreement on the Privileges and Immunities of the Agency³⁴ and provided for the social security coverage of persons employed by the Agency.

Before the expiration of the three-year period for which the Agreement was originally concluded, the Director General appointed a panel of four experts to evaluate the first two years of operation. Their report was reviewed by SAC and then forwarded with its recommendations to the Board. Thereupon the parties agreed to a five-year extension of the project until the end of 1968.³⁵

During 1967 the Director General appointed a new group of consultants to determine the part the Monaco Laboratory should play on the subject of waste management in the Agency's new 6-year programme, particularly in relation to marine releases of nuclear materials. The positive recommendations of this group were referred to SAC, which seconded them and also emphasized that while the Laboratory was too small to do much significant, independent research, it could be most valuable in supporting the Agency's work on waste disposal, in providing internationally accepted standards and calibrations, and in helping co-ordinate the work of national laboratories. On the basis of these reports and that of the Director General, the Board in June 1968 approved an extension of the Laboratory on the basis of a new "Agreement Concerning Developmental Studies on the Effects of Radioactivity in the Sea". That instrument differs from the earlier one only slightly: no research programme is annexed, but the "Purposes of the Project" are clearly oriented towards practical work relating to both accidental and systematic radioactive contamination of the seas; the initial duration is 6 years, subject to extension; the respective obligations of the parties are restated in slightly altered form; and an exculpation clause in favour of the Agency was added. The Agreement was signed on 27 March and on 21 May 1969, and entered into force on the latter date.³⁶

19.1.2.2. Operation

The Agency operates the International Marine Radioactivity Laboratory at Monaco as an integral part of its own activities.³⁷ Though both the Government and the Institute may put at the disposal of the project scientists, technicians and other persons (who are not to be considered as staff members of the Agency but who work under the direction of the Chief Scientist appointed by it), most of the personnel is provided by the Agency and are employed by it as staff members. These are subject to the Provisional Staff Regulations and the regular Staff Rules,³⁸ though special salary scales have been promulgated for the General Service grades³⁹ and a special determination of the appropriate post adjustment is made with respect to the professional staff.⁴⁰ In addition, the Agency may grant fellowships for work on the project.⁴¹

Though responsibility for the project is in the hands of the Agency, the Agreement provides for an "advisory committee", two of whose members are

appointed by the Agency while the Government and the Institute each appoint one.⁴² This committee meets periodically and considers how the three parties can contribute most effectively to the enterprise.

19.1.2.3. Financing

The premises and equipment for the Monaco Laboratory, including several boats, are for the most part provided by the Government and the Institute, and to a lesser extent by the Agency, without burdening the budget of the project.

The operating costs are borne by the Agency. However, in the first Agreement, the Government undertook to make an annual contribution of NF 200 000 to the project,⁴³ which was increased to NF 220 000 in the new instrument.⁴⁴

The Agency itself covers the balance of the funds required from its Regular Budget. However, in view of the need for annual budget approval, it has not undertaken to make any definite contribution. Instead, in a unique device, the first Agreement provided that each year, as soon as the Agency's budget for the next year was approved, the Director General was to notify to the other two parties the staff, equipment and supplies that the Agency proposed to make available to the project for that year. If these contributions had fallen below the level established for the initial year (which was specified in the Agreement) and had the other two parties concluded that in view of such reduction the project could not effectively be continued, they could have terminated the project at the end of the current calendar year.⁴⁵

In the new Agreement the Agency overcame some of its reluctance to enter into long-term commitments, though the Board declined to undertake that "The contributions of the Agency in subsequent years will be determined by the statutory bodies of the Agency in amounts to ensure the continued operation of the project for the fulfilment of its purposes" and substituted the initial year's contribution (estimated at \$131 000) as an explicit ceiling (and implied commitment), at least until a 3-year review has taken place, "except to the extent that increases may be needed to offset any general rise in the cost of goods and services".⁴⁶

19.1.3. Trieste Theoretical Physics Centre

19.1.3.1. Establishment

At the Conference on the Statute it was formally proposed that the Statute provide for the establishment of a "World University of the Atom".⁴⁷ Though this proposal was not adopted,⁴⁸ the general idea was revived again and again in the General Conference until a somewhat reluctant Board (backed by a skeptical SAC) was pressured into the originally tentative establishment of the International Centre for Theoretical Physics at Trieste.

Already the Fourth General Conference requested the Director General to study the establishment of such a Centre.⁴⁹ At the fifth session the Italian Government announced an offer to help finance and support the Centre,⁵⁰ and thereupon the Conference addressed a more emphatic request to the Board and the Director General to undertake the necessary studies.⁵¹ Not dis-

couraged by a report of SAC's negative attitude submitted to its sixth session,⁵² the Conference then repeated its request for a study and indeed proposed that the Board include such a Centre in the Agency's programme as soon as possible.⁵³ Finally in June 1963 the Board decided to accept, of the several offers that had been received, the Italian one and to establish the Theoretical Physics Centre on a provisional basis under the Agency's auspices. It restricted the initial period of operation to about four years, limited the Agency's total contribution during that period to a specified amount and provided that after two years a review should be performed to determine whether the activities of the Centre should be maintained at the same level. In September 1963 the Board further approved the text of the Agreement between the Agency and the Government of Italy Concerning the Establishment of an International Centre for Theoretical Physics at Trieste.⁵⁴

That instrument, far more than that relating to the Monaco Laboratory, was in effect a type of headquarters agreement. It stated that the Centre "shall be established as a part of the Agency".⁵⁵ Logically, since the Centre is an Agency activity, no contribution was pledged by the Agency; on the other hand the Italian Government undertook to place at the disposal of the Agency a number of buildings and equipment (initially consisting of temporary premises to be replaced by permanent ones - a requirement that might have been considered over-optimistic in view of the nominally temporary nature of the Centre) and to guarantee payment (by unspecified private donors) of a substantial annual financial contribution.⁵⁶ Detailed provisions are made for privileges and immunities, in part by reference to the Agency's Agreement.⁵⁷

Pursuant to the Board's instruction that the operation of the Centre be reviewed after two years, the Director General received a report from the Centre's Scientific Council in May 1966, which gave the Centre exceptionally high marks for fulfilling each of its several objectives and recommended that the Agency consider the Centre as one of its essential activities, to be supported at an increased budgetary level to be primarily supplied by the Agency. The Board discussed this report in June, but took no decision on it.

In September 1966 the survival of the Centre was debated at length in the Programme, Technical and Budget Committee of the General Conference, on the basis of a draft resolution which would have requested the Board to insure the continuation of its work "in the years to come" and the Director General to negotiate for contributions to this end from the Italian Government, from other Member States, from UNESCO and from foundations;⁵⁸ however, in spite of considerable support no agreement could be achieved, and the Conference therefore merely transmitted the proposed resolution and the records of the related discussions to the Board.⁵⁹ Before the latter could again consider the matter, the Director General also communicated to it, with his endorsement, a second report from the Scientific Council containing further suggestions for extending certain activities of the Centre and re-emphasizing the need for a stable budget. In February 1967 the Board authorized the Director General to negotiate a new 6-year agreement with the Government of Italy, to reflect the assumptions that the latter would maintain its level of annual contributions, that the Agency would contribute about \$150 000 per annum (a considerable increase from the previous level

of support) and that other sponsors, including particularly UNESCO, would help achieve the desired annual budget of about \$500 000.

On the basis of this decision, the Director General negotiated an extension agreement with Italy. Conforming to the latter's wishes that a new instrument should clearly reflect that the Centre is an Agency rather than a joint activity, the text retained in substantially unchanged form only the provisions relating to Italy's role as the host State; the ephemeral provisions relating to the original establishment of the Centre and to its temporary quarters were naturally omitted, as were all the provisions relating to the Government's annual contributions for the support of the Centre that would be provided for in other, less formal instruments. Together with the text of the proposed agreement, the Director General also presented to the Board an outline of the "Organization and Operation of the Centre" which had been prepared at the request of the Italian authorities. In June 1967, the Board authorized the Director General to sign the new agreement and any necessary ancillary instruments, and incidentally noted one Governor's proposals relating to the paper on organization of the Centre. The Agreement Concerning the Seat of the International Centre for Theoretical Physics was signed on 5 December, 1967, to enter into force upon ratification by Italy.⁶⁰

In order to ensure increased support from UNESCO, the IAEA concluded a 5-year agreement with that organization for the joint operation, as of 1970, of the Centre by the two agencies with both making equal contributions.⁶¹

19.1.3.2. Operation

The Trieste Centre was an IAEA, and has become an IAEA/UNESCO, activity Except for some service staff employed and made available by the Italian Government, all personnel of the Centre are and will be employed by the Agency, as staff members or on Special Service Agreements, or are assigned to it on fellowship grants. As in the case of Monaco, the same Staff Regulations and Rules are applicable at the Centre as at Headquarters, with the exception of modified General Service salary scales⁶² and a separate determination of professional post adjustments. In furtherance of their agreement for the joint operation of the Centre, UNESCO and the Agency have formulated a set of "procedural arrangements" concerning the "Selection, appointment, promotion and termination of staff".

The Director General has promulgated two principal administrative instructions relating to the Centre. One was originally incorporated into the Provisional Manual, and specified mostly special delegations of authority to the Director of the Centre relating to functions that in Vienna would be performed by various officers of the Secretariat.⁶³ The other is an instruction on the "Scientific Organization and Operation" of the Centre,⁶⁴ which:

- (a) Defines the purpose of the Centre;
- (b) Outlines its scientific programme;
- (c) Establishes a Scientific Council, whose members are appointed by and which is to advise the Director General;⁶⁵
- (d) Confirms the Director as the scientific and administrative head of the Centre,⁶⁶ responsible to the Director General;

- (e) Provides for several categories of scientific staff: long-term scientific staff, visiting scientists, guest scientists, senior associate members and junior associate members;
- (f) Establishes an Academic Board to advise the Director;
- (g) Defines the terms under which training and research fellowships are to be awarded.

From the beginning close collaboration was established with UNESCO, which was furthered by the appointment of UNESCO's Assistant Director-General for Science to the Scientific Council.⁶⁷ The Agency, UNESCO and the Italian National Institute of Nuclear Physics entered into an agreement for the establishment of an Advanced School of Physics at the University of Trieste, in which fellows working at the Centre or appointed by UNESCO can receive instruction.⁶⁸

The Centre (acting in the name of the Agency) has entered into Federation Agreements with a number of universities and other scientific institutions, providing for the exchange of scientists between these and the Centre.⁶⁹ These agreements, each of which follows one of three standard forms, provide for the Centre's partner to send some of its collaborators to visit the Centre or to invite scientists of the Centre to visit the institution; the Centre subsidizes these exchanges, within specified limits, by making certain payments for subsistence and travel.

Another device for assisting talented scientists from developing countries involves the selection of some of these as "associate members" of the Centre, who may each year spend one to four months there at its expense. The purpose of these arrangements is to reduce the "brain drain" from developing countries by making it unnecessary for these physicists to face the choice of stagnating through continuous work in their own countries, or of exiling themselves for the sake of wider scientific opportunities.⁷⁰

Finally, the Centre is host to a number of Agency fellows assigned to it under the Agency's⁷¹ or UNESCO's fellowship programmes. Under the first Agreement the Italian Government paid a large part of the Agency's costs relating to these awards.⁷²

19.1.3.3. Financing

The capital expenses of the Centre were borne entirely by the Italian Government.⁷³

The operating expenses of the Centre are nominally covered by the Agency. However, the larger part of the required funds is donated by various sources in Italy, and the annual level of these contributions was guaranteed by the Government in the first Agreement.⁷⁴ Thus only residual expenses need to be charged to the Agency's Regular Budget, within limits specified by the Board in authorizing the establishment and continuation of the Centre.

In 1967 the Ford Foundation granted \$200 000 to the Centre, to be used for extraordinary activities during the next three academic years.

From the beginning, UNESCO has made substantial contributions to the Centre. As indicated above, in 1969 an agreement was concluded for its contribution to reach parity with the Agency's by 1970, and for the consequent transformation of the Centre into a joint operation.⁷⁵

19.1.4. Vinča Dosimetry Experiment

On 15 October 1958 a serious accident occurred in the operation of a critical facility at the Boris Kidrič Institute of Nuclear Science at Vinča near Belgrade. In an unmeasured critical excursion six scientists were severely irradiated; all were immediately flown to France and subjected to radical and novel treatment as a result of which all but one recovered. Since data on severe human irradiation is fortunately rare, it seemed valuable to determine retroactively the dose that each victim had received so that the success of the treatment might be evaluated in the light of that data. It was therefore proposed that the Agency arrange for a controlled "reconstruction" of the accident, in which the injured scientists would be replaced by appropriate measurement devices.

Though the entire project was not a major one and was completed in a relatively short time during April 1960, it provides an interesting and up to now unique example of international collaboration co-ordinated through the Agency. Out of a number of technical and political considerations it seemed desirable to subdivide the scientific work among several Member States, and for practical reasons it was simplest for their legal relations to the project to be regulated by a series of bilateral agreements with the Agency. Thus separate agreements were concluded with:⁷⁶

- (a) The Yugoslav Federal Nuclear Energy Commission, which made available to the Agency the premises and facilities where the accident had occurred and much of the required technical man-power;⁷⁷
- (b) The French Commissariat à l'Energie Atomique, which re-activated the facility and later analysed the samples irradiated in the experiment (which included several "phantoms" - ingenious humanoid dummies filled with saline solutions), thus permitting comparisons with the tissues of the victims examined by the same French team as part of the treatment given immediately after the accident.⁷⁸
- (c) The United Kingdom Atomic Energy Authority, which loaned the necessary heavy water to permit re-activation of the facility.⁷⁹
- (d) The United States Atomic Energy Commission, which made the dosimetric measurements during the reconstructed excursion to determine the actual amount of radiation released.⁸⁰

The Agency itself supplied the leadership of the project and co-ordinated and directed the work of the several teams provided by the national organizations. At the conclusion of the experiment and after evaluation of all the data, the Agency published the results for the information of all its Members⁸¹.

19.1.5. Reports on the Agency's research

Since 1963 the Agency annually publishes a report on "IAEA Laboratory Activities", which appears in the Technical Reports Series.⁸² At present these publications cover the work of the Headquarters (Vienna), Seibersdorf and Monaco Laboratories, and of the Trieste Centre, as well as of the Middle Eastern Regional Radioisotope Centre for the Arab Countries⁸³.

These reports are not submitted either to SAC, to the Board of Governors or to the General Conference, but are available to its members - as well as to the general public. They thus supply the detailed information that is only summarized in the Board's Annual Reports.⁸⁴ The Board itself is kept up-to-date through the Director General's periodic reports,⁸⁵ which always refer to the Agency's research activities, and through the special ad hoc reports on particular activities communicated to it from time to time.

19.2. RESEARCH CONTRACTS

The primary way that the Agency has found, from the first year of its existence, to carry out its statutory function to encourage and assist research, is through the granting of research contracts to investigators working in private or public scientific institutions.⁸⁶ The Agency was one of the first organizations within the UN system to establish a research contracts programme and thus its experience in this field is of interest.

19.2.1. Policies and procedures

The basic policies and procedures of the research contracts programme have never been promulgated in a single instrument.⁸⁷ Instead they have been developed as required by the Secretariat, though from time to time all or part of these provisions have been submitted to the Board for approval or merely for information.

After some years of ad hoc operation, the Board in June 1960 instructed the Director General to review the practices and procedures for awarding research contracts in consultation with SAC and to report the results to the Board before carrying out the 1961 programme. In October the Director General presented a lengthy memorandum to SAC on "The Agency's Policy and Procedures in Awarding Research Contracts", in which he also addressed a series of questions to the Committee. SAC responded with a number of recommendations, which the Director General incorporated in a "Review of Practices and Procedures Followed in Awarding Research Contracts" communicated to the Board in December. After Governors had submitted a number of suggestions and had discussed the Director General's proposals at a meeting of the Board, the entire matter was referred to its Administrative and Budgetary Committee, to which the Director General submitted a revised set of proposals. After these were somewhat altered by the Committee they were accepted by the Board in April 1961 and to the present constitute the closest approach to a binding and cohesive policy instrument on this subject. However, certain important legal questions (e. g., the provisions to be included in research contracts) are only covered in the Director General's December memorandum (on which no formal action was taken by the Board), while later changes in procedures and policies are reflected in memoranda that the Director General communicated to the Board in May 1962 and June 1965.

The provisions approved by the Board relate to two types of questions: through what procedures and organs is the annual research contracts pro-

gramme to be developed, and through what procedures and organs are particular research contracts to be awarded within the approved programmes. While the present practices are set out in Sections 19.2.3 and 19.2.4, it is useful to consider first the fundamental questions relating to the two principal, interconnected policy issues:

(a) What type of research is to be supported

Should primarily those projects be supported that are of particular interest to the Agency itself for its own operations (e. g., for the development of radiation exposure standards), or those as might have the maximum chance of extending the frontiers of knowledge or technology, or finally those of particular immediate interest to the underdeveloped majority of the membership?⁸⁸ Over the years the emphasis of the programme has shifted along this spectrum until it is now firmly fixed on the last alternative (except for the special research carried out in support of the safeguards programme).⁸⁹

The reason for this shift can be found in the political dynamics which assures that the bulk of the Agency's resources will be distributed along lines desired by the majority of Members: the relatively modest resources available, fragmented as required by political exigencies, make it difficult to contract for any significant work of the first two types mentioned above; furthermore the decision (referred to immediately below) that contracts should as far as possible be awarded to institutions in the less developed States, makes it unlikely that any research of fundamental import and genuine novelty will be carried out.

(b) On what basis should research contractors be selected.

Should selection be on the basis of greatest ability and competence, or on the basis of maximum need for the Agency's financial assistance? Both from a legal and a practical point of view, the horns of this dilemma can be defined more sharply as follows: is the programme genuinely one of contracting for research leading to results required by and valuable to the Agency and its Members, or is it a means of distributing grants supplementing technical and other forms of assistance? A related question is whether research proposals should be developed by the Agency, which is then to seek the best available investigator (contract approach), or whether proposals should be advanced by potential investigators with the Agency merely selecting the most worthy of the projects (grant approach).⁹⁰

Though these sets of questions suggest an apparently insoluble polarization of policies, in fact various compromises are possible. Originally the least imaginative of these was adopted, a mere division of the available funds into a portion allocated for genuine contracts and another for grants. Later, a more constructive approach was evolved, designed to combine the more desirable features of both policies: though the choice of contractors is based more and more on need rather than on ability (by taking account of the geographic allocation of awards, with the largest fraction assigned to under-developed countries), more and more research proposals are originated in the Agency. Through this device the Agency is able to stimulate less-developed institutions to carry out types of research for which experience shows they are best fitted and whose results at the same time are

of particular benefit to their part of the world; furthermore, by the operation of co-ordinated research programmes (in which a number of researchers in different countries perform the same or closely related experiments),⁹¹ the results may achieve a significance surpassing the capability of any individual investigator. Therefore only the purist might regret that the programme has not evolved definitely toward either the contract or the grant approach (for both of which clear-cut precedents exist in national practice), but has remained delicately if not quite evenly balanced between the two. However, it is consonant with the grant-oriented bias that the Agency's modest funds should be so widely distributed that the average contractor receives less than \$6000 annually - an amount rarely sufficient to pay for any significant work in the nuclear field.

19.2.2. Financing

19.2.2.1. From Agency resources

The research contracts programme has been largely, but not exclusively, financed by the Agency itself - though of course it must be understood that all contracts granted by the Agency are on a cost-sharing basis, i. e., the contractor always must carry at least part and usually the major share of the costs: at the minimum the institutional overhead as well as any construction costs, and usually also a substantial fraction of the specific operating costs of the research - a logical consequence of the "grant approach".

The funds made available by the Agency have until recently come from both the Regular and the Operational Budgets - a distinction corresponding roughly but never by any means exactly to the "contract" versus "grants" concept of the programme.

Initially, under a relatively strict interpretation of Statute Article XIV. B. 1, only those contracts were financed from the Regular Budget that could be related directly to some Agency function listed in Article XIV. B. 1 (e. g., safeguards, interpreted as including - (as in Statute Article XII. A) health and safety - and extending the latter to include almost all biological investigations).⁹²

Somewhat later, after the practice became established of financing part of the research contracts programme from the Operational Budget, it would have been logical to fund from that source all contracts that could not be brought within an increasingly liberal interpretation of Article XIV. B. 1. Instead, over the objection of several Member States concerned lest the assessed budget be ever more expanded to cover activities classified as operational by the Statute, in 1961 the following distinction was officially established between projects: those financed from the Regular Budget were to be of general interest to the membership; those whose results were likely to be of interest only to a few States (e. g., the study or cure of a local disease by the use of radioisotopes) were relegated to the smaller Operational Budget.⁹³ In fact, no strict distinction between projects financed by the two budgets was maintained: sometimes a contract originally financed from one budget was renewed under the other, or several contracts forming part of a co-ordinated programme were differently financed.

In 1963 a further and somewhat different distinction was introduced: the Board declared that since the Operational Budget is largely dedicated to technical assistance, research projects carried out in under-developed countries could be financed from that source - regardless of the nature of the study - on the ground that such projects constitute useful supplements to the Agency's training programmes.⁹⁴

In connection with the 1967 Budget the Board decided, without objection from the General Conference, to abolish the previous distinction and to finance all research contracts from the Regular Budget.⁹⁵ This change was justified on the ground that no part of the programme should be considered as a concealed form of technical assistance (i.e., as a grant) - a mildly hypocritical position in view of the continuing tendency to favour researchers from poor countries, but actually justifiable in view of the ever more serious demands made on contractors (through co-ordinated projects, etc.).⁹⁶ In doing so, however, the last vestige of any restriction of the Regular Budget to contracts on Article XIV. B. 1 subjects disappeared, apparently without any overt resistance from the States that had earlier objected even to the lesser violations of the statutory distinction.

Though ordinarily Regular Budget appropriations lapse one year after the year to which they apply, this period has been extended to two years for obligations arising under research contracts.⁹⁷ This is necessary because even if a one-year contract is granted late in a fiscal year, the final payment cannot be made until the final report (which is usually written some time after the completion of the research) has been received and evaluated.⁹⁸

19.2.2.2. From outside contributions

From time to time the Agency has received outside contributions to finance particular research projects. The only continuous series of such contributions has come from the USAEC as a result of an offer announced at the Second General Conference⁹⁹ and subsequently accepted by the Board. The Agency and the Commission thereupon concluded a Master Contract for U.S. Financing of Agency Research,¹⁰⁰ under which the Agency submits to the Commission research projects that the Secretariat has evaluated and found acceptable under its own criteria; if the Commission agrees to support the project, a research contract is concluded between the Agency and the Commission in the form of a short supplement to the Master Contract; pursuant to that research contract the Agency then enters into a sub-contract with the appropriate research institution. The USAEC pays the Agency and the Agency pays the researcher; the research reports are addressed to the Agency, which evaluates them and forwards copies to the Commission for further consideration.¹⁰¹

19.2.2.3. Cost-free research

Because of its limited funds the Agency cannot support all the worthy research proposals submitted to it, nor can it finance any really substantial investigations. The Agency has therefore repeatedly approached its Members as well as certain institutions to ask them to make available to it the re-

sults of research that they are carrying out on their own initiative (such requests can be addressed to Member States on the basis of Statute Article VIII, A)¹⁰² or even to carry out some particular study (a request for services to be provided pursuant to Statute Article X). Compliance with such a request is of course voluntary and does not require the conclusion of an agreement.

Nevertheless the Agency some years ago initiated its "research agreements" programme, under which it concludes contracts with institutions for the carrying out of specified research at no cost to the Agency. By these instruments the researcher merely undertakes to provide to the Agency a complete technical report containing publishable information, while the Agency agrees to include him in any reciprocal exchange of information with other institutions carrying out similar or related research in other parts of the world. Though a few isolated studies are covered on this basis, most research agreements relate to co-ordinated research projects under which a number of scientists throughout the world are working on the same problem;¹⁰³ to assist productive interaction the Agency may finance occasional meetings of the several researchers.

19.2.3. The annual programme

The research contract programme for a given year is developed according to procedures outlined by the Board in 1961:

- (a) The first step is to define, approximately eighteen months before the start of the fiscal (calendar) year in question, the fields of research in which the Agency is particularly interested. This is done by the Secretariat, relying in part on the advice of panels of outside experts convened by the Director General.
- (b) About fourteen months before the start of the year in question the Secretariat's conclusions are submitted to SAC.
- (c) In April before the year in question the Director General submits to the Administrative and Budgetary Committee of the Board the draft budget, which includes a proposed total to be spent for the research contracts programme, sub-divided into six to twelve fields for each of which a sub-allocation is indicated. The Board is also informed of SAC's comments on the Secretariat's proposals.
- (d) After approval of the estimates by the Board, but before the General Conference has acted on them, the Member States are informed in July of the planned research contracts programme for the coming year and invited to stimulate national institutions to submit proposals in the specified fields.¹⁰⁴

19.2.4. The granting of contracts

The award of research contracts¹⁰⁵ is the responsibility of the Director General. Though from time to time it has been suggested that he should consult with or even secure the approval of SAC¹⁰⁶ or the Board for each award, no individual contract has ever been submitted to either of these bodies - whose functions thus relate only to the formulation of general policies and procedures and to the establishment of the annual programmes.

The following procedure is followed in granting contracts:

- (a) Formally, research proposals are received from institutions. However, though many of these originate through individual initiative, perhaps stimulated by the general invitations addressed by the Agency to Member States and to certain institutions, more and more projects are developed by the Secretariat and "sold" to a researcher who then submits his proposal. Unlike fellowship applications, these proposals need not be submitted through governmental channels, and indeed rarely are.¹⁰⁷
- (b) In the Agency these proposals are evaluated by a scientific project officer (appointed ad hoc for each proposal or related group of proposals) - who may be the person who originally developed the project and stimulated the researchers.
- (c) All proposals recommended by project officers are submitted, through the competent Division Directors, to the inter-departmental Committee for Contractual Scientific Services (CCSS), composed of representatives of the seven Divisions primarily concerned with research contracts (including the Division of Budget and Finance) and chaired in rotation by the DDGs for Research and Isotopes and for Technical Operations. The Committee's principal term of reference is to advise the Director General on the selection of research projects, from whatever source they are to be financed.¹⁰⁸
- (d) The final decision on awarding research contracts is made by the Director General. Of course, if a project is to be financed by the USAEC, then the approval of the Commission must also be obtained.¹⁰⁹
- (e) For each approved project the Research Contract Section concludes a research contract with the institution, in the form discussed in Section 19.2.5.
- (f) After the conclusion of the contract, the Government of the researcher is notified by the Agency - however, no governmental approval is sought by the Agency. At the same time any specialized agency that might be interested in the subject matter of the project is also informed; these organizations are not consulted on the conclusion of individual projects (except that FAO is directly represented on CCSS and among the project officers through its participation in the joint FAO/IAEA Division), but they are sometimes represented on the panels on the basis of whose recommendations the annual programmes are developed and they may submit observations on these programmes and on their execution through the various existing consultative devices.¹¹⁰ The Board is informed of all research contracts granted by means of the Director General's periodic reports.¹¹¹ Until 1962, the Board's Annual Report¹¹² listed all contracts granted during the past year,¹¹³ but later only a breakdown by subject and country has been included.¹¹⁴
- (g) All research contracts require the submission of progress and final reports. These are evaluated by the project officer, and all except the initial payment under the contract require the project officer's certification that the reports due have been received and are satisfactory.
- (h) Contracts are normally granted for one year, with the possibility of up to two one-year renewals. The procedures for renewing a contract are substantially the same as for the original grant: submission of a

proposal by the institution, evaluation by the project officer and CCSS, decision by the Director General, conclusion of a renewal contract, and notifications as indicated in paragraph (f). These steps are of course less elaborate than in respect of an initial grant, and are eased even more if the initial request indicated a probable duration of 2-3 years.

- (i) The Agency encourages publication by the investigator of the results of the research, requiring only acknowledgement of the Agency's support. Sometimes the Agency may itself publish the final report.¹¹⁵ In any case the Agency annually publishes, in its Technical Reports Series, an extensive summary (prepared by the researcher and edited by the project officer) of each final report received during the preceding year, together with literature references.¹¹⁶

19.2.5. Contractual arrangements

The actual contractual instrument relating to a research project is always concluded with an institution, private or public, and not with any individual. The arrangements for the project are usually made with the "Chief Scientific Investigator", an evaluation of whose competence is one of the principal issues in considering an award; his continued participation in the project is therefore implicitly a condition of the contract.¹¹⁷

For the most part the Agency uses one of several standard printed contract forms, of which the following versions exist: a basic form used for Agency-financed projects; a somewhat expanded one for those financed by the USAEC; a simpler research agreement for cost-free arrangements; and short renewal instruments for each of the above three versions. The following are the principal contractual provisions:¹¹⁸

- (a) An identification of the research project, which may be more precisely defined by exchanges of letters.
- (b) The date of commencement of the project and of its duration (usually one year).
- (c) A requirement that progress and final reports be submitted at specified times, in any of four indicated languages¹¹⁹ and conforming to an appended standard outline.
- (d) The Agency receives an exclusive and full copyright to all reports. However, the contractor and persons on his staff may publish any results of the research project, provided they acknowledge the Agency's (and in appropriate cases the USAEC's) contribution.¹²⁰
- (e) The patent provision, whose development and present form are discussed in Section 31.1.6, is designed to ensure that all results of Agency supported research become freely available for peaceful uses throughout the world. Thus patents may be taken by the contractor or the Agency only for defensive purposes (i. e., to prevent other persons from claiming the invention). The contractor must arrange for all persons taking part in the research to sign a form by which they undertake to respect these contractual restrictions.
- (f) The non-liability of the Agency for any injury resulting from the project is recognized, and the contractor agrees to hold the Agency harmless should the latter be held liable to a third party.¹²¹

- (g) In contracts financed by the USAEC, the Agency and the Commission receive the right to observe activities carried out in connection with the project.
- (h) All research contracts (but not the cost-free agreements) provide basically for lump-sum, cost-sharing arrangements - that is, the Agency always offers to pay an amount which is significantly less than the estimated budget on the basis of which the project was approved (and never includes provision for overhead and only most rarely for construction). The contractor undertakes to use any funds provided by the Agency solely in connection with the agreed research project.¹²² The contract specifies how the agreed compensation is to be paid: usually in the form of an initial payment, perhaps some intermediate payments (after receipt and approval of satisfactory progress reports) and a final payment (after receipt of the final report);¹²³ in addition, the supply of certain equipment of specified value (to which the Agency retains title until the receipt of a satisfactory final report) may be provided for. The Agency may loan some additional equipment which is to be returned to it after the conclusion of the contract, and may also undertake to assist the contractor in obtaining equipment or supplies from other sources.
- (i) If any equipment is loaned to the contractor or supplied to him provisionally as part of the agreed compensation, he must care for it until he returns it to the Agency or until title is transferred to him.
- (j) Contractors must observe such of the Agency's health and safety standards as are communicated to them by the Agency.¹²⁴
- (k) Disputes are to be settled by three-man arbitral tribunals. The law to be applied to the interpretation of the contracts is not specified.¹²⁵

Since printed form contracts are used, allowing only minor individual variations through the completion of blanks or the crossing out of irrelevant provisions, the principal instrument is often supplemented by one or more exchanges of letters in which certain details (such as: the research procedure; the specification of equipment to be supplied or loaned) are specified.

19.2.6. Technical contracts

In addition to research contracts, which always relate to a precisely defined investigation, the Agency has from time to time concluded "technical contracts" with certain intergovernmental organizations such as the International Commission on Radiological Protection and the International Commission on Radiation Units and Measurements.¹²⁶ Some of these agreements merely indicate a line of work in which the organization is engaged (e. g., "studies on maximum permissible exposure to radiation") and affirm that it is of importance to a specified part of the Agency's programme. In consideration of the organization carrying out the indicated work and making available to the Agency its results, the Agency agrees to pay a specified lump sum. Thus, even more than certain of the research contracts, these

arrangements definitely constitute "grants", though made not in order to strengthen a financially weak recipient but rather to cement its ties with the Agency by a token recognition of its valuable work.¹²⁷

Other "technical contracts" are, however, awarded for precisely defined research in fields in which the Agency requires data for its operations. The work produced on these contracts is of a type and quality so as to be of genuine assistance to the Agency and in effect takes the place of research the Agency itself would perform if it had the requisite facilities. It could therefore be said that these arrangements deliver what the research contracts programme usually at most promises.

These contracts, though financed from the same Section of the Regular Budget, are not part of the research contracts programme. Their award is therefore considered by the Contract Review Committee¹²⁸ rather than by CCSS, and the legal instruments relating to them are individually formulated and do not follow the pattern of the standard research contracts.

19.3. RESEARCH ASSISTANCE

19.3.1. Middle Eastern Regional Radioisotope Centre for the Arab Countries

19.3.1.1. Establishment

From time to time proposals have been advanced for the establishment by or with the participation of the Agency of regional research and training centres. As early as May 1958 such an institution was proposed for Latin America,¹²⁹ and subsequently proposals were advanced for the establishment of regional centres in Greece or Turkey, in Japan and in tropical Africa. The Board has always been reluctant to give serious consideration to these proposed projects, unless substantial contributions from outside sources could be assured and it was certain that the Member States in the region needed and would actively participate in the project: this reluctance is based primarily on the consideration that the establishment of any such institution, even if only on a temporary basis, requires the commitment for an extended period of a substantial fraction of the resources available to the Agency for research and training.

After extensive consideration of a proposal by the United Arab Republic concerning a Middle Eastern Regional Radioisotope Centre for the Arab Countries,¹³⁰ in the course of which the Board requested the Director General to experiment with a succession of regional training courses in that region and to report to the Board on the participation and results achieved,¹³¹ it approved an agreement for the establishment of the Centre in Cairo and requested the Director General to take the necessary steps to implement the Agency's consequent obligations. In that decision it included several provisos, including one limiting the Agency's annual contributions to the Centre to specified fractions of the amounts available to the Agency from EPTA for regional projects.¹³²

The Agreement, which entered into force on 29 January 1963 and to which the Agency and 7 Arab States have become parties,¹³³ in effect es-

tablished a new international organization whose legal personality is entirely separate from both the Agency and the Host State (the United Arab Republic).¹³⁴ The Agency's participation in the Centre was limited to a period of four years, which could be and was extended for a further period of two years.¹³⁵ The Agency's participation in the Centre consequently ceased in 1969.

19. 3. 1. 2. Operation

As indicated, the Centre is an international organization in its own right. It has three principal organs:

- (a) A Governing Body, consisting of a representative of the Host State, the Director General of the Agency or his representative, and three representatives elected by the other Participating States.¹³⁶
- (b) A Director, appointed by the Host State after consultation with the Governing Body.¹³⁷
- (c) A Technical Advisor, appointed by the Agency after consultation with the Host State and the Governing Body.¹³⁸

In addition, the Governing Body has established a Scientific Committee as a subsidiary organ.

The aims and functions of the Centre, as well as the method of its financing and the authority and duty of the several organs, are set forth in the Agreement for its establishment. To supplement these, the Governing Body has promulgated a number of instruments, including its own Rules of Procedure, Staff Regulations (which, however, do not apply to staff members seconded by the Agency) and Financial Rules. The Centre has also entered into an administrative agreement with the Agency defining the terms under which the latter makes available staff and financing.¹³⁹

19. 3. 1. 3. Financing

Pursuant to the founding Agreement, the Centre has its own budget to cover its operating costs. The contributions thereto are made by the Host State and by other Participating States, according to a scale of annual contributions set forth in an annex to the Agreement or pledged by States upon becoming parties to it. Though this scale is subject to variation by unanimous decision¹⁴⁰ of the Governing Body, no adjustments have yet been made.

The Agency's contribution is limited, both in the Agreement and by the decision of the Board approving it, to a share of the EPTA funds available to the Agency for regional projects.¹⁴¹ These funds must be used in accordance with the regulations and rules governing EPTA assistance and only for certain limited purposes set forth in the Agreement.

19. 3. 1. 4. Reports

The Governing Body approves the Annual Report of the Centre, copies of which are made available to the members of the Agency's Board of Gover-

nors and which is also available to the public. A summary of that document appears in the Agency's annual report on IAEA Laboratory Activities.¹⁴²

19.3.2. Joint research projects

The Agency has evolved a particular form of co-operative arrangement whereby it can participate, with one or more of its Members, in research projects using facilities made available by such States. Up to now four such arrangements have been entered into; though their form is flexible and they differ from each other in many ways, each of them has the following general characteristics:

- (a) Each relates to the use of one or more substantial facilities of a type not owned or operated by the Agency; in particular, each of the agreements concluded up to now relates to or requires the use of research reactors.
- (b) The Agency's principal role in each case is to:
 - (i) Participate in the governing or co-ordinating body established for the project;
 - (ii) Grant fellowships to facilitate the interchange of personnel among the participants, or the introduction into the project of some outsiders;
 - (iii) Grant other types of assistance under Statute Article XI.
- (c) All operations are to be performed at the specified national facility or facilities, under the responsibility and direction, and largely with the staff of the national authority — supplemented by persons to whom fellowships have been granted by the Agency.

19.3.2.1. NORA Project

The Joint Programme of Research in Reactor Physics with the Zero-power Reactor "NORA" was the first joint project entered into by the Agency, and was also the only one established on a purely bilateral basis. This project, and the agreements relating to it, are described in Section 17.2.2.4. After several extensions of the original three-year (1961-64) Programme, it was terminated in June 1968.¹⁴³

19.3.2.2. NPY Project

The Agreement between the Agency and the Governments of Norway, Poland and Yugoslavia Concerning Co-operative Research in Reactor Physics¹⁴⁴ establishes the most elaborate of the several joint research projects of the Agency. Originally concluded for three years (1964-67) and later twice extended (1967-70-71),¹⁴⁵ it provides for a Co-operative Programme whose technical objectives are stated in an annex and whose annual implementation is to be decided by a Joint Committee. Each of the Governments agrees to make available specified reactors and other facilities and to implement the share of the annual programme assigned to it by the Committee.¹⁴⁶ The Agency's principal contribution is the provision of fellowships and the compilation,

publication and distribution of the results of the Programme;¹⁴⁷ it is also foreseen that the Agency might award research contracts to assist particular parts of the Programme or supply materials or equipment under Article XI project arrangements.¹⁴⁸

The Co-operative Programme is to be guided by the Joint Committee, consisting of two representatives of the Agency and of one from each of the three Governments.¹⁴⁹ Its tasks are specified in the Agreement, and include the establishment and assignment of the annual detailed research plan, the approval of the exchange of personnel among the institutions, and the making of recommendations for the granting of the fellowships to be provided by the Agency and regarding any research contracts or project assistance that may be required.

To facilitate the exchange of personnel and of materials and equipment among the participating Governments, two model contracts are annexed to the agreement whose terms are to apply to any such exchanges unless different provisions are negotiated on an ad hoc basis by the parties.¹⁵⁰

19.3.2.3. IPA Project

The Agreement for Conducting under the Auspices of the Agency a Regional Joint Training and Research Programme using a Neutron Crystal Spectrometer¹⁵¹ relates to a scientific instrument supplied under the Agreement by India for use in connection with the PRR-1 reactor in the Philippines. It entered into force upon acceptance by the Governments of these two Members,¹⁵² and the Governments of other Member States in the areas "South Asia", "South East Asia and the Pacific" and the "Far East"¹⁵³ may also become parties by notifying their acceptance of the Agreement to the Director General.¹⁵⁴

The Agreement specifies the contributions to be made by the Agency and the Governments of India and the Philippines, and foresees that other Governments becoming parties may make additional contributions. The Joint Committee established for the administration of the programme consists of one representative each of the Agency and of the two named Governments, while other Governments becoming parties to the agreement may appoint advisers.¹⁵⁵ The Committee's principal function is to establish an annual programme for training and research, to make recommendations concerning the recruitment of experts and fellows, and to accept offers of contributions made by Governments upon joining the project.¹⁵⁶

19.3.2.4. International Programme on Fruit Irradiation

The Agreement for Collaboration in an International Programme on Irradiation of Fruit and Fruit Juices¹⁵⁷ was concluded by the Agency with OECD (acting for ENEA) and with the Österreichische Studiengesellschaft für Atomenergie GmbH (SGAE). It provided for collaboration between the Agency, SGAE and interested members of ENEA in a programme outlined in an annex to the Agreement. The principal work in implementing the programme was carried out by SGAE at its own facilities. Any ENEA countries participating could assign scientists to take part in the programme, or

make a financial contribution, or carry out special research work as part of the programme. The Agency's principal contribution was specified as the award of fellowships to qualified scientists for participation in the programme, and in the assignment of experts.¹⁵⁸

The programme was administered by a Project Committee composed of one member designated by the Agency, one by ENEA, one by each Participating Country, and not more than four designated by SGAE.¹⁵⁹ Its principal function was to approve each year the programme proposed by the Project Leader appointed by SGAE, to give advice on the use to be made of financial contributions received and to establish rules for the distribution and utilization of any scientific and technical information derived from the programme.¹⁶⁰

In February 1968 the participants decided to complete the work under the original programme by the end of that year, and to start in 1969 a new project for testing the wholesomeness of staple foods of world-wide interest.¹⁶¹ Tentative agreement was also reached on restructuring the Project Committee.

NOTES

- 1 Statute Article III, A, 1.
- 2 GC.1/1, paras.20-41, 103-104.
- 3 In the Statute the only suggestion that the Agency might engage in research itself is the obscurely stated authority in Article III, A, 1 "to perform any operation or service useful in research..."; most of this clause was added at the Conference on the Statute (IAEA/CS/Art.III/Amend.8; IAEA/CS/OR.22, p.6).
- 4 Section 15.3.1.3.
- 5 INFCIRC/50, para.89.
- 6 IAEA/CS/Art.III/Amend.3; IAEA/CS/OR.22, p.13. Czechoslovakia, which proposed this deletion, had indeed foreshadowed this attitude by a reservation to the report of the Working Level Meeting (WLM Doc.31, Annex IV, para.2(a)).
- 7 GC.1/1 paras.101-104.
- 8 GC(II)/RES/25, paras.B.3-4. The Board had itself included a low-key recommendation to this end in its budget proposals (GC(II)/36, paras.304-305 — de-emphasized in para.286).
- 9 This contribution was accepted by the Board pursuant to its provisional authority under GC(II)/RES/23, para.2 (Section 25.5).
- 10 INFCIRC/15, Part I.
- 11 GC(III)/73, para.228.
- 12 It is possible that this may be done in AM.IX/5, a Section of the Administrative Manual foreseen but not yet issued.
- 13 The latest and most extensive such presentation appears in the Programme for 1969-74 (Section 15.3.1.4), GC(XII)/385, paras.238-297.
- 14 GC(II)/RES/25, para.B.3; also GC(III)/73, para.229.
- 15 Section 15.1.2.1(a).
- 16 GC(IV)/RES/79. However, the Laboratory itself was only obliquely referred to in paragraph (c) of the Preamble.
- 17 GC(V)/RES/108.
- 18 GC(VII)/241.
- 19 GC(VII)/226/Add.1/Mod.1.
- 20 Sections 19.1.5 and 32.2.8.
- 21 Section 25.1.1.2.2.
- 22 Section 16.8.
- 23 Sections 25.1.1.2.2 and 25.2.1.
- 24 GC(VI)/200, paras.41-54.

- 25 *Ibid.*, para. 46.
- 26 GC(XII)/385, para. 239.
- 27 GC(XIII)/405, para. 88.
- 28 This is true, for instance, when it performs work as a sub-contractor on a UNDP/SF project (Section 18.2.4).
- 29 Sections 25.1.4.5 and 25.7.2.
- 30 INFCIRC/27.
- 31 Sections 19.3.2 and 26.2.1.8.
- 32 Section 26.2.1.2.
- 33 The Board, in an unusual move, delegated to SAC the approval of this portion of the text, and the Committee thereupon required it to be re-drafted and re-negotiated before the Agreement could be signed.
- 34 INFCIRC/9/Rev.2; Section 28.3.5.4.
- 35 INFCIRC/27/Add.1.
- 36 INFCIRC/129.
- 37 AM.I/5.
- 38 Sections 24.1.3, 24.1.5.2.1 and 24.3.1.2.
- 39 AM, II/1, Appendix B(2).
- 40 Section 24.4.1.1.2.
- 41 INFCIRC/129, Article 6.
- 42 INFCIRC/27, para.10(a); INFCIRC/129, Article 9(b), Section 11.2.4.
- 43 INFCIRC/27, para.4(a). For 1967 and again for 1968 the Government voluntarily made additional contributions on an ad hoc basis, to compensate for rising costs. The entire Monegasque contribution, though specified in the Agreement, is made in the form of a "voluntary contribution to the General Fund" -- a device adopted so as to cause a corresponding increase in the US contributions to the Fund, which were originally made on a 100% matching basis (Section 25.5.3); however, subsequently the United States refused to match tied contributions so that the contribution subterfuge embodied in the first Monaco Agreement and perpetuated in the second no longer serves any purpose.
- 44 INFCIRC/129, Article 4(d).
- 45 INFCIRC/27, para. 6(a); this device was continued in the extension agreement, INFCIRC/27/Add.1, para.2.
- 46 INFCIRC/129, Article 3(d).
- 47 IAEA/CS/Art. III/Amend. 9.
- 48 The sponsors agreed that the proposal be referred to the Co-ordination Committee (IAEA/CS/OR.22, pp. 2-5), but for some reason this was not done (see IAEA/CS/COORD/2) and thus the Committee did not deal with it in its report (IAEA/CS/10).
- 49 GC(IV)/RES/76.
- 50 GC(V)/OR.50, para. 89.
- 51 GC(V)/RES/107.
- 52 GC(VI)/194, para. 3.
- 53 GC(VI)/RES/132.
- 54 INFCIRC/51. Though the Agreement was duly signed on 11 October 1963, it did not enter into force (for want of the required parliamentary ratification) until 5 February 1968; however, by a communication on 21 February 1964 the Government had formally undertaken to apply the Agreement de facto.
- 55 INFCIRC/51, Section 1.
- 56 INFCIRC/51, Articles III-VI.
- 57 INFCIRC/51, Article VIII. The incorporation of the Agreement on the Privileges and Immunities of the Agency (INFCIRC/9/Rev.2) was fraught with difficulties, since the Government had previously offered to become a party to the Agreement but only subject to a number of reservations not acceptable to the Agency (Section 28.3.3); the incorporation language finally adopted in effect left open the question whether these reservations would relate to the Trieste Agreement (Section 28.3.5.4).
- 58 GC(X)/COM.1/98/Rev.1.
- 59 GC(X)/RES/214.
- 60 INFCIRC/114.
- 61 INFCIRC/132.
- 62 AM, II/1, Appendix B(1).
- 63 PM/Pt. 0/5, now AM.I/4, Annex II, paras.4-13.
- 64 Originally ICTP/500/1(3 June 1964), now AM.I/4 and Annex I.
- 65 Section 11.2.7.

- 66 The Director of the Centre, was, according to the first Agreement (INFCIRC/51, Section 3), to "be appointed by the Director General of the Agency after consultation with the Government"; this provision does not appear in the new Agreement, AM, I/4, paras. 6(c) and 7.
- 67 GC(IX)/299, para. 211.
- 68 Agreement of 21 May 1965 between the Instituto Nazionale di Fisica Nucleare (INFN), the IAEA and UNESCO "Concerning Training in the Field of Theoretical Physics".
- 69 "Arrangements for the Exchange of Scientists between the _____ and the International Centre for Theoretical Physics at Trieste" (AM, I/4, Appendix C).
- 70 AM, I/4, para. 4 and Appendix B.
- 71 Section 18.3.4.
- 72 INFCIRC/51, Section 13(b).
- 73 INFCIRC/51, Article III and Annexes I and II.
- 74 INFCIRC/51, Section 13(a).
- 75 INFCIRC/132.
- 76 All these agreements were concluded by the Director General without specific authorization from the Board, whose only role was to approve post hoc a minor transfer of funds within the Regular Budget to cover some of the special expenses incurred by this unforeseen activity.
- 77 This Agreement for Cooperation in Conducting a Dosimetry Experiment (for the text see: Technical Reports Series No. 6, "The Vinča Dosimetry Experiment", STI/DOC/10/6, Annex I), which was the only really formal instrument (the others involving mere exchanges of letters), in fact never entered into force, since it required "ratification" by the "competent bodies" of the Republic, which could not be obtained in the few weeks between signature and the carrying out of the experiments; though the Agreement was concluded with the Nuclear Energy Commission, governmental ratification was required because certain of its provisions (in particular that relating to privileges and immunities) were beyond the authority of the Commission.
- 78 Ibid., Annexes II and III.
- 79 Ibid., Annexes IV and V.
- 80 Ibid., Annexes VI and VII.
- 81 Ibid., On a more mundane level, the Agency learned expensively about the high cost of nuclear insurance, particularly for a novel activity (Section 29.3). Though none of the participating organizations charged the Agency for their services, a considerable expense (\$21 778) was involved in securing various types of insurance coverage: \$100 000 death and disability insurance for each non-Agency participant (who were required to sign waivers of any claims above that limit); property and business interruption insurance for the Yugoslav facilities and premises; third party liability insurance which the Agency was required to obtain by its agreement with the Yugoslav Commission; and insurance covering the transport of \$400 000 worth of heavy water from and to England (id., part 1.9).
- 82 Section 32.2.8; e.g., 5th Annual Report (1967) (STI/DOC/10/90).
- 83 Section 19.3.1.
- 84 Section 32.1.2.
- 85 Section 32.1.1.
- 86 The first research contract was entered into on 15 May 1958 (PR. 58/18).
- 87 It is, however, foreseen that at least the principal procedural provisions will appear in AM, IX/6.
- 88 INFCIRC/17, para. 100; GC(IV)/114, para. 193.
- 89 Safeguards research was originally part of the research contracts programme (e.g., Programme and Budget for 1964, GC(VII)/230, Table 12). However, once these projects started to increase in size and significance, they were budgeted for separately (though in the same budgetary Section — e.g., Budget for 1965, GC(VIII)/276, Table 10 and para. 27), in part so that these should not dominate and distort the research contracts programme, and in part because the approaches and techniques developed for that programme (e.g., awards primarily to under-developed countries) were not suitable for research requiring elaborate, massive equipment and fully reliable results.
- 90 These alternative approaches were already discussed in the Board's Annual Report for 1958/59 (GC(III)/73, para. 187).
- 91 For example, as listed in GC(XI)/355, Tables VI and VII (malnutrition).
- 92 Sections 25.1.1.2.2 and 25.2.1.
- 93 GC(V)/155, para. 344.
- 94 GC(VII)/227, para. 32; GC(VII)/230, para. 190.
- 95 GC(X)/333, paras. 7, 8 and 71.

- 96 As a matter of fact the experts who prepared the UN Secretary-General's report on "Contributions of Nuclear Technology to the Economic and Scientific Advancement of the Developing Countries" considered the Agency's research contracts programme as a useful adjunct to technical assistance, noted the fact that it was not financed from the same source, and consequently called for an expansion of this programme (UN doc. A/7568, para. 243).
- 97 INFCIRC/8/Rev. 1, Regulation 5.03. Section 25.2.4.1.1.
- 98 Section 19.2, 5(h).
- 99 GC(II)/OR, 18, para. 23.
- 100 INFCIRC/89, Part I; Section 25.7.4.1. The Contract has subsequently been modified and extended, *ibid.*, Parts II and III and INFCIRC/89/Add. 1 (to 30 June 1969). However, fewer and fewer contracts were being financed under it in the later years.
- 101 The payment by the USAEC for research contracted for by the Agency has occasionally been used as a device to assist certain Agency projects. Thus in connection with the Joint NORA Project (Section 19.3.2.1), under which the Norwegian Government agreed to lease fuel elements from the USAEC and to pay the consequent rental charges, the USAEC agreed to finance a series of research contracts for work covered by the Joint Project, the payments for which in effect cancelled out the lease charges (Section 17.2.2.4).
- 102 In response to such an appeal the Soviet Union, which has always urged the Agency to rely more heavily on cost-free studies, offered to place the results of 43 research projects at the Agency's disposal (GC(VII)/INF/69).
- 103 For example, the food and agriculture programmes listed in Table 9 of GC(XII)/380.
- 104 A general list, not related to a particular year but evidently generally applicable in the middle 1960s, appears in "IAEA Services and Assistance" (GEN/PUB/12, Vienna 1966), Annex III, Part 1.
- 105 The procedures relating to research agreements for cost-free research are substantially identical to those relating to regular contracts; consequently, unless specifically stated otherwise, the account in this Section covers both types of arrangements.
- 106 For example, a suggestion to this effect appeared to be contained in GC(IV)/COM.1/48 — though this was later explained away by the sponsor (GC(IV)/COM.1/OR.30, para. 52) before he finally withdrew it (*idem*, para. 61). A more direct suggestion to that effect was made, though only in passing, at the 277th meeting of the Board.
- 107 Requests must be submitted on the Agency's "Research Contract Proposal" form (*op. cit. supra* note 104, Part III).
- 108 AM.1/7, Appendix C; Section 9.4.4.1(c).
- 109 Section 19.2.2.2.
- 110 Section 12.3.4.
- 111 Section 32.1.1.
- 112 Section 32.1.2.
- 113 For example, GC(VI)/195, Annex XI.
- 114 For example, GC(XII)/380, Annex C.
- 115 Sections 31.1.5 and 32.2.4.
- 116 For example, "IAEA Research Contracts -- Sixth Annual Report (1966)" (STI/DOC/10/53).
- 117 This is a relatively recent, though an entirely logical development. For many years, the Chief Scientific Investigator was only named, if at all, in an exchange of letters supplementary to the actual contract.
- 118 *Op. cit. supra* note 104, Part II.
- 119 English, French, Russian or Spanish — the four Working Languages of the Board of Governors (Sections 33.2, 33.5). In earlier versions of the standard contract a blank was left where one of these languages (or sometimes German) would be filled in.
- 120 Section 31.2.4.
- 121 Section 29.2.6.
- 122 For some years research contractors were instead required to "be guided by" the estimated budget on the basis of which their project was approved — which was set out in an exchange of letters.
- 123 Initially, provision was made for 5 separate payments and 3 reports for each one-year contract. These have gradually been reduced to 2 payments (an initial and a final one) and 2 reports (a progress and a final one).
- 124 Section 22.2.4.2. Routinely only the Basic Safety Standards and the Manual on the Safe Handling of Radioisotopes with Addenda (Section 22.2.3) are communicated to contractors.
- 125 Section 27.3.1.

- 126 For example, Agreements registered under Agency Registration Nos. 121 and 129 (Section 12.6.3(i)).
- 127 Section 12.4.3.6.
- 128 AM. I/7, Appendix B.
- 129 On the basis of the report of one of the Agency's first survey missions (GC(III)/73, para. 139).
- 130 The term "for the Arab Countries" was of course added in order to permit the exclusion of Israel without violating the Agency's principle that no Member State may be discriminated against in Agency sponsored activities (Section 13.1.3). Recently consideration is being given to amending the agreement establishing the Centre (and presumably its name) to enable other African States to join in its operation and activities (5th Report on IAEA Laboratory Activities (STI/DOC/10/90), p. 145, section 1.1).
- 131 GC(III)/73, paras. 140-141; GC(IV)/114, para. 132.
- 132 INFCIRC/38, para. 2.
- 133 INFCIRC/38 and /Add. 1/Rev. 1.
- 134 INFCIRC/38, Section 23.
- 135 *Idem*, Section 34.
- 136 *Idem*, Sections 5(a) and 6.
- 137 *Idem*, Sections 5(b) and 8.
- 138 *Idem*, Sections 5(c) and 12.
- 139 Protocol signed on 17 February 1964.
- 140 INFCIRC/38, Sections 8, 14-17, 20.
- 141 *Idem*, Section 18, and cover-sheet, para. 2(c). Section 18.2.3.2.
- 142 Section 19.1.5.
- 143 GC(XII)/380, para. 41.
- 144 INFCIRC/55.
- 145 INFCIRC/55/Add. 1 (3 years); PR 70/22 (reporting on a 1-year extension).
- 146 INFCIRC/55, Sections 2, 4 and 6(a), and Annex B.
- 147 *Idem*, Section 3. The original Agreement provided (Section 3(a)) that the Agency would annually provide a minimum of six fellowships; this definite number was, however, deleted from the instrument in extending it (INFCIRC/55/Add. 1, Section 2); *supra*, Section 18.3.4.
- 148 INFCIRC/55, Sections 3(c) and (d), 6(d). To facilitate the provision of such assistance, Section 3(d) specifies (in a so far unique provision) that the Joint Programme is an approved Agency Project (within the meaning of Statute Article XI, E — Section 17.2.1.1). Actually, no research contracts or project assistance has been requested for or awarded to the Programme.
- 149 INFCIRC/55, Section 5; *supra*, Section 11.2.2.
- 150 *Idem*, Sections 12 and 14, and Annex C.
- 151 INFCIRC/56.
- 152 INFCIRC/56/Add. 1.
- 153 These are "areas" within the meaning of Statute Article VI, A.1 (Section 8.2.2.4.6).
- 154 Korea and Thailand have become parties (GC(XII)/380, para. 41).
- 155 INFCIRC/56, Section 6; *supra*, Section 11.2.3.
- 156 For a description of IPA's work during one year, see GC(X)/INF/87, paras. 7, 99-101.
- 157 INFCIRC/64.
- 158 *Idem*, Article 3.
- 159 *Idem*, Article 4; *supra*, Section 11.2.5.
- 160 Section 31.1.4.
- 161 GC(XII)/380, para. 61. A more complete report on the Programme than any so far published by the Agency appears in the Ninth Report on the Activities of ENEA (Dec. 1967, Paris), paras. 92-98.

CHAPTER 20. DISTRIBUTION OF INFORMATION

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III, A. 3, VIII, XIV. B. 1(a)
General Conference Resolution on Scientific Meetings (GC(II)/RES/28)
Publications Revolving Fund (Establishment and Rules - GC(III)/RES/53; Abolition - GC(X)/RES/213)
International Nuclear Information System (exploration - GC(XI)/360, Annex III)
Administrative Manual, Sections AM.1/4, Appendix D, AM. VII/1 and AM. VIII/6
Guide for the Organization of IAEA Scientific Conferences, Symposia and Seminars

The distribution of information is one of the principal functions assigned to the Agency by its Statute. Article III. A. 3 authorizes it:

"To foster the exchange of scientific and technical information on peaceful uses of atomic energy;"¹

Article VIII indicates in detail how the Agency is to carry out its functions with respect to the "exchange of information"; it foresees that information will be received from Member States on two bases:

- (a) Each Member is requested to make available such information as would, in its judgement, be helpful to the Agency.
- (b) Each Member is obliged to make available to the Agency all scientific information developed as a result of assistance extended to it through Agency projects; however this obligation is qualified by Article XI. F. 5, which suggests that interests in inventions and discoveries arising out of projects need not automatically be assigned to the Agency but should be regulated as specified in the relevant Project Agreement.²

Article VIII also provides that the Agency is to assemble all the information it thus receives from its Members (and presumably any available to it from other sources or through its own efforts) and make it available in accessible form; in addition, it is to encourage and assist the direct exchange of information within its membership. Finally, Article XIV. B. 1(a) provides that the expenditures incurred for the distribution of information are to be considered as "administrative", and thus assessable on all Member States.³

The Preparatory Commission devoted considerable attention to the Agency's information functions. In the Report on the Initial Programme it proposed a number of projects,⁴ and for the most part its recommendations were followed. These programmes constitute a significant part of the Agency's activities, but are only discussed here in so far as they are of legal interest.

Though not specifically foreseen in the Statute, the Agency has also become the third-party beneficiary of agreements among certain Member States relating to the exchange of information.⁵

The 1968 Conference of Non-Nuclear-Weapon States called on the Agency "to continue its utmost efforts" to disseminate publicly available information and further recommended that it "study appropriate international arrangements to facilitate exchange of scientific and technical information which have commercial or intrinsic value"; it also invited nuclear-weapon States "to advise the Agency at regular intervals as to the possibility of their declassifying scientific and technical information which has become essential for the development of the peaceful uses of nuclear energy".⁶ The Agency and its principal Members have not yet responded to these proposals.

20. 1. SCIENTIFIC MEETINGS

One of the principal means for the Agency both to gather and at the same time to distribute scientific and technical information is the holding of conferences, symposia and seminars – over one hundred having been convened during its first decade. Though all these types of meetings serve the same basic purpose, they can be distinguished by their scientific scope as follows:

- (a) A conference covers a wide range of related subjects;
- (b) A symposium deals with a specialized subject;
- (c) A seminar deals didactically with a particular theoretical or practical question.⁷

Aside from scientific meetings, the Agency has convened diplomatic conferences designed not to distribute information but to reach agreement on a legal text; similarly intergovernmental committees have been established for such a purpose.⁸ Study, working, discussion and consultant groups and panels are convened to advise the Agency on a given subject (e. g., health and safety standards⁹). Finally, training courses serve to distribute but not to gather information and constitute part of the technical assistance programme.¹⁰ None of these types of meetings are considered in this Chapter.

20. 1. 1. Programme

The Second General Conference recommended that a plan of conferences and symposia be submitted by the Director General to the Board annually, after consultations with SAC and the interested specialized agencies.¹¹ This recommendation was accepted by the Board, and consequently the following procedure for planning the annual programme of scientific meetings for each "conference year" (1 April to 31 March) has become established:¹²

- (a) Approximately eighteen months before the start of the year in question the Secretariat prepares, from proposals submitted by its scientific divisions, a list of possible conferences, symposia and seminars.
- (b) This list is submitted to SAC in January before the year in question.
- (c) On the basis of SAC's recommendations the Director General establishes a tentative list of meetings.¹³

- (d) The preliminary list is then communicated to potentially interested international organizations, for information and to facilitate co-ordination;¹⁴ at the same time the list is also communicated to all Member States with the request that those interested in acting as hosts inform the Secretariat by a stated deadline.
- (e) By making its programme and budget recommendations to the General Conference in June¹⁵ the Board in effect gives its final approval to the list. This approval is of course subject to the acceptance by the Conference of the relevant budget figures.
- (f) After the General Conference has approved the budget the Director General proceeds to prepare the meetings for the following year. Since the approved list is always somewhat more extensive than the number of meetings for which budgetary provision is made, the Director General has some discretion in selecting those that will actually be scheduled; in addition he is generally authorized to make minor adjustments in the approved list.¹⁶

Special procedures have been established for the scheduling of seminars and conferences at the Trieste Centre.¹⁷

20.1.2. Location

The Second General Conference also recommended that scientific meetings be organized as far as possible in different parts of the world.¹⁸ This recommendation has since been reinforced by statements made in the Conference, in the Board and in SAC. As a result, more than half of the Agency's meetings are held away from headquarters.

As a general rule, for a meeting to be held outside Vienna an invitation must be issued by the Government of a Member State in which it offers to assume the extra costs of organizing and conducting the meeting in the proposed location. However, in order to make it possible to hold some scientific meetings in under-developed areas, the Director General has been given discretion to agree to the Agency bearing some of the extra cost. In particular, it has been provided that the extra cost of conducting certain meetings in less developed areas, such as regional symposia to distribute information on recent scientific developments, will be borne by the Agency, with the host Government providing only a suitable meeting place and auxiliary facilities; the extra costs incurred by the Agency for this purpose are thus in the nature of technical assistance (but are borne by the Regular Budget).¹⁹

If a meeting is held away from Headquarters, a "Host Agreement" should be concluded with the Government whose invitation the Director General has accepted. For this purpose a standard form was devised,²⁰ designed to be concluded by an exchange of letters, including, inter alia:

- (a) A specification of the categories of persons entitled to attend and in particular to participate in the meeting.
- (b) The obligation of the Government to apply the Agency's Privileges and Immunities Agreement²¹ to the Agency and its personnel and to all other

participants, and to allow all participants as well as correspondents accredited by the Director General to enter the State and to remain there in connection with the meeting.

- (c) The obligation of the Government to provide specified premises, services, installations and equipment, local personnel and accommodation, and in addition to pay a specified sum to cover additional expenses incurred by reason of the meeting being held away from Headquarters.

Though from time to time a few host States declined to accept the standard terms and insisted on particular variations, and others never gave (and were not pressed to give) the formal consent by which the host agreement could enter into force,²² few significant difficulties concerning the actual arrangements for meetings were encountered during the Agency's first decade. However, during 1968 the informality that the Secretariat had permitted to characterize these legal instruments did lead to a major confrontation when, at an advanced stage of the preparation for a meeting, it was discovered that the host did not consider itself obliged to grant visas to participants from all Member States. Although, through the last-minute, personal intervention of the Director General, an accommodation was reached enabling the meeting to be held, he considered it necessary to develop, after extensive consultations, tighter procedures for "Arrangements with Host Governments for the Holding of Agency Meetings", which he communicated to the Board in September 1968: In the future, the annual circular letter announcing the tentative schedule of meetings and soliciting invitations for these,²³ will not only (as had been the previous practice) merely indicate the general obligations that the host Government would be expected to assume, but will clearly state that the Government will be required to enter into an agreement with the Agency covering the above-listed points and specifically containing a commitment of equal treatment of all Member States. After all offers received are evaluated and a host is selected, the Director General will address a letter to its Foreign Minister in which the specific obligations the Government will have to assume in connection with the meeting are recapitulated and to which a reply sufficient to constitute an agreement will be requested.²⁴ If no such reply is received by a stated date, the invitation will be considered as withdrawn, and if, in spite of its acceptance, the Government should later decline to issue visas within the time limits stated in the agreement,²⁵ the meeting will be relocated or cancelled. The Board discussed these procedures at its 405th meeting and, though several Governors suggested that the Agency should not attempt to conclude the same standard agreement with every Government, the Board welcomed the Director General's paper and in particular the principle that all Member States had an equal right to take part in Agency meetings.²⁶

20.1.3. Participation

Aside from staff members, three categories of persons participate in most meetings:

- (a) Nominees of Member States (normally of any such States, unless the meeting is a regional one);²⁷

- (b) Representatives of organizations invited by the Director General (selected, depending on the subject of the meeting, from among: the United Nations and the specialized agencies; regional intergovernmental organizations with which the Agency has concluded Co-operation Agreements; other international organizations invited by the Board to send observers to the General Conference; and non-governmental organizations having consultative status);²⁸
- (c) Persons invited ad personam by the Director General to perform a special function (e. g., chairman, scientific secretary, discussion leader, rapporteur);²⁹ though these participants are nominally selected by the Agency and are compensated for their attendance, the invitations are usually issued through governmental channels.

Thus all participants in Agency meetings must be designated through official channels. At several successive General Conferences proposals were initiated to cause the Conference to recommend that invitations to meetings be issued on the basis of "universality", i. e., to all scientific organizations and to all States.³⁰ None of these proposals were adopted, and consequently invitations to nominate participants continue to be addressed only to Member States and to "recognized" organizations.

In addition to participants, correspondents of public information media may be authorized by the Director General to attend and members of the public are admitted as far as the available facilities make this possible. These categories of persons may not take any direct part in the proceedings.³¹

20.1.4. Co-sponsorship

Various UN organs, in particular ECOSOC and ACABQ, repeatedly have expressed concern about the burden imposed on States by the proliferation of meetings sponsored by international organizations.³² Numerous recommendations have therefore been addressed to the United Nations, the specialized agencies and the Agency to contract their schedules of meetings, in part by arranging for two or more organizations to co-sponsor meetings of common interest.³³ The Agency attempts to comply with these recommendations, as generally indicated by a note in the annual Budget document³⁴ and as specifically provided for in the Long-Term Programme.³⁵

In practice, invitations to co-sponsor meetings are generally issued as soon as the tentative list of meetings has been established.³⁶ Concurrently other organizations announce meetings planned by them and the Agency may indicate that it wishes to co-sponsor or at least to participate in these.

The Agency co-sponsors meetings only with organizations in the UN system or with which it has concluded a Co-operation Agreement. Co-sponsorship implies a close to equal sharing of all rights and responsibilities among the sponsoring organizations,³⁷ though generally one of them is considered as the principal sponsor (usually the one having initiated the plans for the meeting) and is mainly responsible for the arrangements, while the others make appropriate financial and personnel contributions. Publications issued for and after the conference are marked with the emblem of each organization.

Agency meetings that are supported but not co-sponsored by other organizations are announced as "organized by the Agency, in co-operation with. . .". These organizations are not expected to bear an equal share of the expenses.

Decisions as to whether the Agency is to invite the co-sponsorship or the co-operation of an organization, or to participate on a similar basis in a meeting convened by another organization, are made by the Director General. No procedure has been devised for securing the prior approval or review of such decisions by SAC or the Board, though of course the Director General reports on them in his periodic reports to the Board.

20.1.5. Financing

To the extent that the expenses of a meeting are not covered by the host Government or shared by a co-sponsoring or co-operating organization,³⁸ its costs are covered from the Regular Budget appropriation Section "Seminars, symposia and conferences".³⁹ The use of this Budget is based on the premise that these meetings are primarily organized for the distribution of information, and thus their expenses are "administrative" within the meaning of Statute Article XIV. B. 1(a). The principles according to which the Agency will cover certain expenses of these meetings, such as the travel of discussion leaders and scientific secretaries, incidental administrative costs, and for publication, are set out in the Programme and Budget for 1962.⁴⁰

In the same appropriation Section provision is also made for the costs to be incurred by the Agency in co-sponsoring meetings convened by other organizations.⁴¹

20.1.6. Reports

The Board's Annual Report to the General Conference lists all meetings convened during the reporting year.⁴² However, until 1966 the list related to the previous calendar year, but also included those conducted or scheduled for the current year.⁴³

20.2. PUBLICATION

The Agency's publications are among the principal vehicles for the distribution of information available to it. They result in part from its scientific meetings, since almost all technical papers presented and the records of most discussions are published. In addition, the Agency distributes the conclusions of other types of meetings organized by it, such as panels and working groups, as well as the results of research contracts. Some volumes are devoted to regulatory or similar material developed by the Agency. Since the establishment of the International Centre for Theoretical Physics at Trieste⁴⁴ it has been issuing an increasing number of "preprints" reporting on scientific work performed there. Finally, some publications consist of or include material written specifically for that medium, either by staff members or more frequently by outside authors.

In addition to these publications available to the general public, the Agency distributes certain materials on a restricted basis (i. e., to Member States and to certain organizations). This, for instance, is done with respect to the reports of Preliminary Assistance Missions⁴⁵ and the final reports of technical assistance experts (unless the Government concerned objects).⁴⁶

20.2.1. Decisions

At the beginning of the Agency's operations the Board intervened directly in the planning of several publications. Before authorizing the publication of a non-technical bulletin it required the Director General to present three successive dummy issues and then complete copies of the first number of the International Atomic Energy Bulletin,⁴⁷ before authorizing its release. Later the Board spent almost an equal amount of time in deciding on the publication, format and contents of the Fusion Journal.⁴⁸

Soon, however, publication decisions were left largely to the Secretariat. From time to time the Director General has consulted with SAC on the publications programme as a whole or on particular parts of it, such as the Review Series.⁴⁹ The outline of the publications programme for the following year is included in the Programme for that year and is thus subject to Board consideration and approval.⁵⁰

Within the Secretariat the decisions as to publications are largely in the hands of the Publications Committee.⁵¹ Established by the Director General in 1959 as an interdepartmental body, the Committee is chaired by the Director of the Division of Scientific and Technical Information, and includes the Director of the Publications Division (Vice Chairman) and representatives of the Departments of Research and Isotopes, of Technical Operations and of Administration (two representatives); its Secretary is the Head of the Publishing Section of the Publications Division.

The formal terms of reference are to:

- (a) Prepare the annual publications programme;
- (b) Approve individual publications, determine the languages of publication, and recommend means of subsidizing them; and
- (c) Consider matters of general publication policy, giving advice to the Division of Publications and making recommendations to the Director General;
- (d) Proposals for individual publications, including the choice of languages, the number of copies and the methods of financing and distribution.

Though the Committee's functions are thus apparently mainly advisory, in fact the Director General delegated to the Committee the making of decisions as to individual publications within the approved programme.

20.2.2. Production

The materials published by the Agency are largely acquired by it as a result of its programmes of scientific meetings, advisory panels and research contracts or are developed as part of its regulatory programmes. Less

than a tenth of the texts are produced by outside authors who are paid for their contributions. Authors of papers prepared for Agency meetings are required, in consideration for the opportunity to present them at the meeting, to assign the publication rights to the Agency.⁵²

Though initially the bulk of the Agency's publications was translated, proofread, edited, illustrated, printed and bound by outside contractors, working pursuant to Special Service Agreements⁵³ where individual work was called for (e. g. , editing and translating) or normal commercial contracts (e. g. , for printing), the Agency has long since become practically self-sufficient in this programme. Almost all work in connection with the preparation and production of the Agency's publications is performed by staff members using the Agency's own equipment – thus, inter alia, reducing the incidence of legal problems.

20.2.3. Distribution

Some of the Agency's publications, such as the International Atomic Energy Bulletin, are distributed free of charge to any interested person or organization.

Most of the Agency's publications are, in principle, produced for sale. These are distributed on the following bases:⁵⁴

- (a) Each Member State receives up to 3 free copies of every publication, and may request up to 7 additional copies for institutions designated by it;
- (b) Certain categories of purchasers, including in particular Member States, staff members, Agency fellows and participants in meetings (with respect to the relevant records), are permitted to purchase publications at 50% of the established price;
- (c) Some copies are provided free of charge to other organizations on exchange arrangements;
- (d) The rest of the copies are sold by the Agency either directly to individuals or organizations, or through agents, some of whom receive exclusive contracts for particular territories (which were originally based on those the United Nations and other international organizations had concluded with the same distributors).

It should be noted that the sales of Agency publications are not restricted to the Governments or nationals of Member States, but are made to any individual or organization no matter from where the request is received.⁵⁵ Since not all transactions are handled by the Agency itself, no restriction on the sales of publications would be practicable.

Following the original policy of most organizations in the UN system, the Agency in the early years sold its publications only for convertible currencies. The Fourth General Conference asked the Director General to examine the possibility of accepting non-convertible currencies in order to facilitate the distribution of the Agency's publications.⁵⁶ In a consequent report to the Board, the Director General recommended that while no general rule should be adopted for the acceptance of non-convertible currencies (of

which otherwise too large quantities might be acquired), some such payments might be accepted if:

- (i) The Government concerned placed no restriction on their use; and
- (ii) There was a foreseeable use for these currencies under the Agency's publications programme (e. g. , for editing or printing), or they might be disposed of to other UN organizations.

Though this proposal was briefly discussed, the Board took no action. In fact, the recommended policy has been discreetly introduced and the Agency is prepared to accept non-convertible payments (but is rarely asked to do so).

Already the Preparatory Commission had suggested that the Agency study the question of establishing a system of coupons for the purchase of publications in any Member State (whether or not issued by the Agency).⁵⁷ In April 1958 the Director General informed the Board of the results of a study the Secretariat had made of the UNESCO coupon scheme⁵⁸ and outlined four possible approaches:

- (A) To create an entirely new system, similar to that of UNESCO, but accepting a wider range of currencies than that organization;
- (B) To establish a system substantially identical to that of UNESCO;
- (C) To use the UNESCO scheme directly, on the basis of an agreement to be concluded with that organization; or
- (D) Merely to publicize the UNESCO scheme among the Agency's Members, informing them of the possibility of using it to acquire nuclear energy literature.

The Director General favoured the third alternative, provided that in the agreement with UNESCO an attempt would be made to adapt the system to the special needs of the Agency. The Board authorized him to initiate negotiations, on the understanding that the proposed arrangements would be submitted to it for approval. In the event, extensive consultations with UNESCO did not lead to any agreement, mostly because it was concluded that the special arrangements required by the Agency (acceptance of a wider range of non-convertible currencies; possible use of the coupons for small scientific items or for samples of nuclear materials) could not conveniently be fitted into the existing scheme. Consequently, in fact the fourth alternative was adopted and the Agency merely uses UNESCO's scheme by accepting its coupons whenever they are offered for Agency publications.

To facilitate the use of its "microfiche clearing house service"⁵⁹ the Agency in 1968 introduced special "microfiche service coupons", which can be purchased for US dollars or for the equivalent of the stated dollar price paid in other currencies.

20.2.4. Financing

The publications programme is financed from two sources:

- (a) The Regular Budget (pursuant to Article XIV. B. 1(a)), in which an annual appropriation is made for this purpose.⁶⁰

- (b) The income from the sale of publications, and to a much lesser extent from the licensing of publication rights.

On the recommendation of the Board,⁶¹ the Third General Conference approved the establishment of a Publications Revolving Fund.⁶² The Rules adopted by the Conference for the operation of the Fund⁶³ were designed to channel the income from the sales of publications into an expansion of the programme; in particular, all revenues from publications were to be credited to the Fund and could be used to:

- (i) Increase the first run of publications beyond the free distribution requirements;
- (ii) Reprint publications on the expectation that at least 25% of the new run could be sold;
- (iii) Purchase publications from commercial publishers to whom the Agency had made manuscripts available;
- (iv) Purchase the records of meetings in which the Agency had participated but which were produced by another organization;
- (v) Publicize the Agency's publications;
- (vi) Cover the cost of freight or postage in distributing publications.

While the balance of the Fund could be carried forward from year to year, any amount in excess of \$50 000 remaining at the end of a fiscal year had to be credited to the miscellaneous income of the Agency.

In 1966 the Tenth General Conference, again upon recommendation of the Board,⁶⁴ abolished the Fund,⁶⁵ but at the same time provided that any income received from the sale of publications could be applied directly to the expansion of the publications programme⁶⁶ - whereby the substantive benefits of the Fund-device were in effect preserved, with simpler accounting procedures and without the restrictions contained in the Rules.

20.2.5. Languages

The principles for selecting the languages in which Agency publications are to appear are discussed in Section 33.6. As indicated above, the actual decision as to a particular publication is made by the Publications Committee.

20.2.6. Reports

The Board's Annual Report to the General Conference for some years included a list of all publications issued during the previous year.⁶⁷ Later this practice was dropped.

A cumulative list of publications appears in the biennial Catalogue "Publications in the Nuclear Sciences 19..",⁶⁸ which in alternate years is up-dated through a supplement.

20.3. THE LIBRARY

The third principal means for the distribution of information by the Agency are the services provided through its Library. The Agency's collection of books, periodicals, reprints, microfilms and films is located primarily at its Headquarters, but there are subsidiary branches at the Seibersdorf Laboratory and the Theoretical Physics Centre in Trieste.

20.3.1. Sources of materials

The Library acquires its materials from:

- (a) Purchases, for which an annual appropriation is included in the Regular Budget;⁶⁹
- (b) Donations by Member States under Statute Article X, which can be accepted without difficulty under the Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities since they benefit an existing programme;⁷⁰
- (c) Exchange arrangements, under which Agency publications are provided to an organization in return for its materials;
- (d) The Agency's own publications.

20.3.2. Recipients

The Library is primarily available and accessible to the Agency's staff and to the representatives of Member States in Vienna. However, the Agency will also lend or provide copies of materials to governmental and private organizations and to individuals wherever located (even if in a Non-member State). In general no charge is levied, but loaned material must be returned at the borrower's expense.

20.4. INTERNATIONAL NUCLEAR INFORMATION SYSTEM

In December 1966 the Director General convened a Working Group of expert representatives and observers from 16 Member States and from certain regional organizations to consider proposals developed by the Secretariat for the establishment of an International Nuclear Information System (INIS). On the basis of the positive recommendations of the Group and of the Director General, the Board introduced into the 1968 Regular Budget⁷¹ (subsequently approved by the Conference) provisions designed to enable the Agency to make a tentative start towards the establishment of a computerized system for gathering, classifying and distributing data about all nuclear energy literature being generated in Member States, by initially:

- (a) Sponsoring international consultations designed to standardize indexing and data format;
- (b) Building up a small cadre of staff having expertise in this work;

- (c) Starting a pilot project within the Agency, relating largely to its own publications supplemented by materials contributed by Member States on an experimental basis.

The Annual Report for 1967/68 recorded that Member States had shown much interest in the INIS project, that a system for describing and cataloguing nuclear science information had been approved by a panel on the basis of draft standards previously prepared by consultants, and that an international team (drawn in part from Member States and from EURATOM) was engaged in drawing up a first reference design of a working system which should permit INIS to be implemented on a minimal scale in 1970; meanwhile, one component of the project, a microfiche clearinghouse, came into operation at the end of 1967.⁷² The simultaneously submitted Programme for 1969-74 contained plans for the implementation and development of the system.⁷³ Though several representatives at the Twelfth General Conference expressed concern about the development of and especially about the likely expenditures on the system and the Secretariat consequently promised that the future of INIS would be referred to further panels and would also be discussed by the Board in 1969,⁷⁴ the latter decided that a start on a limited basis be made during 1970;⁷⁵ to this end a contract has been concluded with EURATOM, under which the latter is to make available much of its experience (particularly a thesaurus of key words) for use in INIS.⁷⁶

If a world-wide system under the aegis of the Agency is to be realized, a number of agreements will have to be negotiated to define the terms under which:

- (i) Member States would supply data to the system;
- (ii) Member States and others could receive information from the system;
- (iii) The overhead costs of the system would be borne;
- (iv) The Agency could co-operate with or even assume certain functions of the existing system of the US Government-sponsored Nuclear Scientific Abstracts (NSA) and perhaps of that more recently established by EURATOM.

NOTES

1 One amendment was, unsuccessfully, proposed to this paragraph at the Conference on the Statute, which would have added a provision concerning the encouragement of education and training — i. e., a technical assistance function now substantially covered by Article III, A. 4 (IAEA/CS/Art. III/Amend. 1; IAEA/CS/OR, 22, p. 2). In addition it was equally bootlessly proposed to insert two new paragraphs, one authorizing the Agency "to convene or sponsor international scientific conferences on the various aspects of the peaceful uses of atomic energy" and the other "to publish an international periodical devoted to the peaceful uses of atomic energy and such other publications as may be deemed useful" (IAEA/CS/Art. III/Amend. 2/Rev. 1, Part A(a) and (c); IAEA/CS/OR, 10, pp. 13-15; /OR, 22, pp. 3-5, 8-10). In connection with the latter proposal it should be recalled that the only substantive point regarding the proposed Statute as to which the 10th UN General Assembly made a suggestion (Section 2.6(d)) was that the "Agency, when established, consider the desirability of arranging for an international periodical devoted to the peaceful uses of atomic energy" (UNGA/RES/912(X), para. II. 7).

2 Sections 17.2.1.2(i), 31.1.1 and 31.1.4.

3 Section 25.2.1.

4 GC.1/1, paras. 28, 37, 48, 58-68.

- 5 For example, Agreement between the USA and the USSR on Exchanges in the Scientific, Technical, Educational, Cultural and Other Fields in 1962-1963, T.I.A.S. 5112, Section II(3), and Agreement on Co-operation between the USA and the USSR in the Field of Desalination, Including the Use of Atomic Energy, 15 U.S.T. 2146, T.I.A.S. 5697, INFCIRC/60, Article VI.
- 6 UN doc. A/7277, para.17, Resolution H.I. Section 15.2.2.
- 7 AM. VII/1, Annex II, para.2. Also in "Guide for the Organization of IAEA Scientific Conferences, Symposia and Seminars" (unnumbered, undated publication, issued by the Division of Scientific and Technical Information in 1966), Part 2; this publication (which is provided for in AM. VII/1, Annex II, para.36) sets out the most useful, detailed description that exists for any part of the Agency's operations.
- 8 Section 11.3 and Chapter 23.
- 9 Section 22.2.2.3.2.
- 10 Section 18.3.5.
- 11 GC(II)/RES/28, para.1. Though the United Nations is not explicitly mentioned in the Resolution, it was meant to be included (see GC(II)/69, para.12).
- 12 "Guide", op. cit. supra note 7, Part 4 and Annex 2. A.
- 13 Formerly this list was communicated to the Board in February before the year in question, to enable the latter to give its preliminary approval so that the Secretariat might initiate the necessary planning and negotiations. Since 1965 the Director General has proceeded with the necessary arrangements without securing such prior Board assent.
- 14 Section 20.1.4.
- 15 For example, for 1969, GC(XII)/385, para.648.
- 16 Ibid., paras.648-649; in the 1969 Budget 16 subjects are proposed for a maximum of 13 meetings.
- 17 AM. I/4, Appendix D, para.3.
- 18 GC(II)/RES/28, para.2.
- 19 GC(IV)/116, para.372(e); GC(V)/155, para.301(c). AM. VII/1, Annex II, paras.23-24.
- 20 "Guide", op. cit. supra note 7, Annex 1.
- 21 INFCIRC/9/Rev.2; Section 28.3.5.3.
- 22 Section 26.5.2.6.
- 23 Section 20.1.1(e).
- 24 For this purpose a draft model letter has been formulated.
- 25 The Director General gave as an example that participants might be advised to apply for visas 45 days before the meeting is scheduled to open, and the Government would be required to issue visas within 15 days of the receipt of the application (even if submitted late).
- 26 Section 13.1.4.
- 27 AM. VII/1, para.3.
- 28 AM. VII/1, para.3. In part such invitations are required by the Agency's Relationship or Co-operation Agreements with particular organizations: e.g., United Nations, INFCIRC/11, Part I. A, Article VII.1 (supra Section 12.2.2.3); UNESCO, INFCIRC/20, Part I. A, Article II.5 (supra Section 12.3.3.2); ENEA, INFCIRC/25, Part I. A, Article II.3 (supra Sections 12.5.2 and 12.5.3.1). See also Rules on the Consultative Status of Non-Governmental Organizations with the Agency, INFCIRC/14, para.5 (supra Sections 12.6.2.1 and 12.6.3).
- 29 AM. VII/1, paras.4, 14, 29-30. "Guide", op. cit. supra note 7, Part. 3.7.
- 30 GC(III)/COM.1/32/Rev.1 and GC(III)/COM.1/OR.22, para.41; GC(IV)/COM.1/41 and GC(IV)/COM.1/OR.29, para.23; GC(V)/COM.1/54/Rev.1, /56/Rev.1, GC(V)/COM.1/OR.40, para.62, and GC(V)/186, paras.21-24.
- 31 AM. VII/1, para.5.
- 32 For example, ACABQ report, UN doc. E/3368, para.16, and Annex I, paras.1 and 2.
- 33 In particular, Recommendations 33, 40-50 (especially 50(vi)) of the UN's Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies, A/7124, Annex I. For the Agency's response, see Ibid., Annex XII.
- 34 For example, GC(XII)/385, para.651. See, however, the rather negative comments in the "Guide", op. cit. supra note 7, Part 4.5.
- 35 INFCIRC/50, para.107. Section 15.3.1.3.
- 36 AM. VII/1, Annex II, para.8.
- 37 Idem.

- 38 For example, "Statement of Financial Contributions Received towards the Cost of Conferences, Symposia and Seminars 1968", GC(XIII)/406, Part IV, Schedule F. 8, showing pledges of US \$58 317 from 19 contributors for 12 meetings.
- 39 AM. VII/1, Annex II, para. 22. With the adoption of "programme budgeting" in the 1971 Budget (Section 25.2.3), this appropriation Section will no longer exist, and the expenses of various types of meetings will be covered from several of the Sections related to operational activities.
- 40 GC(V)/155, para. 301(c)-(f); as to the costs of regional meetings, see GC(IV)/116, para. 372(e).
- 41 For example, GC(XII)/385, para. 651.
- 42 For example, GC(XII)/380, Annex D.
- 43 For example, GC(X)/330, Annex III, A and B.
- 44 Section 19.1.3.
- 45 Section 18.3.7.
- 46 Section 18.3.1.
- 47 Now a bimonthly publication.
- 48 STI/PUB/23, a quarterly journal.
- 49 STI/PUB/15/...
- 50 In the early years the publications programme appeared in some detail (e.g., for 1961, GC(IV)/116, para. 379(a)-(h)); lately only a most scanty general sketch, projecting the expected volume rather than the type of publication, has been presented (for 1969, GC(XII)/385, para. 540).
- 51 Formerly set out in PM/Pt. 0/1, Appendix D. Its original composition and terms of reference were promulgated in SEC/INS/105, paras. 12-13, and a reconstitution was promulgated in SEC/INS/105/Rev. 1/Corr. 1, paras. 14-18. See also GC(IV)/116, para. 86. Its composition and terms of reference were reformulated on 19 February 1969.
- 52 Section 31.2.4.
- 53 Sections 24.3.3 and 24.9.2.1.
- 54 AM. VIII/6.
- 55 Section 13.3.1.
- 56 GC(IV)/RES/75.
- 57 GC. 1/1, paras. 62 and 67(j).
- 58 Mentioned in GC(II)/39, para. 141; also GC(III)/73, para. 165.
- 59 Section 20.4.
- 60 Under the Section "Distribution of Information", e.g., GC(XII)/385, Table 44. See, however, *supra* note 39.
- 61 GC(III)/75, para. 23 and Annex IV. C.
- 62 GC(III)/RES/53.
- 63 *Idem*, Annex.
- 64 GC(X)/333, paras. 6 and 31.
- 65 GC(X)/RES/213.
- 66 GC(X)/RES/210, para. 3(a); though this provision was for some reason not included in the Regular Budget Appropriations for 1968 (GC(XI)/RES/226), it has since then been repeated annually (e.g., GC(XIII)/RES/253, para. 5(a)).
- 67 Up to the Report for 1965/66 (GC(X)/330, Annex III, C).
- 68 PUB/CAT/19...
- 69 Under the Section "Distribution of Information", e.g., GC(XII)/385, Table 44 and para. 655.
- 70 INFCIRC/13, Part I. Section 16.8. See, e.g., agreement with the United States concerning films (Agency Registration No. 186).
- 71 GC(XI)/360, paras. 15 and Annex III.
- 72 GC(XII)/380, paras. 105-110. The microfiche service is described in some detail, for the first time, in the 1968 Supplement to the 1967 Publications Catalogue (PUB/CAT/1968/E, pp. 36-37).
- 73 GC(XII)/385, paras. 526-533.
- 74 GC(XII)/395, para. 2, and /396, para. 2.
- 75 GC(XIII)/404, paras. 101-102; GC(XIII)/405, paras. 12-22.
- 76 GC(XIII)/404, para. 102; PR 69/79.

CHAPTER 21. SAFEGUARDS

PRINCIPAL INSTRUMENTS

- IAEA Statute, Articles II, III.A.5, XI.F.4, XII, XIV.B.1(b), XIV.C, and also III.B.1, III.B.2, IX.H, IX.I.2
- Bilateral agreements requiring transfer of safeguards to the Agency, such as:
- South Africa/USA of 8 July 1957, as amended (290 U.N.T.S. 147; 458 U.N.T.S. 328; 18 U.S.T. 1671), Articles X.B, XII
 - India/USA of 8 August 1963 (14 U.S.T. 1484; T.I.A.S. 5446), Article VIII
- Treaty for the Prohibition of Nuclear Weapons in Latin America of 14 February 1967 (A/6663), Articles 13, 14(1), 16(1), 18(3), 19(1), 20(2), 28(1)(d)
- Treaty on the Non-Proliferation of Nuclear Weapons (UNGA/RES/2773(XXII), Annex; INFCIRC/140), Article III
- IAEA/USA Co-operation Agreement (INFCIRC/5, Part III), Article V
- IAEA/UN Relationship Agreement (INFCIRC/11, Part I), Article III.2
- Safeguards Documents:
- First (INFCIRC/26 and /Add.1)
 - Revised and Provisionally Extended (INFCIRC/66/Rev.2)
- Inspectors Document (GC(V)/INF/39, Annex)
- Privileges and Immunities Agreement (INFCIRC/9/Rev.2), Sections 18(b), 23
- Board of Governors Procedural Rule (GOV/INF/60) 11(c)
- Provisional Staff Regulation (INFCIRC/6/Rev.2) 1.06
- General Conference Resolutions noting the Safeguards Documents (GC(IV)/RES/71; GC(VII)/RES/144; GC(IX)/RES/186)
- Board decision of 29 June 1961 on appointment of inspectors (GC(V)/INF/39, para.2)
- Project Agreements, such as:
- Japan: JRR-3 (INFCIRC/3, Part II), Article III
 - Pakistan: PINSTECH (INFCIRC/34, Part II), Articles IV, VI, VII, IX, X, Annex A
 - Uruguay: URR (INFCIRC/67, Part II), Articles IV, VI, VIII, IX, Annex A
 - Argentina: RAEP (INFCIRC/62, Part II), Articles III, V, VI, VIII, IX
- Safeguards Transfer Agreements, such as:
- South Africa/USA (INFCIRC/70; INFCIRC/98)
 - Denmark/UK (INFCIRC/63)
- Safeguards Submission Agreements, such as:
- USA: Yankee, etc. (INFCIRC/57)
 - UK: Bradwell (INFCIRC/86, Part I)
 - Mexico: under Tlatelolco Treaty (INFCIRC/118)
 - Romania: small quantities of nuclear materials (INFCIRC/117)
- Safeguards Letters, to:
- Japan: JRR-3 project (INFCIRC/3, Pages 12-15; INFCIRC/3/Mod.2, Part I)
 - Finland: FIR-1 project (INFCIRC/24/Add.1)
- Supplementary Agreement, with UK, relating to Bradwell (INFCIRC/86, Part II)
- Subsidiary Arrangements (not published)

21.1. INTRODUCTION

21.1.1. Definitions, distinctions and restrictions

Though safeguards is one of the principal functions of the Agency – perhaps even the uniquely important function without which the organization need not and possibly would not have been created¹ – and is extensively dealt

with in the Statute, the treatment in that instrument is by no means complete or free of ambiguities. In particular, three related but different control functions are intermixed in the statutory provisions:

- (a) Health and safety controls;
- (b) Controls on nuclear materials held by the Agency itself, to prevent their diversion to any military purpose - i. e., internal or auto-safeguards;
- (c) Controls on nuclear items or activities in a State to prevent their diversion to any military purpose - i. e., external safeguards.

Health and safety controls are really an entirely separate function, which constitute the subject of the following Chapter. When first mentioned in the Statute (in Article III. A. 6) these controls are clearly distinguished from those against military uses (Article III. A. 5); however, a number of provisions concerning health and safety are explicitly included in Statute Article XII (entitled "Agency Safeguards") (see all paragraphs except A. 3, 4 and 7). As a result of this grouping it is not fully possible to disentangle safeguards from health and safety controls in two other statutory provisions: Articles XI. F. 4(b) and the first clause of Article XIV. B. 1(b). Following this interwoven statutory pattern the Secretariat formulated the first draft of the Safeguards Document² so as to relate also to health and safety, and though the Board quickly divided the texts the original combination is still reflected in the Inspectors Document, which deals with both safeguards and with health and safety inspections. However, the legal questions arising out of the partial statutory combination of the two control functions affect mostly the health and safety activities and are therefore discussed in Section 22.1.1.3, and to some extent in Sections 24.7.3.3 and 25.2.1.

The "internal" safeguards function was already referred to in President Eisenhower's speech, which envisaged the Agency largely as a guardian of a pool of demilitarized nuclear materials.³ That the Agency should protect any material in its custody was never controverted, and the relevant provisions survived substantially intact from the first US Sketch to the actual Statute; they are reflected in Articles:

- (i) III. B. 2, which requires the Agency to establish controls over the use of special fissionable materials received by it, to ensure their exclusively peaceful use;
- (ii) IX. H, which holds the Agency responsible for storing and protecting materials in its possession, and requires that these be "safeguarded", inter alia, against unauthorized removal or diversion and against forcible seizure;
- (iii) IX. I. 2, which requires the Agency to establish "physical safeguards" in connection with the materials supplied to it;
- (iv) XII. B, which assigns to the staff of inspectors to be established by the Agency the responsibility of examining all operations of the Agency to determine, inter alia, whether it is "taking adequate measures to prevent the source and special fissionable materials in its custody or used and produced in its own operations from being used in furtherance of any military purpose";

- (v) XIV. B. 1(b), which defines the costs relating to the above operations as "administrative expenses".

Up to now these internal safeguards have not been applied because the Agency has not yet begun to function as the custodian of a pool of nuclear materials.⁴ Consequently no implementing provisions have been promulgated, though in connection with the very minor quantities of nuclear materials in the Agency's Laboratory the Department of Safeguards and Inspection has de facto applied some of the relevant provisions of the Safeguards Document.

It is the "external safeguards" function, directed against military diversion in or by a State, that is commonly known merely as "safeguards". These are the measures that constitute the Agency's most significant contribution to international organization practice and that form the subject of the balance of this Chapter.

The term "safeguards" was apparently first used in this general sense in the 3-Nation "Agreed Declaration on Atomic Energy", which announced that the three Governments would only share detailed information concerning the practical application of atomic energy "as soon as effective enforceable safeguards against its use for destructive purposes can be devised".⁵

As used in the Statute and as restricted by established practice to the external controls implemented by the Agency, the term "safeguards" means the measures taken by the Agency to prevent:

- (A) Additional States from achieving a military nuclear capability ("proliferation") by the misuse of assistance rendered to them by the Agency for peaceful purposes;
- (B) Proliferation by the misuse of certain other international transfers;
- (C) The increase in the nuclear military resources of any State (i. e., whether or not a nuclear power) through the use of nuclear materials produced under Agency safeguards.
- (D) The use for military purposes of nuclear items submitted to Agency control, which might otherwise either lead to proliferation or to the increase in the nuclear military resources of any State.

It should, however, be noted that though safeguards are designed to "prevent" certain abuses (or, according to Statute Articles II and III. A. 5, to "ensure" that these do not occur), the controls can at best inhibit the proscribed activities by threatening to expose them, for the sanctions directly available to the Agency are limited, with the potentially most severe one (withdrawal of misused items) requiring the compliance of the accused State.⁶

The safeguards system as established at present is by no means a disarmament exercise - i. e., it is not designed to prevent, by itself, a country from making atomic weapons by use of only its own technical resources, nor to cause the nuclear powers to dispose of their existing stocks of nuclear weapons or of the means for producing more.⁷ Rather, the controls are merely meant to ascertain the inoffensive use of particular items submitted, directly or indirectly, to the Agency's supervision; they are not designed to determine that a particular State does not have, anywhere, any military nuclear activities or stocks of nuclear weapons. But while this latter restriction is possibly implicit in the Statute and is consonant with the limited

purposes for which the Agency was established, and moreover is reflected in the successive Safeguards Documents adopted by the Board as well as by the limited size of the staff of inspectors, it is not necessarily an absolute limitation if the political organs of the Agency as well as the States to be controlled should decide to extend the existing scope of the controls system.⁸ In particular, the Agency's authority under Statute Article III. A. 5 to apply safeguards to any bilateral or multilateral arrangement, and the potentially extensive rights under Article XII. A. 6, might enable the Agency to exercise at least a limited territorial control.

21.1.2. Safeguards politics

To understand the reason for the very complicated nature of safeguards, testified to by the inordinate length of this Chapter, it must be realized that this function of the Agency has always been the most controversial aspect of its operations, and that disagreements in relation to it have been persistent from the earliest discussions of the draft Statute — even after two UN endorsed treaties were formulated in reliance on that system. The basic disagreement as to whether the Agency should exercise these controls has in part led to and has in part been reinforced by a number of subsidiary concerns about particular aspects of the system. One problem in unravelling the tangled skeins of argumentation about safeguards has been the difficulty in recognizing (and the natural reluctance to admit) whether a particular issue is being raised out of a genuine concern with that special point or as a feint in a larger campaign to abolish or weaken the system. Without attempting to anticipate the detailed arguments as to these numerous subsidiary issues, it may ease the comprehension of the balance of this Chapter if some of these are previewed here:

- (a) Should safeguards be imposed on only certain States (i. e., those requiring international assistance for their nuclear energy activities, or those that have not by a certain date attained the status of nuclear-weapon powers)?
- (b) Is there any point in imposing safeguards on a State that already has a military programme, which of course it intends to isolate from the activities to be controlled?⁹
- (c) To what extent may the Agency insist on uniformity in exercising its safeguards in different States?
- (d) Will the introduction of some safeguarded items into a State lead inevitably to the spread of controls throughout its entire nuclear energy programme?¹⁰
- (e) Will controls interfere with peaceful nuclear activities to the extent of making them less profitable and thus less competitive?
- (f) Will the safeguards imposed on minor activities and items be so onerous that every effort should be made to obtain exemptions from or the suspension or termination of such controls?¹¹
- (g) What organ of the Agency and to what extent should Member States be responsible for the selection and dispatch of inspectors?¹²

- (h) Need inspectors enjoy a status more secure than those of most international civil servants — perhaps approaching that of diplomats?¹³
- (i) Is the freedom of access and movement desired by the Agency for its inspectors compatible with national sovereignty?¹⁴
- (j) Will inspections jeopardize valuable industrial and commercial secrets?¹⁵
- (k) Who should bear the costs of safeguards?¹⁶

21.2. STATUTORY PROVISIONS

21.2.1. Development

21.2.1.1. United States Sketch

No reference to external safeguards appears in President Eisenhower's speech¹⁷, since that proposal was largely focused on the "pool" concept of the Agency. However, already in the first US Sketch of the Statute¹⁸ it was foreseen that the Agency would have the right to specify certain safeguards provisions, as well as to verify the status of materials it had allocated to a Member and the latter's compliance with the terms of the allocation. This limited concept of controls of course constituted an abandonment of the bold Baruch Plan.¹⁹

21.2.1.2. Negotiating Committee

In the draft prepared by the Negotiating Committee²⁰ the external safeguards were already more prominently dealt with than the internal ones — indeed they are among the subjects most fully treated. Articles III, XIII.B.3 and 6, XII.B.1, 3, 4 and 5, and XIII.D already contained most of the provisions for safeguarding Agency projects, in substantially the same form as these now appear in Articles II, XI.F.4 and XII.A and C. However, all these provisions related only to Agency projects — i. e., to controls on assistance supplied by the Agency.

21.2.1.3. Meeting of 6 Governments

The meeting of scientific representatives of 6 Governments at the close of the First General Conference related entirely to safeguards.²¹ However, though the psychological consequences were beneficial, in fact none of the technical procedures discussed found their way into either the Statute or into the Agency's actual control practices.²²

21.2.1.4. Working Level Meeting

The Working Level Meeting made several significant additions to and changes in the external safeguards provisions:

- (a) With respect to Agency projects it was provided that the safeguards to be applied to a particular project be specified in the Project Agreement;

- (b) Article XII was recast into a form and with provisions practically identical to those in the final Statute ;²³
- (c) In view of the development of other bilateral and multilateral atomic energy arrangements during the already long incubation of the Statute, some of which provided for the exercise of safeguards by the Supplying State, a provision was added authorizing the Agency to apply its controls also to such arrangements if the parties thereto request it to do so.
- (d) Two provisions were included in the financial Article to specify how the safeguards function would be financed, both in relation to Agency projects and in relation to those other arrangements to which it would apply safeguards by request.

Two participants in the Meeting expressed formal reservations with respect to some of the safeguards provisions: the Czechoslovak delegation suggested that Article XII. A. 6 did not adequately guarantee the observance of the sovereign rights of States as required by Article III. D;²⁴ the Indian delegation felt that the introductory sentence to Article XII. A should specifically refer to any limitations on the safeguards rights of the Agency that might be specified in particular safeguards agreements, that source materials should be deleted from the reporting requirement of Article XII. A. 3 and that the provisions in Article XII. A. 5 for the deposit with the Agency of excess produced material were unduly onerous.²⁵

21.2.1.5. Conference on the Statute

At the Conference on the Statute the principal controversies²⁶ relating to safeguards concerned the two points that had been raised by India in its reservation with respect to Article XII. A. 3 and 5. However, after extensive debate on many aspects of safeguards, which occupied a major fraction of the time available to the Conference, only relatively minor changes were agreed on:

- (a) Article III. A. 5 was further extended to provide for the possibility of a State unilaterally submitting any of its atomic energy activities to Agency safeguards – but this addition was adopted at a relatively late stage so that no consequential changes were made in Articles XII and XIV.
- (b) A restrictive clause was added to Article XII. A. 3, to make it clear that the Agency could only require records with respect to such source and special fissionable materials as are included in a safeguarded project or arrangement.
- (c) The conditions under which the Agency can require the deposit of any excess produced special fissionable material were clarified and restricted in Article XII. A. 5.
- (d) A new sentence was added to Article XII. A. 6, authorizing an inspected State to have the Agency's inspectors accompanied as long as they are not thereby delayed or otherwise impeded in the exercise of their functions.

21.2.1.6. Subsequent transactions

No formal reservations were made with respect to any of the safeguards provisions of the Statute, except perhaps in so far as the Swiss reservation concerning the Agency's relations to the Security Council²⁷ can be considered as relating to safeguards.

The Government of India, in depositing its instrument of ratification, formally stated that it feared that the exercise of safeguards would tend to separate Member States into two categories: "the small and less powerful States being subject to safeguards while the Great Powers are above them",²⁸ The Government feared that thereby international tension would be increased rather than decreased; as long as certain States provided nuclear items to others without safeguards, the application by the Agency of controls to similar assistance would result in discrimination.

21.2.2. Summary

The provisions directly relevant to the Agency's external safeguards functions are distributed throughout the Statute;

- (a) Article II requires the Agency to "ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose".
- (b) Article III. A. 5 authorizes the Agency to establish and administer safeguards under the following three conditions:
 - (i) To carry out the obligation established by Article II;
 - (ii) To any bilateral or multilateral arrangement, at the request of the parties thereto; or
 - (iii) To any nuclear activity of a State, at its request.
- (c) Article XI. F. 4 requires that all Project Agreements include two undertakings by the Member States parties thereto:
 - (i) That the assistance received for the project "shall not be used in such a way as to further any military purpose"; and
 - (ii) That the project shall be subject to Agency safeguards, to the extent the Agreement specifies particular controls to be relevant.
- (d) Article XII contains the principal safeguards provisions; it sets forth in three paragraphs:
 - (i) The rights and responsibilities that the Agency is to have when carrying out safeguards, to the extent that these are relevant to the specific situation:
 - (A) To review the design of safeguarded facilities;
 - (B) To require the maintenance and presentation of certain records;
 - (C) To require the submission of reports;

- (D) To follow special fissionable material produced under safeguards through chemical reprocessing and to its future uses, or to require the temporary deposit of such material with the Agency until a peaceful, safeguarded application can be found;
 - (E) To send its inspectors into safeguarded States in order to account for nuclear materials and to determine compliance with the relevant agreements; and
 - (F) To impose certain sanctions
- (ii) The requirement that the Agency establish a staff of inspectors, whose general functions are specified;
 - (iii) The steps to be taken by inspectors, by the Director General and by the Board if any State is discovered to be violating its safeguards undertakings -- including a specification of possible sanctions.
- (e) Article XIV specifies how the Agency's expenditures for safeguards are to be covered:
- (i) Generally as "administrative expenses" (assessable on all Member States) in accordance with Article XIV. B. 1(b),
 - (ii) Except to the extent that such expenses can be recovered, pursuant to Article XIV. C, from States arranging for the application of safeguards by request.

In addition, Article III. B. 1 requires the Agency to conform its conduct to those policies of the United Nations "furthering the establishment of safeguarded world-wide disarmament" -- which falls somewhat short of requiring the Agency to assist the UN in such endeavors, but at the same time provides persuasive authority for it to do so.²⁹

Evidently because the possibility of bilateral and multilateral safeguards submissions was added to the draft Statute after the safeguards with regard to Agency projects had already been completely formulated,³⁰ the provisions relating to these submissions were no longer fully developed in the Statute. Thus Article XII. A (which in its introductory words refers both to projects and to submissions) in paragraphs 6 (inspections) and 7 (sanctions) refers to "recipient State or States" -- a term meaningful in relation to projects, but at best relevant to only some bilateral and multilateral arrangements (and not to those based on reciprocity rather than on the delivery of assistance).

Even more marked are the deficiencies of the Statute in relation to unilateral submissions to safeguards -- the possibility of which was added at a still later stage.³¹ This function of the Agency is mentioned only in Article III. A. 5, and no reference appears in any other place, including the crucial Article XII. Though detected in the last stages of the Conference on the Statute,³² the Co-ordination Committee, to which several proposals to complete the draft Statute were referred, decided that no additions to the text were required since the organs of the Agency would be able to make the necessary arrangements with the States concerned.³³

Consequently it is essential, though sometimes confusing, to interpret certain provisions of the Statute to apply, *mutatis mutandis*, to safeguard situations to which they do not directly refer. The tabular presentation below indicates the extent to which such interpolation is necessary.

Statute Article	Agency assisted projects	Bilateral or multilateral submissions	Unilateral submissions
II	E	?	?
III.A.5	E	E	E
XI.F.4	E	A	A
XI.F.6*	E	A	A
XII.A (intro.)	E	E	A
XII.A.1**	E	E	A
3**	E	E	A
4**	E	E	A
5**	E	E	A
6*	E	A	A
7	E	A	A
XII.C*	E	A	A
XIV.B.1(b)	E	E	A
XIV.C	-	E	A

E = Explicitly covered

A = Application by analogy required

* Same scope as Article XI.F.4

** Same scope as introductory sentence to Article XII.A - i.e., clause itself contains no further explicit restrictions (but cf. Article XII.A.6 and 7)

21.2.3. Scope of situations involving Agency safeguards

Article III.A.5 of the Statute lists three situations in which the Agency is authorized to apply safeguards. In one of these (the administration of Agency projects) it is obliged to do so, while in the other two the exercise of this function is optional. As indicated above, the reason for the separate listing of these three situations is largely historical, each having been included at a separate stage in the negotiation of the Statute.

The Statute itself does not oblige any State to submit to Agency safeguards. If a State does so, its motives must be sought elsewhere, and a listing of the possible motives, which cut across the three statutory categories, provides in some ways the most useful framework for analysis:

- (a) The desire to receive international assistance³⁴ for nuclear energy programmes:
 - (i) If the assistance is to come from or through the Agency, Statute Article XI.F.4 (as well as Article II) requires the acceptance of Agency safeguards.

- (ii) If the assistance is to come directly from another State or from some other international organization, the supplier may insist on Agency safeguards, either absolutely or as an alternative to exercising safeguards itself – but the Statute does not oblige any Supplying State or organization to establish such a requirement. In spite of the statutory distinction between these situations, it should be noted that in practice there is little difference between a safeguarded Agency project and a bilateral assistance arrangement to which the Agency applies safeguards, since even under a project the Agency rarely supplies assistance from its own resources and therefore usually acts merely as a broker and its control activities represent its most significant continuing intervention.³⁵
- (b) Participation in some bilateral, regional³⁶ or world-wide³⁷ non-proliferation arrangement, requiring the States party to it to agree to submit all or certain of their nuclear activities to Agency safeguards; such submissions might be made either by a collective request by the parties to such a bilateral or multilateral arrangement, or by co-ordinated unilateral submissions.
- (c) Internal or external political pressures.

Finally it should be noted that the Statute does not explicitly restrict the Agency's safeguards functions to Member States (except in so far as only Members may receive assistance under Article XI project arrangements) – since Articles III. A. 5 and XII (unlike other Articles, such as IX and XI) refer to "States" (without the adjective "member").³⁸ In fact, Article XVIII. E clearly contemplates the continued application of safeguards to Ex-member States. Some minor difficulties might arise concerning privileges and immunities, as well as certain sanctions, but these would seem soluble by proper drafting of safeguards agreements with Non-member States.³⁹ On the other hand, the entity with which the Agency makes safeguards arrangements must clearly have the international attributes of a State – though whether it must be recognized as such by a majority of the membership is primarily a political and not a legal question.⁴⁰

21.3. TREATIES PROVIDING FOR AGENCY SAFEGUARDS

Though the Statute contains no unconditional obligation to submit to safeguards, a requirement to do so is often contained in some other international agreement. Except in the case of Project Agreements, the Agency has not become a party to any instrument which motivates States to submit to Agency safeguards. Though such agreements thus are somewhat peripheral to the law of the Agency, but their impact is such as to require consideration here.

21.3.1. Bilateral agreements

During the prolonged period required for the negotiation of the Statute, several nuclear advanced States entered into agreements, with each other but primarily with less developed countries, for the provision of nuclear

assistance. In offering such assistance these States (primarily the United States, the United Kingdom and Canada) almost invariably reserved the right to apply safeguards. Frequently provision was also made for the later transfer of this function to an intergovernmental organization, alternatively by:

- (a) Merely noting the plans for establishing (or, later, the existence of) the Agency and the possibility of requesting it to perform certain functions under the bilateral agreement;⁴¹
- (b) Requiring the parties to consult concerning such a transfer of the safeguards function, and in effect providing that such a transfer take place at the request of either party, the other merely reserving the right to denounce the agreement (with the consequent obligation that all assistance rendered under it be returned to the supplier) if no accord on the modalities of such transfer can be reached;⁴²
- (c) Providing that such a transfer take place, on the fulfillment of certain conditions.⁴³
- (d) Require that safeguards be transferred to the Agency immediately or within a stated period.⁴⁴

Finally, certain of the more recent bilateral agreements do not provide for national safeguards at all but specify that all assistance will ab initio be subject to Agency safeguards.^{44A}

21.3.2. Multilateral agreements

Multilateral agreements, just like bilateral ones, can foresee a role for Agency safeguards either as an alternative for or as a supplement to any control system established by the agreement or even as the primary or sole means of control. The political basis of these requirements may be: the assistance to be rendered through the agreement, or the joint operation of nuclear projects through an organization created by the agreement, or the desire to obtain reciprocal assurance against proliferation.⁴⁵

21.3.2.1. European Security Control

The European Security Control Convention,⁴⁶ whose provisions in relation to the European Nuclear Energy Agency correspond and are very similar to the safeguards provisions of the Agency's Statute, foresees in Article 16(b) that "an agreement may . . . be entered into between [ENEA and the Agency] in order to define the co-operation to be established between the two institutions". This very general language must be read in the context of Article 16(a), which provides for an agreement "defining the arrangements under which the control established by the [ENEA] Convention shall be carried out within the territory to which the [EURATOM] Treaty . . . applies, by the competent bodies of EURATOM by delegation from [ENEA] . . .". Presumably the agreement with the Agency mentioned in the next paragraph of the Convention might therefore have similar objectives. However, up to now no such agreement has been concluded by ENEA, either with EURATOM or the Agency, nor have negotiations with respect to Article 16(b) even been started; meanwhile, ENEA is administering its own controls.

21.3.2.2. Latin American denuclearization

The 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America⁴⁷ (the Tlatelolco Treaty) provides in pertinent part:

"Article 1

"Obligations

"1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:

(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way; and

(b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapon, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.

...

"Article 5

"Definition of nuclear weapons

"For the purposes of this Treaty, a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.

"Article 7

"Organization

"1. In order to ensure compliance with the obligations of this Treaty, the Contracting Parties hereby establish an international organization to be known as the 'Agency for the Prohibition of Nuclear Weapons in Latin America', hereinafter referred to as 'the Agency'. Only the Contracting Parties shall be affected by its decisions.

...

"Article 12

"Control system

"1. For the purpose of verifying compliance with the obligations entered into by the Contracting Parties in accordance with article 1, a control system shall be established which shall be put into effect in accordance with the provisions of articles 13-18 of this Treaty.

"2. The control system shall be used in particular for the purpose of verifying:

(a) That devices, services and facilities intended for peaceful uses of nuclear energy are not used in the testing or manufacture of nuclear weapons;

(b) That none of the activities prohibited in article 1 of this Treaty are carried out in the territory of the Contracting Parties with nuclear materials or weapons introduced from abroad, and

(c) That explosions for peaceful purposes are compatible with article 18 of this Treaty.

"Article 13

"IAEA safeguards

"Each Contracting Party shall negotiate multilateral or bilateral agreements with the International Atomic Energy Agency for the application of its safeguards to its nuclear activities. Each Contracting Party shall initiate negotiations within a period of 180 days after the date of the deposit of its instrument of ratification of this Treaty. These agreements shall enter into force, for each Party, not later than eighteen months after the date of the initiation of such negotiations except in case of unforeseen circumstances or force majeure.

"Article 16

"Special inspections

"1. The International Atomic Energy Agency and the Council established by this Treaty have the power of carrying out special inspections in the following cases:

(a) In the case of the International Atomic Energy Agency, in accordance with the agreements referred to in article 13 of the Treaty;

...

"Article 18

"Explosions for peaceful purposes

"1. The Contracting Parties may carry out explosions of nuclear devices for peaceful purposes – including explosions which involve devices similar to those used in nuclear weapons – or collaborate with third parties for the same purpose, provided that they do so in accordance with the provisions of this article and the other articles of the Treaty, particularly articles 1 and 5.

"2. Contracting Parties intending to carry out, or co-operate in the carrying out of such, an explosion shall notify the Agency and the International Atomic Energy Agency, as far in advance as the circumstances require, of the date of the explosion and shall at the same time provide the following information: . . .

"3. The General Secretary and the technical personnel designated by the Council and the International Atomic Energy Agency may observe all the preparations, including the explosion of the device, and shall have unrestricted access to any area in the vicinity of the site of the explosion in order to ascertain whether the device and the procedures followed during the explosion are in conformity with the information supplied under paragraph 2 of the present article and the other provisions of this Treaty.

...

"Article 19

"Relations with other international organizations

"1. The Agency may conclude such agreements with the International Atomic Energy Agency as are authorized by the General Conference and as it considers likely to facilitate the efficient operation of the control system established by this Treaty.

"Article 28

"Entry into force

"1. Subject to the provisions of paragraphs 2 and 3 of this article, this Treaty shall enter into force among the States that have ratified it as soon as the following requirements have been met:

...

(d) Conclusion of bilateral agreements on the application of the Safeguards System of the International Atomic Energy Agency in accordance with article 13 of this Treaty.

"2. All signatory States shall have the imprescriptible right to waive, wholly or in part, the requirements laid down in the preceding paragraph. . . ."

In addition, other Articles⁴⁸ provide for certain reports to be made to the Agency,⁴⁹ routinely or in the event of a violation of the Treaty. It is clear that the entire scheme of the Treaty is based on the assumption that the Agency will carry out its safeguards to control at least the principal obligations, or rather the proscriptions of that instrument. Reciprocally, its potential impact on the Agency's safeguards operations is manifold:

- (a) It is foreseen that the Agency will enter into safeguards agreements with each State party to the Treaty, pursuant to which the Agency is to apply its safeguards (including in particular the performance of "special inspections"⁵⁰) to the nuclear activities of these States. The conclusion of these agreements is indeed made a pre-condition for the entry into force of the Treaty for each potential party.
- (b) The Agency is expected, in addition, to observe peaceful nuclear explosions carried out within the territories of the parties to the Treaty, to ascertain compliance with that instrument.
- (c) The Agency is to co-operate with the Latin American Agency, according to a special agreement to be concluded between the organizations.

Of course, except to the extent that the Agency binds itself to assist in implementing the Treaty, it is under no legal obligation to take any of these steps — for even the conclusion of safeguard agreements would merely occur on the basis of non-binding "requests" submitted to it pursuant to Statute Article III. A. 5. However, the Treaty has received the endorsement of the UN General Assembly,⁵¹ and though the relevant resolution is not explicitly addressed to the Agency, it does appear to express a policy to which the Agency is to conform pursuant to Statute Article III. B. 1.⁵²

The primary effect of the Treaty should be to induce the Latin American States to submit all their nuclear activities to Agency safeguards, and from this point of view this instrument is typically one described in the introductory sentence of Section 21.3. However, two potential difficulties should be noted:

- (i) The prohibitions of the Treaty, to which the relevant controls are to be addressed, are not necessarily identical to those expressed in the Agency's Statute: on the one hand, the Treaty requires its parties to use nuclear material and facilities "exclusively for peaceful purposes" — an obligation obverse and thus possibly even somewhat broader than the statutory safeguards proscription of "any military purpose";⁵³ on the other, the specific prohibitions of the Treaty relate solely to "nuclear weapons" (as defined in Article 5) — a term that does not include non-weapon military uses (such as nuclear warships). Assuming that the "control system" foreseen by the Treaty is to concern itself only with the activities specifically prohibited, the question arises whether the Agency will and perhaps must insist on exercising its controls for their

full statutory purpose, i. e., to prevent all activities proscribed by the Statute, and whether such restraints additional to those written into the Treaty will prove acceptable to the potential parties thereto.

- (ii) The ultimate purpose of the Treaty is to prevent the presence within the territory it covers of any nuclear weapon. The Agency's safeguard system is not, however, designed to detect all improper activities in a given territory, but rather to detect any improper activity with items previously registered with it or derived from such items. If the Agency were to undertake the exercise of territorial control (assuming that to be at all feasible — for example, how could any controls reliably detect a nuclear weapon smuggled into a country with or without the connivance of its Government), it would have to alter and extend its safeguards system drastically. Fortunately, it is unlikely that the Agency will be called on to do so, for the Treaty contains an ingenious provision for "special inspections" triggered by official accusations,⁵⁴ which means that the detection of unreported activities will in the first instance be relegated to reciprocal, unofficial policing.

The Agency has up to now entered into one safeguard agreement in relation to the Treaty.⁵⁵ In that agreement the two complications discussed above were avoided: Mexico made an "undertaking" in the Agency's usual form,⁵⁶ and the Agency only undertook to control the items properly registered by it.⁵⁷ The Latin American Agency noted this agreement at its first General Conference, and invited the Director General of the IAEA "to explore the possibility of preparing a model draft safeguards agreement" to serve as the basis for negotiating with other parties to the Tlatelolco Treaty.^{57A}

The possible implications of safeguarding nuclear explosions are discussed in Section 21.13.

In reporting on the Treaty to the Board of Governors in May 1967, the Director General suggested that consideration of possible additional control functions that the Agency might perform in connection with the Treaty should await its entry into force, the consequent establishment of the Latin American Agency and any proposal from that organization for the conclusion of an agreement with it:⁵⁸ the Board was content with this postponement. Indeed, it is not clear what further functions the Agency might be requested to perform, though at least one was suggested in preliminary drafts of the Treaty:⁵⁹ to carry out at the direction of the Council of the Latin American Agency any special inspections resulting from accusations, i. e., the inspections that would seek to determine whether at a given place any unregistered (and thus ipso facto illegal) nuclear activities are taking place.

21.3.2.3. General non-proliferation

The 1968 Treaty on the Non-Proliferation of Nuclear Weapons⁶⁰ provides in pertinent part:

"The States concluding this Treaty

...

"Undertaking to co-operate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

"Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

...

"Article II

"Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

"Article III

"1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

"2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.

"3. The safeguards required by this article shall be implemented in a manner designed to comply with article IV of this Treaty, and to avoid hampering the economic or technological development of the parties or international co-operation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful

purposes in accordance with the provisions of this article and the principle of safeguarding set forth in the preamble.

"4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations."

This study is not designed to elucidate this in many ways complex instrument. It is only intended to evaluate its potential impact on the Agency, keeping in mind that the Treaty only entered into force in March 1970 and that no safeguards agreements under it have yet been concluded, so that almost all statements made in this field are of necessity speculative; it would therefore be bootless to consider all possible variations and interpretations.

Unlike the Tlatelolco Treaty, the Non-Proliferation Treaty foresees only a single control function for the Agency: the application of safeguards in accordance with agreements it is to conclude with the non-nuclear-weapon States parties to the Treaty. With respect to that instrument, the conclusion of such agreements is not, however, made a pre-condition for entry into force, but is merely an obligation to be fulfilled by the parties to it.

Again it is clear that the Agency is under no direct obligation to enter into the agreements foreseen by the Treaty, the negotiation of which must be initiated by the individual or collective requests of States pursuant to Statute Article III. A. 5. However, here too it should be noted, in connection with Statute Article III. B. 1, that the Treaty was not only endorsed by the UN General Assembly, but was in its final stages actually negotiated within that body and received its official text in an almost unanimous resolution of the Assembly.⁶¹

The Treaty is to put two types of pressure on non-nuclear weapon States to conclude safeguards agreements with the Agency:

- (a) Each such State party to the Treaty is obliged, by Article III. 4, to conclude a safeguards agreement within a limited period (maximum two years) of the entry into force of the Treaty for it;
- (b) All such States, whether or not parties to the Treaty, can under Article III. 2 receive nuclear assistance from any party to the Treaty (whether a nuclear-weapon or a non-nuclear weapon State) only subject to Agency safeguards.

Though these apparently straightforward provisions seem designed to fit smoothly into the Agency's system, and on their face appear to do no more than to motivate States to submit to safeguards, in fact a number of problems will have to be faced by the Agency in assuming the role foreseen for it by the Treaty:

- (i) The principal prohibition of the Treaty is generally much narrower than that expressed in the Statute, since the former relates explicitly only to "nuclear weapons or other nuclear explosive devices" and not to the other potential military uses of atomic energy. The Agency might thus be required to observe, without being able to object, that safeguarded nuclear items are "diverted" from peaceful pursuits to military ones not prohibited by the Treaty.
- (ii) A further complication relates to the same discrepancy. Since the Agency is only to exercise controls with respect to peaceful activities (a restriction suggested but not necessarily required by its own Statute,⁶² but stated explicitly in Article III. 1 of the Treaty), States concluding safeguards agreements with the Agency pursuant to the Treaty still may avoid controls with respect to all activities they declare to be military but which are not prohibited by the Treaty. Naturally as to such items beyond its control the Agency will not be able to determine whether the prohibitions of the Treaty are actually being observed.⁶³
- (iii) In at least one significant way the prohibitions of the Treaty reach beyond those of the Statute, since they ban, for non-nuclear-weapon States, the acquisition in any way of even non-weapon nuclear explosive devices - i. e., including those designed solely for civil purposes. Thus the Agency will be obliged to use its control system to prevent an activity legitimate under its Statute, indeed one that it might otherwise further as an Agency project.⁶⁴
- (iv) Even more broadly than the Tlatelolco Treaty, the safeguards under the Non-Proliferation Treaty are to relate to all peaceful nuclear activities within the territory of each non-nuclear-weapon State, or otherwise "under its jurisdiction, or carried out under its control anywhere". Again the Agency under its present system will only be able to control those activities that are reported to it - and thus both unregistered items and those officially declared to be used for a non-weapon military purpose will escape its scrutiny;⁶⁵ unlike the Latin American instrument, the Non-Proliferation Treaty does not provide for special inspections to be carried out on the basis of accusations.
- (v) Concealed in Article III. 4, actually more in its history than in its text, is another complication: the Agency is to conclude safeguards agreements with States "either individually or together with other States". The declared purpose of the stated alternative is to induce the Agency to conclude an agreement with EURATOM, acting for those of its five members that are non-nuclear-weapon States, under which that organization might continue to carry out its present safeguards functions in lieu of some or all of the controls that would normally be imposed by the Agency.⁶⁶ This possibility is discussed in Sections 21.11.2.3 and 21.11.3.3 below.

Up to May 1970 the Agency had not yet concluded the negotiation of any safeguards agreements under the Treaty. But intensive Secretariat studies have been started, and on 2 April 1970 the Board established the Safeguards Committee (1970), on which any Member of the Agency may be represented, to advise the Board "on the Agency's responsibilities in relation to safeguards in connection with the Treaty" and in particular with respect to the

safeguards agreements to be negotiated pursuant thereto. In anticipation, the Agency's Budget for 1970 already included a modest increase for safeguards, based on the assumption that the Agency would assume significant tasks under the Treaty.⁶⁷

21.3.2.4. Safeguards cartel

Article III, 2 of the Non-Proliferation Treaty in effect constitutes all the parties to it as a cartel that will refuse to supply any non-nuclear-weapon State (whether or not a party to the Treaty) that does not submit to Agency safeguards. This provision is only one in a long series of proposals that have been and are being made to a similar effect — though so far it is the only one that has received explicit formulation in a treaty instrument. Indeed it had originally been intended that the Agency itself constitute such a cartel, and the extensive political concessions made to the potential Supplying States were designed to attract all of these into the organization so as to make its control over the nuclear materials market complete; however, while the Agency's membership did indeed become almost universal, the Statute never explicitly restrained Members from supplying either other Members or Non-members without safeguards, nor was any firm gentleman's agreement to that effect ever arranged.

A more or less formally organized nuclear boycott of States refusing to submit to safeguards has from time to time been proposed as a substitute for the Non-Proliferation Treaty, and even with the formulation of such an instrument the explorations in that direction have not yet ceased. Indeed, at least one significant supplement to the Treaty has been suggested: a co-ordinated boycott by the non-nuclear-weapon States of those nuclear-weapon States (which are not required to submit to safeguards pursuant to the Treaty) that refuse to submit internationally procured nuclear items to safeguards.

Another variant of such a cartel, which has been mentioned as a possible supplement to (or a most imperfect substitute for) the Non-Proliferation Treaty, would be an agreement among all suppliers to inform the Agency regularly of all international transfers of nuclear items.⁶⁹ To the extent that such shipments are destined to a State subject to safeguards, the reports would facilitate the immediate and certain imposition of controls, even if the recipient State should fail to report them promptly as required by the relevant safeguards agreement; if the reported destination is an un safeguarded State, the Agency will at least be able to keep track of the potential capacity of its nuclear operations, and through the publication of periodic accounts keep the world informed of the extent to which such a State constitutes a potential nuclear menace.

21.4. SAFEGUARDS INSTRUMENTS ADOPTED BY THE BOARD

The Statute, while dealing more extensively with safeguards than with any other function of the Agency, still only establishes the framework of the actual control system. In principle that is all that is necessary, since the

Statute foresees that safeguards will only be exercised in a State on the basis of an agreement between its Government and the Agency. However, already in negotiating the very first safeguards agreement, that relating to the JRR-3 reactor project in Japan,⁷⁰ it became apparent that unless detailed rules were established on when and how the Agency should apply safeguards to particular types of assistance, the formulation of even minor agreements would become too lengthy, complicated and controversial. Consequently the Board has supplemented the general provisions of the Statute by specific provisions, set out in two instruments: the so-called Safeguards and Inspectors Documents (which together constitute the core of the Agency's "safeguards system"⁷¹). In addition, certain relevant rules appear in other instruments, such as the Privileges and Immunities Agreement and in isolated Board decisions.

21.4.1. The Safeguards Document

21.4.1.1. Development

21.4.1.1.1. The First Document

The extensive negotiations and Board discussions required to draft the safeguards provisions relating to the minor assistance for the JRR-3 reactor project in Japan caused several Governors to suggest that a general safeguards document be prepared by the Secretariat.⁷² Without any formal directive from the Board, the Secretariat by May 1959 prepared a two-part draft, consisting on the one hand of some general principles (entitled "The Relevancy and Method of Application of Agency Safeguards") and on the other of a detailed set of "Draft Regulations for the Application of Safeguards".⁷³ Both these parts combined provisions relating to the Agency's obligation to prevent military diversion and to the separate obligation to ensure that the projects it was associated with would not constitute a hazard to health and safety; the Draft Regulations also included a separate portion setting forth the inspection procedures common to both types of controls.

Before the Board had any opportunity to consider this draft, the Director General also submitted it to SAC and requested its advice on some of the technical problems. This step and the method by which the Committee's conclusions were reported to the Board caused considerable controversy in the latter⁷⁴ — a foretaste of what was to follow before the first safeguards document was completed.

After prolonged consideration of the Secretariat's draft in June 1959, the Board decided that the safeguards and the health and safety provisions should be separated. It also requested the preparation of a revision of most of the first part, dealing with general principles.

The Secretariat prepared the requested revision, which was considered by the Board at several sessions immediately preceding the Third General Conference. After acting on a number of proposed amendments, the Board appointed an "Ad hoc Drafting Committee", consisting of the representatives of Brazil, France, India, Romania, Soviet Union, United Kingdom and United States. This Committee prepared a revised draft, which after further amendment was provisionally approved by the Board on 26 September 1959.

On the basis of these tentative general principles the Secretariat then prepared a set of "Procedures for the Attachment and Application of Agency Safeguards against Diversion". After extensively considering these procedures, together with a Secretariat "Commentary" and numerous proposed amendments, the Board on 20 January 1960 established a "Special Working Group of Expert Representatives on Safeguards", whose composition was essentially the same as that of the "Ad hoc Drafting Committee", except that Czechoslovakia replaced Romania (which was no longer represented on the Board) and that the Group was chaired by Dr. Gunnar Randers acting in his personal capacity (and not as the Governor from Norway). This body was instructed to consider the Secretariat's draft in the light of the Board's discussion, to clarify and simplify it and to combine it with that of the general principles.

When the Working Group met on 15 February 1960 it had before it a revised text of the draft procedures prepared by the Secretariat, as well as a considerably shortened version that had subsequently been formulated by the Chairman in co-operation with the Secretariat and which incorporated the provisionally approved general principles. The Group decided to base its work on the Chairman's draft, and in a series of 11 meetings prepared a slightly revised text, which it presented to the Board together with a dozen comments and explanations by individual representatives.

The Board amended the Working Group's text and provisionally approved it on 7 April 1960. At the same time it decided to submit that text to the Fourth General Conference "for consideration and appropriate action in accordance with the Statute".⁷⁵ This formula constituted a compromise carefully constructed to avoid specifying whether the Conference was merely being invited to exercise its power (under Statute Article V.D) to discuss and make recommendations on any matter, or was being asked (pursuant to Article V.F.1) "to take decisions on any matter specifically referred to the General Conference for this purpose by the Board".⁷⁶

The Conference first referred the Board's text to its Administrative and Legal Committee.⁷⁷ On the report of this body⁷⁸ the Conference after some more heated debate, adopted (43:19:2) a Resolution which, inter alia, "took note" of the Board's text and invited the Board, before giving effect thereto, "to take into account as appropriate the views expressed in the General Conference".⁷⁹ This Resolution was just as careful as the Board had been to avoid specifying whether the Conference was acting under Statute Article V.D or V.F.1.

On 31 January 1961 the Board, after adopting over a dozen further amendments to the text it had submitted to the Conference, approved the "Principles and Procedures for the Attachment and Application of Safeguards by the Agency" in the form in which they were thereupon reproduced in document INFCIRC/26, which became known as the Agency's "[First] Safeguards Document" or "The Agency's Safeguards System (1961)".

21.4.1.1.2. Review of the First Document

The General Conference, in its Resolution relating to the preliminary version of the First Safeguards Document, invited the Board to report to the Sixth

Conference (in 1962) the results of a general review of the safeguards system, to be undertaken after two years "in the light of the actual experience gained by the Agency as well as of technological developments";⁸⁰ by its resolution of 31 January 1961 approving the system, the Board decided that it would so report. The Document itself provided for its review after two years - a period that would of course only expire in January 1963.⁸¹

In May 1962 the Director General proposed to the Board that it inform the Conference that the experience gained in the less than 18 months that the safeguards system had been in effect was insufficient for a comprehensive review - which should consequently be delayed. The Board agreed with the Director General and so informed the Conference,⁸² which took no action on the matter.

21.4.1.1.3. Extension of the First Document

In February 1963 the Board requested the Director General to formulate draft proposals for the extension of the safeguards system to reactors of over 100 MW(th) (the First Safeguards Document having been limited to reactors below that capacity);⁸³ simultaneously it re-established the Special Working Group and charged it to review the Director General's draft and to submit proposals to the Board.

The Secretariat prepared a draft in which it included a proposal that reactors above a certain capacity be subject to continuous inspection. In this connection the Director General also recommended that the Inspectors Document be correspondingly supplemented, as its provisions related exclusively to discrete inspections.

The Working Group met in April 1963 and agreed on proposals that in general followed those of the Secretariat. However, it considered that those relating to the Inspectors Document were outside its terms of reference. Though considerable dissatisfaction was expressed with the existing system and consequently the wisdom of extending it substantially unchanged to large reactors was questioned, the Group also decided that it was not authorized to undertake a general review of the system.

On 19 June 1963 the Board provisionally approved the procedures proposed to it by the Working Group, agreed to submit them to the General Conference on the same basis as the original system, and decided to undertake a general review of the safeguards system "giving particular attention to the provisions relating to the attachment of safeguards to equipment".⁸⁴

The General Conference again referred this item to its Administrative and Legal Committee. On the basis of the Committee's report⁸⁵ it passed (57:4:6) a Resolution similar to the one it had adopted in relation to the original system.⁸⁶

On 26 February 1964 the Board gave its final approval, without any change, to the extension procedures - which were then issued as document INFCIRC/26/Add.1.

21.4.1.1.4. Revision of the extended First Document

In the Resolution by which it approved the extension of the First Safeguards Document, the Board decided to establish, once more under the ad personam

chairmanship of Dr. Randers, a new Working Group to Review the Agency's Safeguards System, on which all members of the Board might be represented, and which it charged with carrying out the once delayed general review of the system. The Board also invited all Member States to communicate their views for consideration by the Group.⁸⁷

By now the atmosphere in the Agency had changed considerably with respect to safeguards; though this activity and the rules governing it continued to be highly controversial, the polemics which had dominated most previous considerations (in the earlier Working Groups, in the Board and in the General Conference) were for the first time replaced by serious studies of how the system could be made to work most effectively and unobtrusively and how its provisions could be stated most simply.

The Working Group held a total of 32 meetings in February, May and October⁸⁸ 1964 and January 1965. During the first series of meetings it considered how to proceed with the task entrusted to it. During the second series it held a thorough discussion of the principles and procedures of the existing system; in this it was assisted by the comments that a number of Member States had submitted in response to an invitation that had been issued by the Board when it decided to initiate the review. The Chairman, in collaboration with the Secretariat, then prepared the preliminary draft of a revised system, which the Group considered and amended at its third series of meetings. Finally the Group once more considered and slightly revised its draft and agreed on a brief report to be made to the Board.

After agreeing to some minor amendments, the Board provisionally approved the revised system on 25 February 1965 and submitted it to the General Conference according to the already hallowed formula.⁸⁹

The Ninth Conference referred the item to its Administrative and Legal Committee,⁹⁰ and then passed a Resolution (without objection — recorded as unanimous approval)⁹¹ in the usual form, noting the Board's proposal and inviting it to take appropriate account of the views expressed in the Conference.⁹² In view of the unprecedented unanimity of this decision, the Board re-convened while the Conference was still in session (and before its composition would be changed on the adjournment of the Conference),⁹³ and gave its final approval to the revised system — which was subsequently issued as INFCIRC/66: "The Agency's Safeguards System (1965)".⁹⁴

21.4.1.1.5. Supplements to the Revised Document

In February 1966 the Board re-established the Working Group that had prepared the Revised System, and charged it with the preparation of provisions extending⁹⁵ it to reprocessing plants. The Group met in May and, on the basis of suggestions received from a number of Member States and of a text prepared by its Chairman with the assistance of the Secretariat, proposed a set of special procedures for such plants. In June the Board provisionally approved these procedures as an Annex to the Revised Document,⁹⁶ but stressed their tentative nature and the need for their early review;⁹⁷ it requested the Director General to inform the General Conference of these steps and to communicate any views expressed at the tenth session to the Board. The Director General communicated the text of the new provisions to the

Conference in an information document,⁹⁸ without, however, placing their consideration on the Provisional Agenda. Consequently, only in the course of the general debate were any comments made with respect to the Board's text.

In June 1967 the Board once more re-established the Working Group and charged it with the preparation of provisions extending the Revised Document to plants for processing or fabricating nuclear material; in addition to allowing all members of the Board to participate, an invitation was extended to all Member States to submit written comments and to those that did so to participate, through non-voting observers, in the deliberations of the Group.⁹⁹ At its fifth meeting that body charged Chairman Randers with reporting to the Board in November 1967 the draft of a second Annex to the Revised Document, setting forth "Provisions for Conversion Plants and Fabrication Plants". The Board considered that draft in February 1968 and approved it provisionally, but at the same time requested the Working Group to meet again to consider certain observations and proposed amendments. After holding three more meetings in May, the Group communicated to the Board a slightly revised draft Annex setting forth "Provisions for Safeguarding Nuclear Material in Conversion Plants and Fabrication Plants". In June the Board thereupon: provisionally approved the new provisions to take the place of those it had approved in February;¹⁰⁰ specified that these provisions are to be subject to review at any time and would "in any case be reviewed after two years of application"; and again requested that these be informed to the General Conference¹⁰¹ and that any views there expressed be communicated to the Board.

In September 1967 a proposal was introduced in the Board for the initiation of the preparation of still another extension relating to isotope separation facilities. Though the Board requested the Director General to prepare for its consideration in June 1968 appropriate procedural proposals, he had not yet done so by the end of 1969 — evidently after consultations had convinced him that the time was not yet ripe for such a move (possibly because of the numerous reports of advances in the development of gas centrifuges).

21.4.1.1.6. Further review and revision

Though the Revised Safeguards Document itself calls for its "periodic review",¹⁰² it contains no automatic time limit such as had been included in the First Document.¹⁰³ However, the two provisionally approved Annexes both provide for their "review at any time . . . and in any case after two years' experience of their application has been gained". As yet, no actual plans have been made for any review.

Nevertheless, the potentially changing basis of the Agency's safeguards function may require extensive revisions of and additions to the Safeguards Document in the near future, particularly in implementing the Tlatelolco and Non-Proliferation Treaties:

- (a) The Preamble to the Non-Proliferation Treaty expresses "support for research, development and other efforts to further

- the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points".
- (b) Resolution F of the Conference of Non-Nuclear-Weapon States¹⁰⁴ calls for the improvement and simplification of the safeguard system, inter alia to achieve the above objective and also to simplify "safeguards in respect of fissionable materials in small quantities for use in scientific research".
 - (c) The territorial nature of the safeguards undertakings in the two new Treaties¹⁰⁵ may require both the introduction of certain new control devices but also may permit considerable simplification in the rules relating to the imposition of safeguards with respect to specific items.¹⁰⁶
 - (d) The performance of "special inspections" under Article 16 (1)(b) of the Tlatelolco Treaty may necessitate additions to the Safeguards or the Inspectors Document.
 - (e) Safeguards for peaceful nuclear explosions will have to be formulated.¹⁰⁷

21.4.1.2. Provisions

21.4.1.2.1. The Revised Document

The Agency's Safeguards System (1965, as Provisionally Extended in 1966 and 1968) is set forth in a document of 85 paragraphs and two Annexes, which deal with several different types of subject matter.

Part I is entitled "General Considerations" and consists of three sub-parts. The first of these describes the purposes and scope of the Document. The second is entitled "The Agency's Obligations", and sets out in six paragraphs various restrictions that the Agency is to observe in applying safeguards: three of these are designed to ensure that the controls exercised will in no case hamper or make less economic legitimate peaceful activities;¹⁰⁸ one requires the Director General to consult with States about the implementation of safeguards; two others are to assure them that information provided to the Agency in connection with safeguards will be held confidential, in particular if it relates to industrial or commercial secrets.¹⁰⁹ The third sub-part specifies certain considerations the Agency is to observe in entering into safeguards agreements.

Part II is somewhat misleadingly entitled "Circumstances Requiring Safeguards". It lists the situation in which nuclear materials are to be subject to safeguards, as well as the conditions under which they may thereupon be exempted from safeguards or upon which safeguards may be temporarily suspended or permanently terminated.¹¹⁰

Part III, entitled "Safeguards Procedures", is the core of the Document. It specifies the control procedures to be applied to nuclear materials under safeguards, but for practical reasons does so primarily in relation to the facilities with which these materials are associated. Listed first are the general procedures that apply to materials in any type of facility (or outside any facility): provisions are made for the review of the design of the facility, for the keeping of records, for the submission of reports and for

the carrying out of inspections.¹¹¹ These general procedures are followed by special ones for materials in reactors, in research and development facilities, in sealed storage, or in other locations. The Document is so designed that from time to time further special procedures may be added to cover other types of facilities.

Part IV contains definitions.

Annexes I and II deal respectively with the control of reprocessing plants and of conversion and fabrication plants. Each is opened by an "introduction", which inter alia specifies when these provisional procedures are to be reviewed, and closes with a part containing supplementary definitions. The principal part of each Annex sets out the "special procedures" applicable to the facilities covered, which are intended to be additional to the "general procedures" in Part III of the main document; these procedures relate to reporting and inspection frequencies and to the method of applying safeguards to various admixtures of safeguarded and unsafeguarded materials.

21.4.1.2.2. Comparison of the First and the Revised Documents

An extended commentary on the provisions of the Revised Safeguards Document would be out of place here — both because of its necessarily disproportionate length and because it would relate mostly to technical details.

Still less useful would be an analysis of the original system — but a brief comparison between the two may be illuminating.

The principal advantage of the Revised Document is its better organization. It avoids much of the repetitiousness characteristic of the earlier text, which had resulted from the formulation of that version in two stages (principles and procedures) that were never merged satisfactorily since the tense political atmosphere precluded even a minimum of editorial revision. The considerable enthusiasm with which the new Document was hailed thus reflected more the improved international consensus in this field (or at least the masking of the earlier East-West polarization), than any great substantive advances.

The Revised Document does provide guidance in a number of situations that had been only briefly or incompletely mentioned earlier (e.g., exemption from and termination of safeguards; control of research and development facilities) or not covered therein at all (e.g., controls over materials outside facilities). As it had become evident that the Agency safeguards would spread less through Agency projects than through unilateral, bilateral and multilateral submissions (which were only sketchily treated in the First Document), the new text is so formulated as to be equally and fully applicable to these. Also, as experience demonstrated the futility of attempting to take systematic account of the unsafeguarded nuclear capacity of a State in which the Agency was controlling certain other items, the complicated "PN" concept was abandoned.¹¹² The restriction of the original system to "first generation produced material" was eliminated, as was the restriction to under 100 MW(th) reactors (which had already been lifted by the extension Document¹¹³). As attention was now properly focused on large rather than small facilities, the confusing "nominal safeguards" provisions of the First Document¹¹⁴ were dropped, and instead provisions relating to more frequent and intensive inspections were introduced.¹¹⁵

Less apparent are the advantages of three other changes (at least two of which were made for purely political reasons), whose implications are discussed in appropriate places in this Chapter: the attempt to shift the focus of controls from facilities to nuclear materials — a change carried through in form, but which could not affect the substance and thus tends to obscure the reality of technical relationships on which the controls depend;¹¹⁶ the related deletion of all references to non-nuclear materials and equipment — which, in fact, the Agency must still safeguard in certain situations, though now without any explicit guidance from the Safeguards Document;¹¹⁷ finally, the attempt to merge the two types of safeguards relationships that had formerly been distinguished by the terms "attachment" and "application" has merely obscured the fundamental differences between them, thus complicating the drafting of satisfactory safeguards agreements.¹¹⁸

21.4.1.3. Legal status

What is the legal status of the Safeguards Document? There is no simple answer.

It is clear that the Safeguards Document does not constitute international legislation binding on Member States. Nothing in the Statute gives the Agency authority to promulgate regulations that would have such an effect. Moreover, out of an abundance of caution, paragraph 4 of the Document states that its provisions "will only become legally binding upon the entry into force of a safeguards agreement and to the extent that they are incorporated therein".

The quoted words also indicate the principal way in which provisions of the Safeguards Document do acquire legal force — through incorporation into the "safeguards agreements" that the Agency concludes with the States in which it is to exercise its controls.¹¹⁹ In practice the entire Document is never incorporated as a whole into any agreement since certain provisions of it cannot suitably be used in this way: in particular, the first sub-part of Part I describes the purpose of the Document itself and the third deals with the function of safeguards agreements. However, the provisions setting forth the control procedures, those imposing various restrictions on the Agency, as well as those relating to exemptions or to the suspension and termination of safeguards, are usually incorporated by reference. Finally some provisions, such as those relating to the scope of safeguards, are not stated in a form making direct incorporation useful, and these are sometimes paraphrased.

However, the Safeguards Document is more than a mere storehouse for the boilerplate clauses of safeguards agreements. One of its other important functions is clearly specified by the statement in paragraph 3 that the principles and procedures set forth in the Document "are established for the information of Member States . . . and for the guidance of the organs of the Agency itself, to enable the Board and the Director General to determine readily what provisions should be included in agreements relating to safeguards and how to interpret such provisions". In effect, the Secretariat uses the Document as a guide in drafting and negotiating safeguards agreements with States, and the Director General does not accept any provision

deviating from the Safeguards Document without calling the Board's attention thereto in submitting the agreement for approval. The Board itself is free to "violate" the Document that it has promulgated, but in practice it has only permitted occasional, minor departures from its terms.

Related to this function of the Document (guidance in formulating safeguards agreements) are the somewhat vague standards it provides for deciding when no safeguards agreement at all is required - i.e., when the assistance provided is of a type or in an amount outside the scope of the safeguards system. Thus practically all technical assistance agreements and most agreements for the supply of minor quantities of nuclear materials can be drafted with no safeguards clause at all (except for the standard undertaking against military use).¹²⁰

Another legal function of the Safeguards Document derives from the procedure specified in a number of safeguards agreements for establishing "additional" control provisions concerning operations or transactions not foreseen by the original agreement. As described in Section 21.5.7.1, the Board may be authorized to promulgate such provisions "subject to Article XII.A of the Statute and to any relevant principles that have been or may be established thereunder". The Safeguards Document sets forth these "principles", and thus when the Board is exercising its power to make supplementary provisions it must conform to that Document.

Finally, the Safeguards Document provides guidance, in a quasi-legal way, on how controls are to be implemented under an existing agreement when situations arise that are not strictly covered by the agreement but for which the adoption of formal supplementary provisions by the Board seems inappropriate. In such a situation an effort is made to derive analogous rules either from the Document on which the agreement is based, or if necessary from more advanced versions of the Document - though legal force can only be given to such an extension by the explicit or implicit consent of the State concerned.¹²¹

From the time of the provisional approval of the Revised Safeguards Document in February 1965 there have in effect been two safeguards documents "in force", since the Board recorded its understanding that for the time being (i.e., until the final approval of the Revised Document) "States negotiating safeguards agreements with the Agency [could] choose between the [old and the revised systems]". Accordingly, in June 1965 the Board approved one safeguards transfer agreement based on the First Document (Israel/USA)¹²² and two based on the Revised version (Denmark/UK and Japan/UK).¹²³

With the definitive approval of the Revised Document in September 1965 the First Safeguards Document did not lose all its legal status, since its provisions were at that time incorporated into over a score of safeguards agreements (most of which were actually in force, while others had been approved by the Board earlier but only entered into force some time later). Though it is clear that by adopting the new Document the Agency could not unilaterally alter the provisions of existing agreements based on the earlier version, paragraph 6 of the Revised Document provides:

"Agreements incorporating provisions from the earlier version of the Agency's safeguards system will continue to be administered in accord-

ance with such provisions, unless all States parties thereto request the Agency to substitute the provisions of the present document. "

This provision was in fact included not to clarify the altogether clear legal status of these earlier agreements,¹²⁴ but rather to preclude any doubts as to whether the Secretariat continued to be authorized to administer safeguards on the basis of the superseded system. Clearly, therefore, the First Document still continues to have some application as long as any agreements incorporating it remain in force. Up to now the Agency has not attempted to induce States to revise such agreements, since it is expected that States will generally favour the new Document and will sooner or later initiate such a revision themselves;¹²⁵ perhaps after most agreements have been transmuted the Agency will exercise some pressure to eliminate vestiges of the old system¹²⁶ — though possibly by then the "revised" system will itself have been further transmuted.

21.4.2. Inspectors Document

21.4.2.1. Development

21.4.2.1.1. The first Document

The first Secretariat draft of a combined safeguards and health and safety document also contained a section on the "Rights, Privileges and Immunities of Agency Inspectors". Since the Board immediately directed the separation of the safeguards from the health and safety portions, it also became necessary either to divide the provisions relating to inspectors or to separate them out into still a third instrument. The latter course was chosen, as it was considered that most of these provisions could apply to both of the Agency's control functions.

The Secretariat prepared a revised draft of the inspection procedures and submitted it to the Board under the same narrow title quoted above. After a preliminary but detailed consideration in January 1960, the Board directed the Secretariat to redraft its proposals in two parts, one relating only to privileges and immunities and the second to the further points required to be covered; it also established an Ad hoc Committee on the Agency's Inspectors (consisting of the representatives of Brazil, Bulgaria, Czechoslovakia, France, India, Japan, Netherlands, Soviet Union, United Arab Republic, United Kingdom and United States, and presided over by the Chairman of the Board (South Africa)), to review the new texts.

The Secretariat prepared the requested two-part revision, first in a document for the Board, and then in slightly altered form for the Committee so as to take account of the First Safeguards Document which had just been provisionally approved. The Committee considered this draft at a series of seven meetings in May 1960 and then submitted a new version (in which it recombined the two parts) to the Board. The covering report commented both on the draft and on certain other matters that had been raised during its consideration: the desirability of restricting the office of inspector to Agency officials; the source of recruitment of inspectors; the possible lia-

bility of States to inspectors injured in the course of duty; other financial implications of the inspection programme; and the possibility of referring the proposed Inspectors Document to the General Conference.

In April and later in June 1961 the Board reverted to its consideration of the Inspectors Document¹²⁸ After deciding that the Inspector General and all professional officers of the Division of Inspection were only to be appointed with the approval of the Board,¹²⁹ it concluded that the document it had earlier submitted to the Conference for information "was in effect". It also decided to circulate the text to the Conference once more, though again only for information — and it is this text which has become the "Inspectors Document",¹³⁰

21.4.2.1.2. Revision

During the final stages of the revision of the First Safeguards Document, the question was raised in the Board whether the Inspectors Document should not also be revised.¹³¹

Aside from certain improvements that might be made in the Document on the basis of the experience gained in applying it for several years in a score of safeguards agreements (as well as in connection with health and safety controls), at least four changes would appear essential in relation to certain provisions of the Revised Safeguards Document:

- (a) The one-week notice requirement for routine inspections was established in the light of the maximum of six annual inspections permitted by the First Safeguards Document.¹³² But under the Revised Document the Agency is to have the "right of access at all times" to certain large facilities or quantities of materials and, to prevent this right from being vitiated by the original notice requirement, a temporary solution was found by providing in paragraph 50 of that Document that in such situations the notice required by the Inspectors Document need not be given — thus accomplishing an admittedly unsatisfactory amendment of the Inspectors Document by means of a clause in the Revised Safeguards Document.
- (b) For similar reasons, the requirement in paragraph 12 of the Inspectors Document, that the inspected State be notified of the result of "each" inspection,¹³³ needs to be modified to provide for the possibility that an inspection under the "access at all times" provision is indefinitely prolonged to permit continuous inspection (e.g., by the stationing of a resident inspector).
- (c) In addition, new provisions are desirable to define the status of resident inspectors and the situations in which they may be stationed in a country: in particular, whether the right to perform extended continuous inspections in a country (e.g., of a reprocessing plant handling only safeguarded materials) should be considered either as a sufficient or as a necessary condition for such stationing (i.e., on the one hand, may a safeguarded State refuse to permit inspectors to settle in the country even if they are there on indefinitely long assignments, and on the other, may the Agency insist on stationing resident inspectors even where no continuous inspection is authorized, if to do so would be more economic than making repeated visits to a country or to a region).¹³⁴

- (d) Sub-paragraphs 10(a)-(d) of the Inspectors Document, outlining the permissible inspection activities, reproduce verbatim the text of subparagraphs 55(a)-(d) of the First Safeguards Document. In the new Document these provisions were revised in paragraph 49 and they should either be eliminated from or at least be similarly altered in the Inspectors Document, since otherwise confusion inevitably arises when (as is customary)¹³⁵ both provisions are incorporated into a single safeguards agreement.

In addition, the Inspectors Document contains citations to the First Safeguards Document and uses terminology which has been somewhat modified in the Revised Document.¹³⁶

In February 1965 the Board therefore requested the Secretariat to study the Inspectors Document and submit any appropriate proposals for its amendment or revision to the Board. Up to now the Secretariat has not found the climate propitious for the development of such proposals — evidently because it is feared that the Board is still too deeply divided on the issue of "resident inspection" (the permanent stationing of one or more inspectors at the site of a large nuclear facility).¹³⁷

21.4.2.2. Provisions

The Inspectors Document consists of 14 paragraphs, covering four different areas:

- (a) The method by which Agency inspectors are to be designated to Member States.¹³⁸
- (b) The method of announcing and carrying out inspection visits.¹³⁹
- (c) The conduct of inspections: the rights of access; inspection procedures; and the obligation to report to the State on the results of each inspection.¹⁴⁰ Paragraphs 9(b) and 11 in this section deal exclusively with the carrying out of health and safety inspections; as to safeguards inspections, which are particularly dealt with in paragraphs 9(a) and 10, the Inspectors Document does not attempt to establish a complete regime, since most questions concerning the various types of inspection (routine; initial; special) as well as their frequency and intensity are dealt with in the Safeguards Document.
- (d) The privileges and immunities of inspectors.¹⁴¹

21.4.2.3. Legal status

The legal status of the Inspectors Document is precisely the same as that of the Safeguards Document.¹⁴² Its provisions too attain full legal force only by incorporation into safeguards agreements; it too serves as a guide in negotiating such agreements; and it too constitutes a standard that must be observed by the Board in establishing any "additional" safeguards provisions under agreements that permit it to do so.

21.4.3. Other instruments

21.4.3.1. Rules of Procedure

Rule 11(c) of the Rules of Procedure of the Board states:¹⁴³

"The Board shall meet at the request of any Member of the Agency to consider any matter of an urgent character arising out of Article XII.A.6 of the Statute [that relating to inspections] which that Member wishes to bring to the attention of the Board."

This provision has not yet been applied in practice.¹⁴⁴

Should the Agency ever agree to apply safeguards in a Non-member State, it might be necessary to amend this Rule. However, no change would be required in Rule 50, which enables the Board to invite States not on the Board to be represented at a meeting, since that is formulated broadly enough to include both Member and Non-member States.¹⁴⁵

21.4.3.2. Staff Regulations

Article VII.F of the Statute cautions that "subject to their responsibilities to the Agency," the Director General and the staff "shall not disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Agency". To reinforce this prohibition the General Conference referred to it in the "General Principles to be Observed in the Provisional Staff Regulations of the Agency".¹⁴⁶ Consequently the Board promulgated the following Regulation:¹⁴⁷

"Regulation 1.06

"Members of the Secretariat shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person or government any information known to them by reason of their official position which has not been made public, except in the course of the performance of their duties or by authorization of the Director General. They shall not at any time use such information to private advantage and they shall not at any time publish anything based thereon except with the written approval of the Director General. These obligations shall not cease upon separation from the Secretariat."

21.4.3.3. Agreement on Privileges and Immunities

The principal substantive difference between the Agreement on the Privileges and Immunities of the IAEA¹⁴⁸ and the corresponding Specialized Agencies' Convention¹⁴⁹ is the inclusion in the former of special provisions relating to inspectors. A new sub-paragraph was added to Section 18 (which recites various rights of Agency officials):

"(b) Officials of the Agency shall, while exercising the functions of an inspector under Article XII of the Statute of the Agency or those of a project examiner under Article XI thereof, and while travelling in

their official capacity en route to and from the performance of these functions, enjoy all the additional privileges and immunities set forth in Article VII of this Agreement so far as is necessary for the effective exercise of such functions."

The Article referred to is that on "Experts on Mission for the Agency". Through this device inspectors are assured of immunity from personal arrest and detention and from seizure of their personal baggage; subject to any appropriate security precautions agreed to between the IAEA and the inspected State,¹⁵⁰ all papers and documents of inspectors are inviolable, and they may communicate with the Agency by means of codes, couriers or sealed bags. Thus inspectors, for all practical purposes, enjoy diplomatic privileges — and are actually accorded an additional measure of security, since the expulsion procedure applicable to them under Section 27(b) of the Agreement is more elaborate than that required by Section 27(a) in relation to diplomats.

Though the Privileges and Immunities Agreement is formulated so as to enter into force with respect to Member States by the deposit of an instrument of acceptance, this procedure is not relied on in the case of safeguards.¹⁵¹ Paragraph 13 of the Inspectors Document requires the Agency to assure the privileges and immunities of its inspectors by appropriately incorporating the Privileges and Immunities Agreement in each safeguards agreement, provided that all parties [thereto] so agree.¹⁵²

Therefore, with respect to a State not party to the Privileges and Immunities Agreement but desiring to become a party to a safeguards agreement, the Agreement has in effect the same legal status as the Safeguards and Inspectors Documents: it is a guide to the provisions to be included in safeguards agreements on this point; moreover, such inclusion is accomplished through incorporation by reference, which is also the device through which the provisions of these Documents are usually implemented.

21.5. SAFEGUARDS AGREEMENTS

21.5.1. Requirement to conclude

Safeguards, whether administered by an international or by a foreign national authority, cannot be carried out within the jurisdiction of a State without its consent — which naturally is recorded in an international agreement. Nor, on the other hand, can the Agency be obliged to carry out safeguards except on the basis of an agreement to which it is a party. The Statute, though constituting an agreement, does not fulfil either of these requirements, and the Safeguards Document is not even an agreement; the treaties described in Section 21.3 may fulfil the first requirements but, since the Agency itself is rarely a party to them, they hardly ever comply with the second.

With respect to Agency projects the Statute provides that for each of these a Project Agreement is to be concluded, and also that it is pursuant to that instrument that the applicable safeguards are to be carried out.¹⁵³

The Statute does not explicitly require the conclusion of safeguards agreements with respect to bilateral or multilateral submissions; however Article XIV.C refers en passant to "agreements regarding the application of safeguards between the Agency and parties to bilateral or multilateral arrangements". With respect to unilateral submissions, not even such an oblique reference can be found. As explained at the end of Section 21.2.2, this omission results from the historical sequence in which the three types of safeguards situations (projects, bilateral and multilateral submissions, unilateral submissions) were successively added to various drafts of the Statute -- with only the provisions relating to the control of projects being fully developed. It can therefore be assumed, by the type of argument from analogy that it is necessary in supplementing the other statutory provisions relating to safeguards submissions, that there is an implied statutory requirement for the conclusion of safeguards agreements in respect of all types of submissions. It is also possible to read Statute Article III.D as requiring an agreement between the Agency and each safeguarded State before the Agency can carry out any activity which, without such agreement, would infringe the sovereign rights of such State.

Independently of any statutory requirement, paragraph 15 of the Revised Safeguards Document specifies the conclusion of an agreement as a condition for the Agency to implement safeguards in a State. Three situations (projects, submission of bilateral or multilateral arrangements, and unilateral submissions) are listed, and paragraph 82 of the Document denominates the instruments relating to each of these as "safeguards agreements".¹⁵⁴

This requirement, whether derived from the Statute, from the Safeguards Document or from more basic principles, is consonant with the basic structure of the Agency¹⁵⁵ and serves to protect the State subject to safeguards from possible arbitrary intervention by the organs of the Agency. It is true that some protection is already accorded by Statute Article XII.A, which restricts the safeguards rights of the Agency to those listed in its seven sub-paragraphs -- but this was not considered sufficient and therefore Article XI.F.4(b) provides that for each project "the relevant safeguards be specified in the [project] agreement".¹⁵⁶ The Safeguards and Inspectors Documents were promulgated to assist in the formulation of agreements in which the control functions of the Agency could be specified briefly but exactly. Still, as explained in Sections 21.5.4.7 and 21.5.7.3, the tendency has been for the precise listing of control rights to recede from the safeguards agreements themselves to certain ancillary instruments. In part this trend reflects the preference of Governments (for which the protection theoretically offered by safeguards agreements was primarily designed) to have the details of the control measures specified in the more flexible "subsidiary arrangements", which do not require submission to and possibly critical discussion in the Board; Governments thus tend to rely less on the increasingly broadly worded safeguards agreements to save them from excessively severe controls, but rather on their ability to appeal to the Board if the Secretariat should be unreasonable either in negotiating the subsidiary arrangements or in implementing them.¹⁵⁷

21.5.2. Types of safeguards agreements

Reflecting the different situations in which the Agency has or may apply safeguards, various types of safeguards agreements have been or are being developed:

- (a) Project Agreements relate to the implementation of Statute Article XI "Agency projects". As pointed out in Section 17.2.1.2, the structure of these instruments is specified in Statute Article XI.F. Unlike other types of safeguards agreements, Project Agreements also cover many points not directly or indirectly related to safeguards: the commercial terms of the project; patent rights; etc. Consequently, most of the safeguards provisions in these Agreements are generally set out in a separate annex.¹⁵⁸
- (b) Safeguards Transfer Agreements are concluded with pairs of States that request the Agency to apply safeguards with respect to a bilateral arrangement between them, which arrangement either provides for the exercise of safeguards by one State in the other, or sometimes for reciprocal controls.¹⁵⁹ The Transfer Agreements, provide, inter alia, for the suspension of these national safeguards while the Agency is exercising its controls, and for their possible re-imposition in certain contingencies (e.g., the inability of the Agency to carry out its safeguards due to the termination of the Transfer Agreement or because the States concerned fail to co-operate).¹⁶⁰ One interesting feature of each of these Agreements has been the imposition, on the original Supplying State, of safeguards with respect to any special fissionable material produced in the Receiving State and transferred to the Supplying State — even if the Receiving State was not authorized by the underlying bilateral agreement to exercise safeguards itself in such a situation.¹⁶¹
- (c) Safeguards Execution Agreements are expected to be similar to Safeguards Transfer Agreements, but to relate to bilateral arrangements which do not provide for any national safeguards (probably because Agency safeguards were foreseen ab initio). Consequently these Agreements need not provide for the suspension of national safeguards and cannot cause their re-imposition.¹⁶²
- (d) Unilateral Safeguards Submission Agreements, which may soon become the principal type of safeguards agreements, relate to the submission by a State of part or all of its nuclear energy activities to safeguards. The terms and extent of this submission depend on the motivation therefor: whether truly an independent and unilateral act,^{162A} or part of an arrangement whereby assistance is secured from another Member State,¹⁶³ or part of a regional or world-wide non-proliferation scheme.¹⁶⁴

Many other types of safeguards agreements are conceivable, and no doubt several new ones will shortly evolve; the hope has been expressed that some of these will be simpler than the existing instruments. In particular, the Agency might make an agreement with an intergovernmental organization (acting for itself and perhaps also as agent of its members) to assume any safeguards responsibilities assigned to that organization.¹⁶⁵

21.5.3. Form and parties

All safeguards agreements concluded up to now have been either bilateral or trilateral in form. By definition, the Agency has always been one of the parties, and the other(s) have been States¹⁶⁶ — up to now, always Member States. These States have always been those in which the Agency is to exercise safeguards as a result of the Agreement, though frequently the likelihood of any safeguardable items ever actually appearing in one of these States (i. e., the Supplier) appears rather remote. Though the Agency would probably be reluctant to accept a State as a party to a safeguards agreement which would not itself thereby become subject to controls, such a situation is not inconceivable where the States concerned agree that some of them have a legitimate and immediate interest (transcending that flowing from mere membership in the Agency) in how the Agency is to carry out its controls in the others.

Unilateral Safeguards Submission Agreements are naturally bilateral in form, since only one State is directly concerned. However, an adhesion type multilateral Submission Agreement, promulgated by the Agency and to which it would also be a party, is also a possibility, particularly in relation to the Tlatelolco and Non-Proliferation Treaties.

Up to now, all Project Agreements have also been bilateral, since each individual project has been initiated by a single State; however, Statute Article XI.A foresees projects initiated by a "group of members", all of which would then become parties to the Project Agreement. The State(s) supplying the assistance made available by the Agency under the project may be parties to the applicable Supply Agreements (to which the Receiving State may or may not be a party)¹⁶⁷ but they are never parties to the Project Agreement itself — precisely in order to avoid their involvement in the safeguards provisions.

Safeguards Transfer Agreements and Safeguards Execution Agreements can be concluded either bilaterally or trilaterally. The State in which safeguards are to be carried out must always be a party to the Agreement; if both parties to the underlying bilateral arrangement are to be safeguarded then both must conclude safeguards agreements with the Agency — but not necessarily the same one. The trilateral form has been preferred for the Transfer Agreements since this provides a convenient device for suspending the original national safeguards, with regard to which the two States would otherwise have to conclude an additional instrument; the trilateral form also is a convenient device for specifying how the Agency is to be notified of and react to nuclear transactions between the two States.¹⁶⁸ Execution Agreements will probably mostly be bilateral, since there is no need to supersede any national safeguards and since bilateral agreements are more convenient to negotiate.

Though no existing safeguards agreements have more than three parties, larger multilateral agreements are conceivable in a number of situations: for example, a project in which assistance is granted to several Member States, or the submission of a multilateral arrangement to safeguards.

21.5.4. Contents

The content of each safeguards agreement of course depends in part on its type and form. However, aside from the functional variations referred to in Section 21.5.2, the principal subjects covered by all these agreements are largely the same, though the method of treatment may differ. For example, some agreements merely incorporate by reference the provisions of an earlier safeguards agreement to which the State is a party.¹⁶⁹ But whether directly or by incorporation, the following points are generally covered:

21.5.4.1. Undertaking against military use

Basic to all safeguards agreements has been the undertaking, by the States to be controlled, that certain items "shall not be used in such a way as to further any military purpose".¹⁷⁰ This undertaking is required by Statute Article XI.F.4(a) to be included in all Project Agreements, and by paragraph 82 of the Revised Safeguards Document to be included in all types of safeguards agreements. It has thus been used even if the agreement related to a bilateral or multilateral arrangement which already included a corresponding obligation.

Strictly speaking, this undertaking does not constitute a part of the safeguards system, and it has indeed been required in practically all agreements relating to any assistance by the Agency to its Members — even if there was no question of applying safeguards.¹⁷¹ Yet the existence of some such undertaking does constitute a prerequisite for the application of safeguards and the Agency will not control any item not so covered; since the only purpose of the safeguards system is to detect certain improper uses of nuclear items, there would be nothing to control if a State was not bound to refrain from and to prevent such use.

As indicated above, until now the Agency has always insisted on the precise undertaking specified in Statute Article XI.F.4(a), even if a particular safeguards agreement nominally merely transferred to the Agency rights and functions arising out of an already subsisting instrument with a perhaps somewhat differently formulated obligation. With respect to bilateral agreements there could be no serious objection to this, since the obligations contained therein (particularly in the standard agreements concluded by the USAEC) were generally substantially similar to those insisted on by the Agency. A more serious question arises, however, in respect of the safeguards agreements to be concluded pursuant to the Tlatelolco or the Non-Proliferation Treaty, since the proscriptions in both these instruments differ considerably from those in the Statute (and, for that matter, from each other): though both treaties may prohibit some activities that the Agency would permit, it is more significant that there are important activities that the Statute prohibits while the newer instruments do not.¹⁷² If the Agency should insist on its own formula for all safeguards agreements, including those that potential parties to the Tlatelolco Treaty must conclude before their participation in that instrument can become effective, and those that non-nuclear-weapon States must conclude within at most two years of be-

coming parties to the Non-Proliferation Treaty, it would indirectly cause these instruments to impose a heavier burden on States than their carefully formulated texts require. Though in the first agreement of this type to be concluded, Mexico (which was already party to several Project Agreements¹⁷³) did not object to including the Agency's standard undertaking in a Submission Agreement relating to the Tlatelolco Treaty,¹⁷⁴ it is by no means certain that all States, and in particular the parties to the still more permissive Non-Proliferation Treaty, will also agree to do so. If they do object, the Agency might have to agree to accept undertakings that conform precisely to those in the Treaty texts (or indeed to recognize the fact that these States are bound by the Treaty obligations and on that basis require no further undertaking¹⁷⁵). However, such a step would involve either an amendment or a tacit disregarding of paragraph 82 of the Safeguards Document and, more seriously, restrictions in the objectives if not in the nature of the existing control system; furthermore, it would require the Agency to interpret, on a continuous basis and particularly if a violation appears to have occurred, the provisions of two instruments to which it is not a party and which it did not draw up.

However, whatever the nature of the undertaking, it cannot be accepted as a substitute for appropriate control measures. Therefore a large majority of the Board has consistently rejected suggestions¹⁷⁶ that a solemn promise by a State should make the application of strict safeguards unnecessary, since it is precisely the purpose of the system to police compliance with these particular promises.

21.5.4.2. Definition of the primary scope of safeguards

Each safeguards agreement must define the items to and in connection with which safeguards are to apply. This can either be done in the form of a list ("closed" agreement) or by establishing some rule according to which these items may be specified ("open" agreement).

All Project Agreements concluded up to now are of the "closed" type, specifying as subject to control those items that were supplied by or through the Agency, as well as the facility to which the assistance directly relates.¹⁷⁷ Most Unilateral Safeguards Submission Agreements have similarly been closed, in that each specified the particular reactors submitted by the Governments concerned.¹⁷⁸ On the other hand, all Safeguards Transfer Agreements have been open-ended: the two Governments are required to notify the Agency jointly of all items subject to bilateral safeguards on the entry into force of the Transfer Agreement and of all safeguardable items transferred later from one State to the other; the Agency must announce, usually within 30 days, whether it will assume the responsibility of safeguarding these items.¹⁷⁹ Similarly, the Mexican Submission Agreement in relation to the Tlatelolco Treaty has of necessity been open, since it must at all times cover all nuclear items in the country.¹⁸⁰

Whichever form of agreement is used, the Safeguards Document provides little (mainly negative) guidance as to the items that are to be submitted to safeguards — and consequently no parts of the Document can usefully be incorporated into the agreements for this purpose. Under Transfer

and Submission Agreements this is left entirely to the States concerned (though these may be bound in this respect by the terms of treaties of the type mentioned in Section 21.3), provided that the items to be submitted fall within categories to which the safeguards system extends.¹⁸¹ Under Project Agreements any supplied nuclear material or principal nuclear facility must be covered,¹⁸² but if a principal nuclear facility is only supplied in part it will only be safeguarded if the Board (subject of course to the consent of the assisted State, signified by its assent to the Agreement) decides that the assistance constitutes the "substantial supply" of the facility.¹⁸³

21.5.4.3. Rules on the derivative scope of safeguards

Whether the safeguards agreement is open or closed, up to now most have included a number of rules specifying the additional items to which safeguards are to be applied derivatively, because of their connection with the items subject to primary application.¹⁸⁴ These provisions are generally based directly on the Safeguards Document¹⁸⁵ and are not subject to any essential variation by negotiation with the States concerned. However, under the general submissions required by the Tlatelolco and Non-Proliferation Treaties such provisions will naturally become irrelevant, since within a given territory all significant nuclear items will be required to be covered.

21.5.4.4. Exemptions, suspensions and terminations

Each Safeguards Agreement includes several provisions requiring or allowing the Agency to exempt certain items from safeguards (because of their military insignificance), or temporarily to suspend or permanently to terminate safeguards under specified conditions.¹⁸⁶ These are based directly on the Safeguards Document (usually by incorporating by reference the relevant paragraphs).¹⁸⁷

21.5.4.5. Inventory of safeguarded items

All except the closed agreements concluded under the first Safeguards Document require the Agency to establish inventories of the items to be safeguarded.¹⁸⁸ These provisions, especially those that define the various categories in which items are to be listed, serve as the basis for important substantive provisions of the agreement, in particular those relating to the derivative scope of safeguards.¹⁸⁹ In addition, the periodic notification of these lists to each State party to the safeguards agreement constitutes a convenient device for announcing unambiguously the items that are subject to the Agency's control.

21.5.4.6. Transfers of safeguarded items

A number of provisions are generally included in each agreement covering the possible transfer of safeguarded items:

- (a) Within the State in which they are being safeguarded;¹⁹⁰
- (b) From that State to the other State party to the safeguards agreement (if it is trilateral in form);¹⁹¹ and

(c) From the safeguarded State to any State not party to the agreement.¹⁹²

The purpose of these provisions is to ensure that such transfers will not reduce the Agency's ability to safeguard those items with respect to which its responsibility continues after the transfer.¹⁹³

21.5.4.7. Safeguards procedures

If the safeguards agreement is closed, it is possible to set out in it in some detail all the control measures (e.g., frequency of routine reports; maximum permissible frequency of routine inspections) to be applied to the items within the primary scope of safeguards – and this was done in most of the early Project Agreements¹⁹⁴ as well as the first Unilateral Submission Agreement.¹⁹⁵ These procedures were of course derived from the applicable Safeguards Document. However, while it is also possible to foresee certain additional items that will become subject to derivative safeguards and to specify procedures as to them, it is never possible to make a complete catalogue of these items and of the related procedures and thus it has always been necessary to use in addition some of the supplementary devices discussed in the following Section.

If the safeguards agreement is open, it is not possible to specify any procedures, since it is not indicated to what items they will apply. Instead the device has been adopted of incorporating the entire procedural portion of the Safeguards Document by reference, with the proviso that the actual procedures to be applied to a given operation or facility are to be specified in "subsidiary arrangements"¹⁹⁶ concluded with the State.¹⁹⁷ In view of the greater flexibility of this approach, it has also been adopted for most closed agreements,¹⁹⁸ since experience has shown that even if the control measures are spelled out in some detail in the safeguards agreement (and too much detail is impractical as well as psychologically undesirable) subsidiary administrative accords recording further measures or changing established ones cannot be avoided.

21.5.4.8. Changes in safeguards procedures

Various provisions have been included in most safeguards agreements permitting the specified procedures to be altered or extended, either because the State may wish to perform operations with safeguarded items which are not foreseen in the original agreement and as to which consequently no safeguards procedures are specified, or because the applicable provisions of the Safeguards Document have in the interim been revised.

As to changes required because of novel operations, a number of agreements provide that if additional safeguards provisions become necessary, these may be established by the Board in conformity with the Statute and the current safeguards system, after the Director General has consulted with the Government;¹⁹⁹ the new provisions are then set out in a "Safeguards Letter".

As to changes that may be desirable because of a revision of the Agency's safeguards system, most recent agreements provide that the Government(s)

concerned may require that the safeguards agreement be appropriately amended.²⁰⁰ It would be improper to permit the Agency (whose Board is responsible for promulgating changes in the Safeguards Document) to exercise a similar right to require that such amendments be made, for that would practically amount to a right of unilateral revision. However, since most changes in the Safeguards Document have up to now tended to relax the system, it is expected that States will generally desire to make these adjustments, and indeed the Canada/Pakistan Safeguard Transfer Agreement signed in October 1969 provides for modifications in the Document to apply automatically, unless either Government objects.²⁰¹

The Mexican Submission Agreement relating to the Tlatelolco Treaty contains several interesting innovations in this area. In the event of changes in the Safeguards or the Inspectors Document, both the Agency and Mexico have merely reserved identical rights to request consultations about amending the Safeguards Agreement;²⁰² however, any additional annexes added to the Safeguards Document will automatically be incorporated into the Safeguards Agreement.²⁰³ Furthermore, in recognition of the fact that this Agreement is the first concluded in relation to the Treaty, both parties also reserved the right to propose its amendment if the Agency should conclude similar agreements with other States that "contain safeguards provisions which are substantially different".²⁰⁴

21.5.4.9. Collateral obligations of and restrictions on the Agency

Early safeguards agreements set out in full several of the obligations and restrictions on the Agency²⁰⁵ that were later included in the Revised Safeguards Document.²⁰⁶ Recently, therefore, only the relevant paragraphs of the new Document have been incorporated by reference into these agreements²⁰⁷

21.5.4.10. Inspections and inspectors

The procedures regarding inspections and the provisions relating to the designation, visits, functions, rights and obligations of inspectors, are generally covered by incorporating by reference all, or the relevant parts, of the Inspectors Document and of the Privileges and Immunities Agreement.²⁰⁸ Some recent agreements, such as that concluded with Mexico pursuant to the Tlatelolco Treaty, include additional provisions supplementing or superseding those in the Inspectors Document.²⁰⁹

21.5.4.11. Sanctions

Certain provisions of the Statute relating to sanctions are incorporated in each safeguards agreement.²¹⁰

21.5.4.12. Financial matters

All Safeguards Transfer and Submission Agreements contain provisions regarding the distribution of the costs of safeguards and defining the types of expenses for which the Agency is to be liable;²¹¹ however, no Project Agree-

ment contains such a clause. Some agreements also include provisions relating to liability for any damage arising out of the implementation of safeguards.²¹²

21.5.4.13. Settlement of disputes

Procedures for the settlement of disputes are included in every safeguards agreement.²¹³

21.5.4.14. Duration

Appropriate provisions are included in every safeguards agreement specifying how it is to enter into force.²¹⁴

No expiration date or right of denunciation is stated for most Project Agreements,²¹⁵ unless the Agreement provides for the automatic transfer from the controlled State of the safeguarded items (e.g., by the return of leased items);²¹⁶ The same is true of those Submission Agreements that are, in effect, surrogate Project Agreements - i.e., they relate to a nuclear project in one State that is assisted by another, with only some control functions devolving on the Agency.²¹⁷ Other types of safeguards agreements generally remain in force for a stated period, which for Transfer Agreements is frequently related to the expiration of the underlying bilateral arrangement;²¹⁸ however, pursuant to paragraph 16 of the Revised Safeguards Document, some recent Transfer and Unilateral Submission Agreements provide for their indefinite continuation in relation to any nuclear materials produced under safeguards.²¹⁹

21.5.5. Evolution

Safeguards agreements, just like other agreements the Agency concludes seriatim, tend to follow certain patterns.²²⁰ Some insights into the operation of the safeguards system can be gained by considering the evolution of these patterns for the several basic types of instruments. In particular it will be observed that many provisions first introduced in certain agreements were subsequently codified in later versions of the Safeguards Document.

21.5.5.1. Project Agreements preceding the First Safeguards Document

Two Project Agreements were concluded before the First Safeguards Document was promulgated - first that relating to the Japanese JRR-3 reactor and then that to the Finnish FiR-1 Triga II reactor.

The JRR-3 Agreement²²¹ introduced certain elements which, albeit in altered form, have re-appeared in many later safeguards agreements and in part have been incorporated into the Safeguards Document. Since in 1959 no safeguards procedures had yet been promulgated, and since the limited scope of the project made any delay to develop and negotiate detailed procedures undesirable, it was provided that all the safeguards listed in Statute Article XII. A would be considered relevant to the project, but that their detailed application would be determined from time to time by the Board;²²²

this "blank cheque" clause is commented on in Section 21.5.7.1. Out of an abundance of caution, a separate clause made any transfer of safeguarded material outside the project subject to the Agency's agreement.²²³ It was provided that if any dispute involved the application of safeguards, the Board might make interim decisions with binding effect.²²⁴ The only feature of the JRR-3 safeguards provisions that was never repeated was the merger with the health and safety provisions.

The FiR-1 Agreement followed the pattern of the Japanese one except that the restriction on other uses or transfers was deleted as unnecessary in view of the blank cheque clause. In the light of the Board's intervening decision to separate the Safeguards and the Health and Safety Documents, the provisions relating to these two control functions were stated in separate Articles.²²⁵

21.5.5.2. Project Agreements subject to the First Safeguards Document

The NORA Project Agreement²²⁶ was the first safeguards agreement concluded under a Safeguards Document. Since this was a "closed" Agreement it was possible to specify the safeguards procedures in some detail, and this was done in Annex B; that Annex also specified the materials and facilities to which safeguards would primarily apply. No blank cheque clause was included - instead a unique provision specified that, if necessary, the safeguards provisions would be revised by agreement of the parties, and if no agreement could be reached then either party could terminate the project, whereupon the leased nuclear material would automatically be returned.²²⁷ The sanctions provisions of the Statute were explicitly incorporated by reference.²²⁸

The Project Agreement relating to the Triga II reactor supplied to Yugoslavia²²⁹ finally established the pattern that was followed with few variations in the later Project Agreements concluded under the First Safeguards Document. The list of items primarily subject to safeguards and a reasonably detailed statement of safeguards procedures were included in an Annex. A limited blank cheque clause covered only the eventuality that the State might make some change in the project²³⁰ - in later projects this clause was also extended to permit necessary additions to the health and safety measures.²³¹

21.5.5.3. Transfer and Submission Agreements subject to the First Safeguards Document

The first agreement relating purely to safeguards was that submitting four American reactors to controls in 1962.²³² It differed in many ways from the pattern previously established for Project Agreements, though it maintained the device of setting out the detailed safeguards procedures in an Annex. Since the United States had become dissatisfied with the confusing "attachment/application" duality expressed in the First Safeguards Document,²³³ none of these provisions were incorporated by reference - instead the relevant ones were paraphrased so as to provide only for the application of safeguards.²³⁴ For the first time provisions appeared in a safeguards

agreement restraining the Agency from publishing information obtained under the Agreement, allocating the cost of the control measures and assigning liability for any damages.²³⁵

The USA Submission Agreement became the somewhat inappropriate model for the first Safeguards Transfer Agreement, that relating to the Japan/USA bilateral. Again all reference to the "attachment" provisions of the First Safeguards Document was avoided. As this was the first open safeguards agreement, the device was developed of establishing an inventory of the items subject to safeguards by means of joint notifications by the Governments, subject to semi-automatic acceptance by the Agency - a formula that has since been followed in all open agreements.²³⁶ However, in spite of the open nature of the agreement, an attempt was made to specify in Annex B the control measures to be applied - but not knowing what items would be put on the inventory it was not possible to do more than to paraphrase partially or to incorporate by reference most of Part V of the Safeguards Document. The most important novelty introduced by this Agreement was the principle that any special fissionable material produced under safeguards must remain under Agency control at least as long as the safeguards agreement is in force, even though it is transferred to the original Supplying State (in which the Receiving State itself could not have exercised safeguards)²³⁷ or is transferred to a third State - though in the latter case the possibility of substituting other safeguards for those of the Agency was also provided for.²³⁸ The American safeguards rights in Japan were suspended, implicitly subject to re-imposition in specified circumstances.²³⁹ For the first time a detailed sanctions clause was used, based on Statute Article XII. C but including some significant modifications.²⁴⁰ Finally an innovation was introduced into the disputes clause, by authorizing arbitral tribunals, rather than the Board, to order binding interim measures on all but a few issues.²⁴¹

Based on the Japan/USA Transfer Agreement, the Secretariat and the American Government negotiated a slightly revised "Model" Transfer Agreement, which was then used for twelve successive bilateral submissions considered by the Board between June 1964 and June 1965. The principal innovation was the abandonment of the Annex setting forth detailed procedures, which was finally recognized as impractical in relation to open-ended agreements. Instead, the entire procedural part of the Safeguards Document was incorporated by reference, on the understanding that the actual procedures would be detailed in subsidiary arrangements - for which, however, no specific authority was yet given in the text.²⁴²

One other agreement strongly influenced by the Model text was the Unilateral Safeguards Submission Agreement relating principally to the American Yankee reactor.²⁴³ Though this was a closed agreement, it imitated the open-ended form of the model in not attempting to set out detailed safeguards procedures.

21.5.5.4. Special agreements subject to the First Safeguards Document

Over two years after the conclusion of the FiR-1 Agreement, another Project Agreement was concluded relating to special critical assemblies to be established at the site of the FiR-1 reactor. Instead of specifying new safeguards,

it was most convenient to provide in the later agreement for the extension of the existing controls to the new project.²⁴⁴

The Argentine RAEP Project Agreement²⁴⁵ was concluded on the same day as the Safeguards Transfer Agreement relating to the Argentine/USA bilateral.²⁴⁶ Since the facilities to be controlled under the two agreements were largely the same, and the materials could not be conveniently separated, the Project Agreement merely specified the items to be safeguarded under it and provided that the procedures for doing so would be those established pursuant to the Transfer Agreement. A blank cheque clause was included to provide for the contingency that no such procedures might enter into effect under that Agreement (e. g., if for some reason it should fail to enter into force).²⁴⁷

21.5.5.5. Agreements subject to the Revised Safeguards Document

The Revised Safeguards Document reflects several years of experience in negotiating safeguards agreements under the First Document. It was thus possible to formulate it so as to permit more of its provisions to be conveniently incorporated by reference into such agreements - thereby simplifying their texts. The Revised Document also permits all types of safeguards agreements to use substantially identical provisions, and the variations among agreements of different types have been considerably reduced.

As soon as the Revised Document was provisionally approved, the Secretariat attempted to evolve, in consultation with the principal Supplying States, a new model Transfer Agreement - whose clauses could, with relatively minor adaptations, also be used for other types of safeguards agreements. In the event it was not possible to evolve a single model, since the special requirements relating to the transfer of safeguards under the American bilaterals could not be brought to a common denominator with the similar arrangements of the other Supplying States. Thus in effect two models were evolved: instruments following the Danish/UK Transfer Agreement,²⁴⁸ such as the Uruguayan Lockheed Project Agreement²⁴⁹ and the Bradwell Unilateral Submission Agreement with the United Kingdom;²⁵⁰ the others were the Transfer Agreements relating to American bilaterals and following the pattern established in relation to the Brazil/USA Agreement.²⁵¹

Though the formal differences between these models appear considerable, there are relatively few substantive deviations. The principal one is that the American influenced agreements provide for the safeguarding of non-nuclear materials and equipment - though the method of doing so is expressed neither in the Safeguards Document nor in the agreements themselves.²⁵² Both models differ from the agreements concluded under the First Document by the greater refinement of the inventory classifications and of the rules relating to various possible transfers of safeguarded items.

Two Transfer Agreements concluded under the Revised Document deserve brief notice: those that relate to the Japan/UK and the Canada/Japan bilaterals. Since Japan was already party to a Transfer Agreement subject to the First Document (that relating to the Japan/USA bilateral), it seemed desirable to conform the two new Agreements as closely as possible to the

style of that older one. As a result, these two instruments, while resembling each other, constitute something of a compromise between an old style and a new style safeguards agreement.²⁵³

Subsequent to the conclusion of the above-mentioned two Agreements, Japan entered into new, long-term agreements with the United Kingdom and with the United States, which replaced the bilateral instruments to which the previous Transfer Agreements related; Japan thereupon negotiated corresponding new Transfer Agreements with the Agency and the Governments,²⁵⁴ which superseded the earlier instruments without changing any of their essential features (though of course the new Agreement with the United States related to the Revised Safeguards Document). Even in these new texts, negotiated almost simultaneously, it was not possible to bring the divergent approaches of the two Supplying States to a common denominator. Of course each of the new Agreements provides, as all superseding agreements should, that the final inventory under the old Agreement constitutes the opening inventory of the new one²⁵⁵ — and thus implicitly no new joint notification of the listed items need be made by the Governments. Meanwhile a number of other Safeguards Transfer Agreements concluded under the First Document have been superseded by new instruments negotiated with reference to the Revised Document, usually at the time when the underlying bilateral agreement was renewed and revised²⁵⁶.

Indicative of the flexibility of the model Transfer Agreements evolved under the Revised Document is the fact that the first agreement concluded for the application of safeguards Under the Treaty for the Prohibition of Nuclear Weapons in Latin America, a Safeguard Submission Agreement with Mexico, could largely follow those texts,²⁵⁷ and in particular that of the Danish/UK Agreement. Like the Transfer Agreements, the Mexican Agreement is open-ended, the first time this is true of a Submission Agreement. The deviations are all such as result strictly from the special purpose of the new instrument:

- (a) Since the Agreement covers, *inter alia*, all source material in the country, a cut-off point was necessary to specify at what early stage the Agency would not exercise controls over such materials (e.g., the Agency clearly cannot control unmined uranium); the Board agreed that, without creating a precedent, "source material in the form of ore" would be excluded from the Agreement.²⁵⁸
- (b) Instead of bilateral notifications, the items to be covered by the Agreement must be unilaterally notified by Mexico; however in relation to imports it may do so jointly with the exporting State and the Agency may supplement or double-check information received from Mexico by contacting the "Export State".²⁵⁹
- (c) The Agency does not, as in Transfer Agreements, reserve the right to refuse to accept items notified to it, except as long as the information relating to them is incomplete.²⁶⁰ This innovation reflects the consideration that first of all such a refusal would create a situation not foreseen in and potentially destructive of the scheme of the Tlatelolco Treaty; secondly, in view of the increased scope of the Extended Safeguards Document and the prospect that any necessary further additions will be

- readily approved by the Board (a presupposition which would have been extremely hazardous only a few years ago), it no longer appears necessary to provide for the possibility that a facility or operation might be notified to the Agency which the latter is technically unable to control.
- (d) There is a significant discrepancy between the undertakings of Mexico and of the Agency: while the former agrees not to use for any military purpose "any material, equipment or nuclear facility required to be notified to the Agency",²⁶¹ the latter only undertakes to control those items that are actually listed as a result of such a notification.²⁶² Thus the Agency can continue to conform to the basic feature of its present safeguard system that it only controls registered items and does not perform random searches through the safeguarded country to locate unregistered ones; at the same time Mexico's legal obligations with respect to items that it deliberately or inadvertently fails to notify are not diminished - and under the Tlatelolco Treaty it of course risks that these will be detected by a special inspection should any other party to the Treaty raise a pertinent accusation before the Council of the Latin American Agency.²⁶³
 - (e) The provisions relating to the inventory, to exemptions from and to the suspension and termination of safeguards, and to transfers of nuclear items within Mexico are all appropriately modified to take account of the fact that, except for negligible quantities of exempted and suspended nuclear materials, there cannot be any unsafeguarded nuclear items in Mexico. For example, the provisions for suspending or terminating safeguards with respect to materials for which previously unsafeguarded material are substituted, are obviously inapplicable.
 - (f) Mexico grants an apparently unconditional right to the Agency to station "resident inspectors";²⁶⁴ this is the first agreement in which this term is used explicitly, and the first in relation to which such a promise is made without any immediate prospect of a facility or an accumulation of material that would justify such an extensive Agency presence.²⁶⁵
 - (g) The duration of the Agreement is related explicitly to Mexico's participation in the Tlatelolco Treaty,²⁶⁶ and there is a special provision for modifying the text if the corresponding instruments concluded by the Agency with other parties to the Treaty should differ substantially from the Agreement with Mexico.²⁶⁷
 - (h) While the Submission Agreement is in force, the safeguards provisions of all previous agreements to which Mexico is a party (i. e., the three Project Agreements²⁶⁸) are suspended²⁶⁹ - whereby the Agency can avoid the simultaneous application to particular items of the different provisions of the several agreements.

In September 1969 the Board approved and on 13 October 1969 the Agency concluded a Safeguards Submission Agreement with the Republic of China with respect to a NRX-type research reactor and the associated facilities, which that State was to receive from Canada.²⁷⁰ In effect, that Agreement represents merely the safeguards portion of a Project Agreement (with a few additional provisions relating to the notification of transfers from Canada and the distribution of expenses), such as would have been concluded if the trans-

fer had been accomplished through the Agency rather than bilaterally.²⁷¹ It appears likely that more agreements of this type will be concluded (unless those relating to NPT entirely pre-empt the field), if States should find it more convenient to settle the economic aspects of such transactions between themselves, leaving only the control functions to the Agency.

Finally a special type of rump Safeguard Submission Agreement was first concluded with Romania in June 1968.²⁷² Having previously made bilateral arrangements with the United Kingdom for obtaining relatively minor quantities of nuclear materials and a subcritical assembly on condition that these would be submitted to Agency safeguards, the Government made an appropriate request which was promptly acceded to by the Board. As the materials concerned all fell under the exemption limits of the Revised Document, the Submission Agreement merely provided for a notification to the Agency of the completed transfer, the prompt exemption of the materials by the Agency (which of course reduces Romania's unused quota of safeguards-free materials²⁷³), and a prohibition of transfers out of Romania without the Agency's consent. In September 1968 the Board of Governors further accepted the Director General's proposal that this instrument serve as a model and that in the future he be permitted to conclude such agreements without advance reference to the Board in order to facilitate the bilateral transfer of minor quantities of nuclear materials;²⁷⁴ this authority is automatically limited with respect to each State to the unused part of its exemption quota for nuclear materials set by the Safeguards Document, for above that limit controls must be applied and the Board wished to reserve the right to approve the individual texts of the agreement under which this is done.

21.5.6. Negotiation and conclusion

If a request is received by the Agency the granting of which will involve the conclusion of a safeguards agreement (i. e., either a request for the supply of nuclear materials or facilities to a project, or for the application of safeguards to an arrangement or activity), the terms of such an agreement are first negotiated between the Secretariat and the Government(s) concerned. As much as possible these negotiations use as a point of departure either a model text designed specifically for that purpose²⁷⁵ or the last previous agreement of a similar type approved by the Board. After these negotiations have been concluded, the Director General submits the text to the Board for approval; he does so under cover of a note or memorandum in which he recites the request, describes the proposed scope of the agreement, and comments on any special features of the text that he feels should receive the particular attention of the Board. In particular, he may thus place on record any relevant correspondence or understanding among the Secretariat and the Government(s), or between the Governments, which for some reason it is not desired to reflect directly in the agreement itself. Consequently these covering memoranda may be useful tools for the interpretation of the agreements.²⁷⁶

Neither the Statute nor the Safeguards Document requires that safeguards agreements be approved by the Board, but the custom has from the beginning been that such approval be secured.²⁷⁷ This is consistent with

the Board's plenary authority under Statute Article VI.F - though of course that provision would not prevent the Board from making a restricted delegation to the Director General, as it has with respect to most other types of agreements. As a matter of fact, for a decade the practice has been to request the Board to approve not only the conclusion of each agreement, but also specifically its text. However, the Board in September 1968 authorized the Director General to conclude on his own authority Project and Safeguards Submission Agreements relating to such small quantities of nuclear material that all of it is to be exempted from safeguards;²⁷⁸ and with the steady increase in the number of safeguards agreements the Board has become willing to delegate at least the formulation of Project Agreements to the Director General.²⁷⁹

After the Board has approved an agreement it is signed by or for the Director General and by representatives of the Government(s). Each agreement of course specifies how it is to enter into force:

- (a) Most safeguards agreements enter into force directly on signature,²⁸⁰ or on a later date specified in the text.²⁸¹
- (b) Some agreements require ratification by the Government(s) concerned.²⁸²
- (c) All but one of the Transfer Agreements concluded under the First Safeguards Document provided for entry into force only after the Agency had received and accepted a joint notification from the two Governments of the items to be initially safeguarded.²⁸³ This device was designed to make it possible to sign the agreement soon after Board approval and still to delay entry into force until the two Governments had fully agreed on the items to be initially notified to the Agency and all necessary subsidiary arrangements had been made with the Agency for safeguarding those items. This method was later abandoned, in part because extended negotiations on the contents of the initial notification and on the terms of the arrangements had sometimes delayed the entry into force of a signed agreement for periods in excess of a year (there being no deadlines to force quick action), however, the Agency's own responsibility under these agreements still does not commence until it has accepted the initial notification, since its undertaking to safeguard only applies to items entered on the inventory.

21.5.7. Ancillary instruments

Although the statutory drafters evidently intended that all details of the Agency's exercise of safeguards in a State should be specified in the safeguards agreement with the Government, experience has shown that it generally is not practical to do so. Consequently several types of ancillary instruments have been developed to supplement the formal safeguards agreement.

21.5.7.1. Safeguards letters

Some safeguards agreements do not specify directly or even by reference the control measures to be applied in all situations. This was particularly true of the first two Project Agreements, which were concluded before the

approval of the First Safeguards Document on the basis of which negotiations could be conducted. Later, closed safeguards agreements had to allow the State to conduct operations or to involve facilities and materials beyond those specified in the agreement and as to which detailed measures could be set out; however, because of the speculative nature of such extensions, no control measure to cover all possible situations could be designed.

In all agreements in which the specified control procedures did not cover all the likely as well as all the possible contingencies (and which did not yet foresee the possibility of covering such contingencies through consensual administrative arrangements), a clause was included authorizing the Agency to establish any necessary additional safeguards procedures.²⁸⁴ Since to some extent this appears to be a "blank cheque" issued by the State for completion by the Agency, a number of protective devices were used:

- (a) The additional procedures must conform to Article XII. A of the Statute;
- (b) The procedures must also conform to any relevant safeguards principles that "have been or may be" established (in effect a reference to the Safeguards Document in force at the time the procedures in question are established) - a requirement designed to prevent the Agency from discriminating against any State;
- (c) The Director General must first consult with the Government concerning the additional procedures; and
- (d) The procedures must be adopted by the Board - thus guarding the State from the whims of the Secretariat.

Once such procedures have been adopted they are communicated to the Government in a letter. They thereupon become binding on the State in the same way as the safeguards agreement itself, since that agreement in each case provides that the Government will comply with any provisions promulgated by this method.

Up to now, three such safeguards letters have been approved and sent: two to Japan in connection with the JRR-3 project, and one to Finland in connection with the FiR-1 project. In fact the first letter sent to Japan²⁸⁵ and that sent to Finland²⁸⁶ were negotiated simultaneously with the respective Project Agreements themselves, and the Governments would not have entered into these Agreements had they been dissatisfied with the letters. The second letter to Japan,²⁸⁷ approved soon after the First Safeguards Document was promulgated, cancelled all safeguards on the project since the assistance supplied to it (3 042 kilograms of natural uranium) fell below the newly adopted exemption limits (10 tons of natural or slightly depleted uranium).²⁸⁸

21.5.7.2. Supplementary agreements

The Revised Safeguards Document provides that certain control procedures must be specified in the safeguards agreements themselves. Such a requirement, for example, relates to the implementation of the Agency's right to have access to certain facilities "at all times".²⁸⁹ Since in agreements that are, at least initially, to apply only to small facilities there is no need to include such politically sensitive procedures, it may instead be provided

that, should the need for such procedures arise, then the Agency and the Government concerned will conclude an appropriate agreement supplementing the safeguards agreement.²⁹⁰

Unlike safeguards letters, these supplementary agreements require the explicit and not merely the implicit agreement of the Government - and consequently it has not been found necessary to provide, protectively, that these agreements be submitted to the Board, and in practice they have not been.²⁹¹

Up to now two such agreements have been concluded: one with Japan in relation to the Japan/UK Safeguards Transfer Agreement (under which the Tokai-mura Nuclear Power Station was submitted to safeguards),²⁹² and one with the United Kingdom in relation to the Bradwell Submission Agreement.²⁹³

21.5.7.3. Subsidiary arrangements

As indicated above, in many safeguards agreements it is not practical or desirable to set forth the detailed safeguards procedures to be applied to particular facilities or operations. In such a case these procedures can be established by means of subsidiary administrative arrangements entered into between the Secretariat and the appropriate governmental authority. All agreements concluded under the Revised Safeguards Document specifically provide for the conclusion of such arrangements;²⁹⁴ however, this device has equally been used for earlier agreements without such a specific provision, including some which attempted to specify detailed procedures in an annex.

Subsidiary arrangements are usually concluded by means of an exchange of letters, which are not submitted to the Board.²⁹⁵ They are thus a much more flexible device than the safeguards agreements themselves, for if changes or additions are required, or if a waiver or temporary suspension of a particular provision appears desirable, this can be done quickly and without waiting for one of the relatively infrequent, scheduled meetings of the Board.

Subsidiary arrangements typically cover some or all of the following points, as required by the terms of the underlying safeguards agreement and as appropriate with respect to the facilities, materials and operations to be covered:

- (a) A definition of each facility, in terms of areas, buildings or rooms;
- (b) The method of reviewing the design of each facility and any significant modifications thereto;
- (c) The records system;
- (d) The reports system;
- (e) Specification of the maximum permissible frequency of routine inspections and of the formula according to which changes may be made therein;²⁹⁶
- (f) Rules defining when nuclear or other materials are considered to be "used" within a principal nuclear facility (which may result in the subjection of the materials or the facility to derivative safeguards according to rules set out in the Safeguards Document);
- (g) Procedures for the exemption of small quantities of nuclear materials;
- (h) Procedures for the exemption of nuclear materials used or produced in small reactors;

- (i) Procedures for the suspension of safeguards with respect to small quantities of materials;
- (j) Procedures for the safeguarding of materials outside of facilities;
- (k) The type of notice to be given before safeguarded materials may be transferred to previously unsafeguarded facilities;
- (l) Administrative formalities concerning the reimbursement by the Agency of expenses incurred by the Government in complying with certain safeguards measures;²⁹⁷
- (m) Sampling procedures.

Subsidiary arrangements need not be restricted to the implementation of a single safeguards agreement, but can relate to several such agreements concluded with the same State; ideally, no matter by how many safeguards agreements (of whatever types) a State submits various items to safeguards, only one set of subsidiary arrangements need be concluded, with special provisions relating to each separate facility (each of which may be the subject of a special annex - which are added as and when needed). On the other hand, it may sometimes be convenient to have more than one set of arrangements subsidiary to a single safeguards agreement, if that relates to facilities or operations of widely different kinds.

21.6. SCOPE OF AGENCY SAFEGUARDS

The most controversial and complicated provisions of the Safeguards Documents have proven to be the rules defining the items that are to come under Agency safeguards. These rules are controversial because, depending on how they are formulated, the Agency's safeguards may spread widely and quickly or only narrowly and slowly through the domestic atomic energy programme of a State receiving some international assistance or otherwise submitting itself to the Agency's controls. They are complicated because they must be based on an intermingling of technical and legal considerations. The latter refer to the closeness of the Agency's relation to a particular item (e. g., supply by the Agency, or submission to Agency safeguards, or production by the use of safeguarded materials, etc.). The technical considerations, which serve primarily to identify the classes of items that may be subject to safeguards if the legal configurations are appropriate, take into account the three possible reasons for controlling an item:

- (a) Its direct usefulness for a military purpose;
- (b) Its usefulness in producing nuclear materials that can be used for a military purpose;
- (c) Its necessarily close association with an item that should be safeguarded under (a) or (b) (e. g., the desirability of receiving full information on a mixture of safeguarded and unsafeguarded materials, rather than data restricted to just the safeguarded part).

These technical and legal considerations are of course interrelated, for the more immediate the military potential of an item is from a technical point

of view, the less close the Agency's legal connection need be in order for it to apply safeguards; vice versa, even a close legal connection will not suffice to make the Agency apply safeguards to items technically uninteresting from a military point of view.

These involuted considerations are reflected in a certain duality in the meaning of the expressions that an item is "safeguarded" or "subject to safeguards":

- (i) They may mean that the Agency merely has the right to control the item - e.g., to receive reports on it or to inspect it.
- (ii) They may mean that the item spreads a certain "contaminating" effect to others it is associated with, or that it "triggers" safeguards with regard to them, so that these too become, temporarily or permanently, "subject to safeguards"; for example:

(A) An otherwise unsafeguarded facility that contains nuclear materials "safeguarded" in this second sense is, temporarily, itself subject to "safeguards" in the first sense;

(B) Special fissionable material produced in or by the use of any nuclear material or principal nuclear facility "safeguarded" in the second sense is itself permanently "subject to safeguards" in that sense.

Of course items that can exercise such a contaminating or triggering effect must also be "safeguarded" in the first sense, for - even if they are of no direct military value (e.g., a reactor) - the extent to which they have "contaminated" other items (e.g., produced plutonium) cannot be measured unless the former are appropriately controlled.

These two meanings were distinguished in the First Safeguards Document, by referring to the first as the "application" of safeguards²⁹⁸ and to the second as the "attachment" of safeguards.²⁹⁹ Though the attachment/application differentiation was a useful device to express this distinction, it was eliminated from the Revised Document largely because of the confusion that had often been caused by these two similar terms.³⁰⁰ However, the elimination of the terminological distinction from the Document did not accomplish any substantive change, for the attachment/application duality is probably inherent in any selective (i.e., non-comprehensive) system designed to control the nuclear energy cycle in which items of military significance may appear at both the input and the output end of most operations.³⁰¹ Of course in any comprehensive system (i.e., one that applies to all nuclear items in a particular area - such as the territory of a non-nuclear-weapon State party to the Non-Proliferation Treaty) the legal distinctions become irrelevant, as do most of the technical ones - for ultimately only those items need to be controlled that are directly useful for a military purpose, and all of these must be controlled without special justifications relating to their origins.³⁰²

21.6.1. Items subject to safeguards

The technical considerations defining the scope of Agency safeguards have led to the following rules, applying to the indicated classes of items.

21.6.1.1. Nuclear materials

Only special fissionable materials constitute the irreplaceable elements of all nuclear weapons, and for this reason the Revised Safeguards Document (unlike the First one) directly provides for the subjection of only nuclear materials to safeguards - though this category also includes source materials that can only be used for weapons after considerable and elaborate transformations in nuclear facilities that may be considerably less available than the material itself.

Paragraph 77 of the Revised Document defines as nuclear material both source and special fissionable material, as these in turn are defined in Article XX of the Statute. Therefore the following materials are covered:

(a) Special fissionable materials (Statute Article XX.1):

- (i) Plutonium-239;³⁰³
- (ii) Uranium-233;
- (iii) Uranium enriched (as this term is defined in Statute Article XX.2) in the isotopes uranium-235 plus 233;
- (iv) Any material containing any of the foregoing;
- (v) Other fissionable materials designated by the Board.

(b) Source materials (Statute Article XX.3):

- (i) Natural uranium, in the form of metal, alloy, chemical compound or concentrate;
- (ii) Depleted uranium in any of the above forms;
- (iii) Thorium in any of the above forms;
- (iv) Any material containing any of the foregoing in such concentration as determined by the Board;
- (v) Other materials designated by the Board.

The Board has not yet taken or considered taking any decision as authorized by sub-paragraphs (a)(v), (b)(iv) or (b)(v) above. Nor has there yet been an authoritative definition, in relation to sub-paragraphs (b)(i) - (ii), of how concentrated ore must be in order to be considered as source material.³⁰⁴

21.6.1.2. Nuclear facilities

Unlike the First Safeguards Document, the revised version does not explicitly provide for subjecting any type of nuclear facilities to safeguards. Implicitly, however, the web of provisions is such that it is proper, in fact necessary, to speak of such subjection.

Paragraph 19(d) of the Revised Document makes safeguarded principal nuclear facilities a vector of safeguards to nuclear materials - much in the same way as paragraph 19(e) makes safeguarded nuclear materials a vector of safeguards to other nuclear materials.³⁰⁵ Paragraph 29 provides that the safeguards procedures "also extend to facilities containing or to

contain [safeguarded nuclear] materials, including principal nuclear facilities to which the criteria in paragraph 19(d) apply".³⁰⁶ In addition to thus announcing the imposition of controls on facilities, the actual safeguards procedures are almost exclusively facility-oriented - i. e., even the procedures solely applicable to materials depend on the type of facility in which the material is contained.³⁰⁷

Three types of facilities are explicitly dealt with in the Revised Document:

- (a) Principal nuclear facilities - defined in paragraph 78 to include:
 - (i) Reactors;³⁰⁸
 - (ii) Reprocessing plants;³⁰⁹
 - (iii) Isotope separation plants;
 - (iv) Fabrication plants;³¹⁰
 - (v) Conversion plants³¹¹ (excepting mines and ore processing plants);
 - (vi) Other types of facilities or plants designated by the Board.
- (b) Research and development facilities - somewhat inadequately defined in paragraph 81.³¹²
- (c) Sealed storage facilities (as referred to and in effect defined by paragraphs 61, 62, 64 and 65), in which safeguarded source materials are subjected to reduced controls.

21.6.1.3. Non-nuclear materials and equipment

Again, unlike the First Document, the revised version does not deal at all with non-nuclear materials or specialized equipment, even if such items substantially assist a principal nuclear facility or could be used independently to further some military purpose.³¹³ Only a very remote reference can be implied from the fact that the Board has reserved to itself authority to determine under what conditions a principal nuclear facility should be considered as "substantially supplied" under an Agency project - which in effect must mean the provision of sufficient nuclear or non-nuclear materials and/or specialized equipment.³¹⁴ This hiatus is evidently an intentional one, since the views relating to the control of non-nuclear materials were among those most thoroughly expounded in the formulation of the Revised Document - and indeed the revision was undertaken principally in order to alter the provisions that appeared on this point in the First Document.³¹⁵

In spite of this lacuna, the Board has approved Safeguards Transfer Agreements under the Revised Document that provide explicitly for the possibility of the Governments submitting non-nuclear materials and equipment to safeguards.³¹⁶ For want of explicit rules in the Document, the necessary measures have to be established entirely in the subsidiary arrangements, using as a basis those relating to nuclear materials and facilities.³¹⁷

Heavy water has been the only type of non-nuclear material to which Agency safeguards have actually been applied, and this was done under Safeguards Transfer Agreements concluded under both the First and the Revised Documents.

21.6.2. Circumstances and relations resulting in safeguards

Regardless of how desirable it might be to safeguard a particular item, the Agency may not do so unless it has some precise claim to the right to exercise its controls. Within the framework of this study it is not necessary or possible to examine all the esoteric rules, formulae, exceptions and precedents determining the conditions under which nuclear items are subjected to safeguards, or the equally abstruse conditions relating to exemptions from and to the suspension and termination of safeguards. These are mostly technical in nature and justification, and relate to the quantity and quality of material that may be of military significance. Only a few aspects are of special legal interest.

To the extent that safeguards may in the future be imposed primarily on the basis of general, territorially (rather than supply) oriented agreements, such as the Tlatelolco and Non-Proliferation Treaties, most of the just mentioned rules will in any event become irrelevant. Except for the likely continuation of the exemption and suspension of inoffensively small quantities of nuclear materials and of the termination of controls with respect to nuclear materials rendered irretrievably inoffensive,³¹⁸ all the conditions for applying or not applying safeguards to items that from a technical point of view should be controlled will be replaced by the general submission of all such items to safeguards. However, even under the Non-Proliferation Treaty, the existing rules will still remain relevant for the application of safeguards to States not parties to the Treaty as well as to any nuclear-weapon States (whether or not they are parties); furthermore, to the extent that the participation of a non-nuclear-weapon State in the Treaty might for some reason be considered as only temporary, the existing rules must continue to be used for identifying the items that would be subject to safeguards regardless of the Treaty (e.g., those supplied under an Agency project).

It is of course possible that a different but equally complex set of rules will be developed to regulate the right of States to withdraw items from safeguards that they intend to use for non-weapon military purposes not prohibited by the Non-Proliferation Treaty.³¹⁹

21.6.2.1. Direct right to safeguard

21.6.2.1.1. Supplied under a Project Agreement

The Agency has a direct right to safeguard any nuclear material or principal nuclear facility supplied under a Project Agreement.³²⁰ The items supplied need not originate with the Agency itself, and indeed the true supplier will generally be some other Member State.³²¹

With respect to materials, the term "supplied" is reasonably free of ambiguity.³²² However, principal nuclear facilities are rarely supplied lock, stock and barrel; generally a substantial part of the construction is done locally with local materials, and only some essential components as well as the plans are supplied from outside. The Board and its Working Group were unable, in spite of considerable effort, to agree on any general rule as to the type and amount of assistance whose supply should trigger the

application of safeguards to a facility. After unsuccessfully attempting to establish a list that would at least serve as a guideline, they merely provided in paragraph 20 of the Revised Document that the Board would determine on an ad hoc basis for each project whether the facility was "substantially supplied".³²³

21.6.2.1.2. Submission to safeguards

The Agency also has a direct right to safeguard any nuclear material or principal nuclear facility that is submitted to its control, either under a bilateral or multilateral arrangement or unilaterally.³²⁴

Since the Board was unable to establish any meaningful criteria as to whether a facility is to be considered as supplied under a Project Agreement, it is not surprising that the Safeguards Document does not establish any rules as to the circumstances under which facilities or other items should be voluntarily submitted to safeguards. For the Agency it is sufficient to know that such a submission has taken place, while the motives for such a move must principally be sought in the treaties referred to in Section 21.3.

Nevertheless, in the open-ended Safeguards Transfer Agreements (for which the motivating treaty is a bilateral agreement between two Member States) an attempt has been made to establish some criteria defining the obligation to submit, and to keep these criteria as similar as possible to those followed with respect to Agency projects - keeping in mind that these projects are really just variations on arrangements under which the assistance is supplied on a bilateral basis with a proviso that the Agency is to carry out safeguards.³²⁵ It is therefore always provided that any nuclear material or principal nuclear facility transferred between these States must be submitted to safeguards.³²⁶ But the question of how substantial a part of a facility must be transferred before this obligation exists is left entirely for decision by the two States - with the hope that they will follow any guidelines that the Board might set either explicitly or by example.³²⁷

21.6.2.2. Derivative right to safeguard

While the rules for establishing a primary right to safeguard are at best sketchily dealt with in the Safeguards Document, and are different for projects and for voluntary submissions, the rules according to which a derivative right to safeguard is established, i. e., the rules defining the "contaminating" or "triggering" effect that safeguarded items may have on others, are clearly set out in the Document. They are usually incorporated into safeguards agreements by reference,³²⁸ and are substantially the same for all types of agreements.

21.6.2.2.1. Produced material

The most important derivative safeguards rule is the one that subjects to controls all special fissionable material produced in or by the use of safeguarded nuclear materials or in a safeguarded principal nuclear facility.³²⁹ These words require some elucidation: "Produced... by the use..." means

that if atom A (e. g., ^{235}U) is under safeguards and in fissioning releases a neutron that is captured by previously unsafeguarded atom B (e. g., ^{238}U) and thereby initiates a reaction that converts that atom into special fissionable material (^{239}Pu), then the altered atom B now comes under safeguards. "Produced in. . ." means a number of things: in the previous example, if atom B had already been under safeguards in its original state, then it will continue under safeguards in its "improved"³³⁰ state, whether or not atom A had also been under safeguards; in addition, even if previously unsafeguarded nuclear material is used in a safeguarded reactor (except for a very small one), then any plutonium or uranium-233 produced therein comes under safeguards.

Since plutonium and uranium-233 are two of the three materials that can be used directly in atomic bombs (the third is uranium highly enriched in ^{235}U), they require thorough and permanent controls. As to the latter point, paragraph 16 of the Safeguards Document states the policy that safeguards agreements provide for the indefinite continuation of safeguards as to any produced special fissionable material.³³¹

21.6.2.2.2. Processed nuclear material

If nuclear material, whether or not previously subject to safeguards, is passed through a safeguarded fuel fabrication, conversion or chemical processing plant, the resulting more valuable material is considered "improved" and therefore also subject to safeguards.³³²

The same is true of material passing through a safeguarded isotope separation plant - though in that case it might be more proper to say that the more valuable material issuing from the plant (i. e., the enriched uranium) should be considered as "produced" (see Section above), and the less valuable part (e. g., the depleted uranium) should be considered as "used" (see following Section).

21.6.2.2.3. Used nuclear material

If nuclear material, even though not previously subject to safeguards, is used in any safeguarded principal nuclear facility, it becomes subject to safeguards and remains under control even after its removal therefrom.³³³ However, this subjection to safeguards is, unlike those referred to above, relatively easily terminated as soon as the material that had merely been used in the facility has been separated from any produced special fissionable material that remains under safeguards.³³⁴

21.6.2.2.4. Substituted nuclear material

Any previously unsafeguarded nuclear materials may, under the circumstances discussed in Sections 21.6.2.3.2 and 21.6.2.3.3.3, be temporarily or permanently substituted for safeguarded nuclear material, whereby the latter is, for the same duration, relieved of safeguards.³³⁵ The substituted material thereby acquires the same status as the original material, and is as appropriate considered as "supplied", "submitted", "produced", "processed", or "used".

21.6.2.2.5. Admixed nuclear material

In some processes safeguarded and unsafeguarded nuclear materials are mixed or blended in such a way that any separation becomes impossible even in theory (when both batches contain some of the same elements and isotopes, whether or not in similar concentrations). The general rule followed is that the Agency must be able to supervise the mixing procedure and ascertain ahead of time what the components are; afterwards an arbitrary division is made in such a way that the material remaining under safeguards is at least as significant (from the point of view of any potential military use) as the safeguarded material that entered into the mixture - which on occasion may necessitate that the entire batch remain under safeguards.³³⁶

21.6.2.2.6. Facilities containing safeguarded material

Paragraph 29 of the Revised Document provides that safeguards procedures are to "extend to facilities containing or to contain [safeguarded nuclear] materials". Generally those controls apply only while such facilities contain any safeguarded material; however the reference to facilities that are merely "to contain" safeguarded materials permits the design review to be carried out and the supplementary arrangements to be concluded before the safeguarded material is transferred to the facility.

Since a supplied or submitted principal nuclear facility automatically triggers safeguards as to all nuclear material in it,³³⁷ such a facility is always subject to controls whenever it contains any such material - and may indeed be controlled when ostensibly empty to make certain that no such materials are introduced.

21.6.2.2.7. Principal nuclear facilities incorporating non-nuclear materials or equipment

The Revised Document provides no guidance regarding either the means to be taken to safeguard non-nuclear materials or equipment, or the "contaminating" or "triggering" effect these may have on any otherwise unsafeguarded facilities in which they are used. In the case of projects, it follows from paragraph 20 of the Document that their supply has such a triggering effect only if the Board finds it to constitute the "substantial supply" of the facility.³³⁸ With respect to submission arrangements, the triggering effect depends on what the parties specify in the safeguards agreement; in certain recent instruments the rather severe rule is established that a facility must be safeguarded (in the broader meaning of the term) as long as it incorporates any safeguarded non-nuclear material or equipment.³³⁹

21.6.2.3. Cessation of the right to safeguard

The Statute does not, explicitly, provide for the cancellation of the Agency's safeguards responsibility with respect to any item that has come under its control. However, it states that the Agency's duty is to ensure the non-military use of materials only "so far as it is able". Thus if it can be shown that

certain quantities or types of materials are not suitable for any such use, or are too minute to be controlled by measures practical in the light of the danger they represent, then the non-application of safeguards is justified. On this basis the Board has included in the Revised Safeguards Document a number of provisions leading to the cessation (or the almost ab initio non-application) of safeguards in specified circumstances.

21.6.2.3.1. Exemption

The First Safeguards Document did not, strictly speaking, provide for the "exemption" of any nuclear material. Rather, paragraph 32 established a threshold for quantities below which it would not be sensible to require the Agency to exercise safeguards with respect to particular materials if no other safeguardable materials of the same type were in the same State. Nevertheless, as soon as it was realized that this interpretation would require the Agency, once that limit had been exceeded, to impose its safeguards retroactively on items that had previously not been controlled, the Board decided to treat the specified thresholds as exemption quotas which States were entitled to use regardless of the total quantity of safeguarded nuclear materials within their jurisdiction.³⁴⁰

The Revised Document clarified this point by clearly stating the availability of these exemptions. It also specified that exemption would not occur automatically but only at the request of the State (to negate any "first supplied, first exempted" interpretation), and suggested that material once exempted may later be returned to safeguards so as to restore the original quota.³⁴¹

Certain other "exemptions" are created by paragraphs 22 and 23 of the Revised Document with respect to small capacity reactors or to certain reactors using a mixture of safeguarded and unsafeguarded fuel. Strictly speaking, these are merely exceptions to paragraphs 19(d) and (e), which establish the basic rules for derivative safeguards.

21.6.2.3.2. Suspension

The Revised Document provides two possibilities for the temporary suspension of safeguards. Both constitute compromises made necessary by the fact that States may occasionally desire to transfer safeguarded nuclear materials either to a domestic facility to which they do not wish to have Agency controls applied (presumably because the facility may also contain some military material or information relating thereto) or to another State not prepared to welcome Agency safeguards.

One possibility is given if the amount of material is relatively small. In effect a suspension quota is established similar (and in addition) to the exemption quota.³⁴²

The other possibility involves the temporary substitution of other nuclear material whose military potential the Agency judges to be at least as great as that with respect to which controls are to be suspended.³⁴³

21.6.2.3.3. Termination of safeguards

Various possibilities for terminating safeguards as to nuclear materials are given in the Revised Document, reflecting the different rationales listed in the Sections below.

Since ostensibly only nuclear materials can be subject to safeguards, all the termination rules in the Document are written in terms of such materials. However, as safeguards are in effect applied to facilities and even to non-nuclear materials and equipment, recent safeguards agreements have realistically provided either for ad hoc arrangements or for the *mutatis mutandis* application to these items of the termination rules designed for nuclear materials.³⁴⁴

21.6.2.3.3.1. Restoration of the status quo ante

If an item was only safeguarded in a State by reason of its supply or transfer from another State, it seems proper to provide that if that item is restored to the supplier in unimproved form, safeguards should terminate – and this is provided for with respect to nuclear materials in paragraph 26(a) of the Document.

If nuclear material is only safeguarded because of its use in a safeguarded facility, then such safeguards may be terminated as soon as it has been removed therefrom and any material produced in it under safeguards has been separated out.³⁴⁵ If it had only been safeguarded because of its intimate admixture with safeguarded materials, then controls are terminated as soon as at least a nominal separation is achieved.³⁴⁶

21.6.2.3.3.2. Consumption

If any material which originally had military potential is so changed (intentionally or otherwise) that it is no longer susceptible of any such use, then safeguards may safely be terminated with respect to it, and this is provided in paragraph 26(c) of the Document.

A special example of such a change is the use of nuclear material for some non-nuclear purpose, in such a way that it loses its military potential (e. g., the dissolution of uranium in a ceramic glaze). Since the Agency is then no longer interested in the material it may terminate its safeguards pursuant to paragraph 27 of the Document. However, until the conversion takes place the material must be controlled to prevent any diversion – even though the conversion process itself is not a nuclear activity of interest to the Agency.

21.6.2.3.3.3. Substitution

Similar to the considerations that justify the temporary suspension of safeguards as to material for which an equivalent is substituted,³⁴⁷ paragraph 26(d) of the Document also permits the termination of safeguards upon the substitution of acceptable material. Again the Agency must assure itself

that the State does not thereby increase its military potential. Since termination is permanent, the rule as to what materials may be substituted is drawn somewhat more severely than for temporary suspension.

21.6.2.3.3.4. Out-of-State transfers

Since the exercise of safeguards as to any item depends on an agreement between the Agency and the State under whose jurisdiction it is located, no major legal problems arise from the transfer of safeguarded items within such jurisdiction.³⁴⁸ The situation is different when safeguarded items are transferred from one State to another. Since the right to exercise safeguards requires an agreement with the State having jurisdiction over the item, the Agency can only allow the transfer of safeguarded items out of the State with which the Agency has a safeguards agreement covering these items, under one of the following conditions:

- (a) If by the very fact of such transfer safeguards are to terminate as to the item; this occurs if the item is being transferred, in substantially unimproved form, back to the State that originally supplied it.³⁴⁹
- (b) If arrangements have been made, on one of the bases related in Section 21.6.2.3.2, for the suspension of safeguards with respect to the item during such a temporary transfer.
- (c) If the transferee State concludes a safeguards agreement relating to such item or if a standing agreement exists under which the transfer can be accommodated; consequently all trilateral Safeguards Transfer Agreements provide that, on the return to the Supplying State of an item on which safeguards cannot be terminated in accordance with paragraph (a), the Agency may continue to exercise its controls.³⁵⁰
- (d) One alternative is provided for in paragraph 28(d) of the Revised Document and in certain agreements concluded under the First Document: if the transfer is to a State unwilling to accept IAEA safeguards but willing to accept other international safeguards that are consistent with those of the Agency and accepted by it, then, with certain exceptions and restrictions, the Agency may relinquish its responsibility to another authority.³⁵¹

21.6.2.3.3.5. Termination of the safeguards agreement

Since the Agency's safeguards rights in each case derive from a safeguards agreement, they cease upon the expiration or denunciation of the agreement. Whether or not the undertaking to use such material only for peaceful purposes persists past the termination of the agreement, it is clear that the Agency's control cannot continue and thus the State is free to do as it wishes. At most, upon termination the Agency can give the world explicit notice of the extent of the threat represented by a State that had accumulated under safeguards substantial quantities of materials of military potential.

Consequently, Project Agreements have always been formulated without any expiration date or right of denunciation.³⁵² The only way for a State to terminate its safeguards undertaking is to transfer the affected items, with

the agreement of the Agency, to some other State or to the Agency itself; alternatively, if these items become or are made useless for any military purpose, the Agency would terminate safeguards with respect to them.³⁵³

Paragraph 3 of the First Document provided that safeguards agreements relating to bilateral or multilateral arrangements or to unilateral submissions might only be concluded for a specified period. Consequently the Transfer and Submission Agreements concluded pursuant to that Document always had a termination date, which in the case of the former was for convenience usually adjusted to the term of the bilateral agreement to which it related.³⁵⁴ On the termination of the Transfer Agreement, the safeguards under the bilateral agreement, which had been suspended while the Agreement with the Agency was in force, automatically revived; unless the Transfer Agreement was renewed (and this was always the intention), this would involve either the restoration of safeguards by the Supplying State in the Receiving State, or the return of all the supplied items (as well as the transfer of any additional material produced in or by their use), to the Supplying State (where they would not be subject to any further international control).

The Revised Document has eliminated the requirement that certain safeguards agreements be concluded for specified periods. As a matter of fact, paragraph 16 states that "it is desirable that safeguards agreements should provide for the continuation of safeguards... with respect to produced special fissionable material and to any materials substituted therefor".³⁵⁵ In spite of these changes, up to now the States concerned have usually insisted that Transfer and Submission Agreements concluded under the new Document provide for both expiration and denunciation.³⁵⁶ However, some agreements include a provision to the effect that even after termination for any reason, the agreement is to remain in force indefinitely with respect to any special fissionable material that had been produced under its safeguards;³⁵⁷ this device was carefully designed so as not to violate the principle that controls may only be exercised under a safeguards agreement with the State concerned,³⁵⁸ since it continues in force so much of the agreement as is necessary to cover the produced material; this residual agreement in effect has the same persistence as a Project Agreement.

21.6.2.3.3.6. Use for a military purpose

The statutory purpose of safeguards is to prevent nuclear items dedicated to peaceful ends from being used for any military purpose. The application of safeguards to a military activity would thus seem to be a contradiction in terms. However, on closer examination it appears that there is no real logical or legal difficulty, but only an overriding practical-political one: the unlikelihood that any State would permit the international control of any of its military activities, whether licit or not. Thus, from a strictly legal point of view, it is possible to postulate several situations in which the exercise of controls over such activities would be entirely consistent with the Statute (which in relation to unilateral safeguards submissions explicitly, and with respect to bi- or multilateral submissions implicitly, permits the control of "any... activities in the field of atomic energy"): ³⁵⁹

- (a) After an illegal military activity has been detected, the Agency should certainly attempt to keep imposing control measures, including especially inspections and sanctions, in the hope of correcting or mitigating the violation;
- (b) If, as under the Non-Proliferation Treaty, there are legal and illegal military activities, the Agency might well control the former (e. g., the reactor of a military vessel) to prevent diversions to the latter (production of plutonium for weapons).³⁶⁰

However, the Non-Proliferation Treaty does not attempt to put the Agency or the non-nuclear-weapon States into such a quandary. Instead, it specifically provides in Article III.1 that safeguards need only be applied to "peaceful nuclear activities". If this limitation is observed (and it need not necessarily be, for the Agency might object and the non-nuclear-weapon States parties to the Treaty might not insist³⁶¹ - though this appears unlikely), then some provision will have to be inserted into the Safeguards Submission Agreements negotiated pursuant to the Treaty, to permit States to arrange for the termination of safeguards with respect to items that are to be used (by them or by a transferee State) for some non-weapon military purpose.

21.6.2.4. Right to take into account

It has always been recognized that safeguards cannot be administered with the utmost efficiency and economy with respect to particular operations or items, unless the controlling authority is at least aware of all the other nuclear activities and facilities in the same State.³⁶² For example, if it is known that the State has no facilities for processing certain types of nuclear materials, such materials need not be guarded as closely as in a State which could transform the materials domestically if the controls should be relaxed for only a brief interval. However, the problem has been to establish a basis on which official cognizance can be taken of activities or items not subject to controls. Though the Agency might gather substantial amounts of information from unofficial documents, as well as from its other activities (e. g., technical assistance) in the State, it was considered undesirable that it should rely on such sources as an integral part of its control system.

The First Safeguards Document therefore introduced the concept of "peaceful nuclear (PN)" materials and facilities. This category was defined to include, in addition to all Agency safeguarded items,³⁶³ all materials and facilities that were:

- (a) Allocated by a State to exclusively peaceful uses, and notified to the Agency as such;
- (b) Subject to other international safeguards or to an international peaceful-uses commitment, if all the parties to the arrangement notified the Agency thereof.

Unfortunately, these provisions were at best imperfectly integrated into the Document, i. e., the circumstances under which account could be taken of these voluntarily notified items were not clearly defined.³⁶⁴ Altogether

only three notifications were made to the Agency (all of international transfers of natural uranium in quantities below the 10-ton exemption limit³⁶⁵), and no notifications at all were made of items subject to other international safeguards.

This provision, and thus the categories of PN materials and facilities, were eliminated from the Revised Document. Therefore at present there is no systematic mechanism by which account can be taken, in agreeing on or in implementing control measures, of items or activities not subject to Agency safeguards.

Lately, however, several new mechanisms are being developed, along different lines, designed to enable the Agency to receive and to take account of information supplied officially, though sometimes somewhat indirectly, in relation to its safeguard functions:

- (i) Three Governments have separately undertaken (after consultation with their bilateral partners), to notify the Agency periodically of their international transfers of nuclear materials.³⁶⁶ The Agency has long been encouraging its Members to make such notifications on a systematic basis, and its efforts may now be reinforced by the Preamble to the Non-Proliferation Treaty which requires all States parties to it "to cooperate in facilitating the application of [IAEA] safeguards on peaceful nuclear activities" - an obligation that goes beyond anything contained in the Agency's own Statute. Consequently proposals were made to the Conference of Non-Nuclear-Weapon States for the conclusion of a multi-lateral agreement among Supplying States to provide such information to the Agency.³⁶⁷
- (ii) Into its first safeguards agreement under the Tlatelolco Treaty, the Agency inserted a provision allowing it to seek and to receive information about transfers to Mexico directly from "Export States".³⁶⁸
- (iii) The Tlatelolco Treaty permits the States parties to it to report to the Council of the Latin American Agency their suspicions about activities taking place under the jurisdiction of other parties to the Treaty, and these accusations can result in "special inspections" which the Agency might be delegated to carry out.³⁶⁹

Ultimately certain sources of information arising outside of the relationship between the Agency and the safeguarded State might constitute a vital, quasi-official supplement to the safeguard system, which will enhance both its efficiency and its credibility. Before States can be expected to enter into undertakings significantly limiting their military nuclear capacity, they will insist on continuing assurances that other States will in fact abide by similar limitations and that, if they do not do so, any violation will be promptly and publicly detected. By itself, the Agency's safeguard system may have difficulty in fulfilling the first requirement, because it is in effect limited to controlling items registered with it; on the other hand, clandestine sources of information available to many Governments may be able to secure information more promptly, but will not be in a position to present and prove it publicly. Agency inspectors, directed by accusations filtered through an

official body (such as its Board of Governors or the Council of the Latin American Agency) should be able to confirm publicly and promptly whenever any violation is taking place.

21.7. SAFEGUARDS PROCEDURES

Article XII. A of the Statute briefly outlines six different safeguards procedures: design review, records, reports, inspections, deposit of excess produced material and sanctions. The first four of these, which may be called the principal procedures, are developed in considerably greater detail in the Safeguards Document. But although this is done at some length, certain procedures cannot be described fully in a general system, and provision is therefore made for the specification of further particulars in the safeguards agreements - and in practice these in turn frequently transfer this function to their "subsidiary arrangements".

21.7.1. Principal procedures

21.7.1.1. Design review

The first important safeguards procedure is the review of the design of each principal nuclear facility in which safeguarded nuclear materials are to be produced, processed or used, or perhaps just stored. According to the Statute³⁷⁰ this review has a two-fold purpose (aside from also constituting a vital part of health and safety controls): to determine whether the facility will per se further any military purpose and whether it will permit the effective application of safeguards. While the First Document closely followed the statutory language,³⁷¹ the Revised version restricts the review only to the second consideration, evidently on the ground that there is no way of predicting by means of a design review how a principal nuclear facility (which by definition is merely a converter of nuclear materials) will actually be used.³⁷²

Paragraph 31 of the Revised Document requires that this design review be carried out as early as possible and in any case before a facility comes under safeguards (to avoid the possibility of the Agency later discovering that it cannot effectively or conveniently safeguard the facility unless some changes are introduced in its design). This is essentially the only safeguards procedure that may be and frequently is carried out before the entry into force of the applicable safeguards agreement, and almost always before the conclusion of the supplementary arrangements (which usually merely recite that a satisfactory review has been carried out). Though the Agency may thus have no true right to insist on performing the review at so early a stage it secures the co-operation of the State by specifying this review as a principal condition for entering into the safeguards agreement - whose terms may indeed depend on some of the information gathered in this way.

The only circumstance under which a design review relates to a facility that the Agency is already controlling is if the State proposes to make a "significant modification" in such a facility - in which case a review of the

modification must precede its accomplishment.³⁷³ The modalities of such a review, including a definition of what is to be considered a "significant modification" to a particular facility, are generally specified in the subsidiary arrangements.

21.7.1.2. Records

Records must be kept concerning the operation of each safeguarded facility and the use and location of all safeguarded nuclear materials associated with it, and also with respect to all safeguarded nuclear materials outside facilities.³⁷⁴ Of course if non-nuclear materials are safeguarded, the records must extend to them too.

The details of these operating and accounting records are negotiated between the Government (which in practice usually means the facility operator) and the Secretariat. It has been the Agency's policy to accept, as far as possible, the records system actually existing at a facility, supplementing it only as far as necessary to include any additional data required particularly for safeguards; quite likely, in relation to the Non-Proliferation Treaty there will be a greater stress on uniformity.

If records are not kept in one of the working languages of the Board, then the Agency's inspectors must be assisted in interpreting them.³⁷⁵ The subsidiary arrangements always specify that inspectors must be given access not only to those records that are part of the agreed system but to all records actually kept with respect to safeguarded items. However, only the records agreed to with the Agency must be retained for at least two years.³⁷⁶

21.7.1.3. Reports

On the basis of the records it maintains, the State is required to submit operating and accounting reports to the Agency - though these need be far less detailed than the records.³⁷⁷

As is true of the records system, the reports to be made are similarly agreed to between the Secretariat and the Government. Again it has been the policy of the Agency to accept, as far as possible, any standard report form and procedure already in use, such as for the purpose of making domestic reports to governmental authorities (or possibly to another State on the use of leased material obtained from it). Consequently the Agency does not obtain fully standardized information from all States and facilities - though here too the future is likely to bring a greater stress on uniformity. However, the reports must be submitted in one of the working languages of the Board.³⁷⁸

Three types of reports are provided for:

- (a) Routine reports must be submitted at regular intervals, at a frequency which depends on the significance of the material or facility involved; the minimum frequency is one per year for minor quantities of materials not contained in a reactor; the maximum required frequency is twelve, for large facilities.³⁷⁹

- (b) Special reports are required immediately after the occurrence or discovery of any incident that has resulted or might result in any abnormal loss of safeguarded materials; they are also required before or very soon after transfers of "significant" quantities of safeguarded materials between facilities or into and out of the State - the quantities constituting "normal operating and handling losses" and "significant" transfers being defined in the subsidiary arrangements, as appropriate to the materials, facilities and operations involved.³⁸⁰
- (c) Reports on the progress of construction of a principal nuclear facility to be safeguarded may be requested by the Agency, mainly in order to ascertain when an appropriate stage for making an initial inspection has been reached.³⁸¹

21.7.1.4. Inspections

The most important safeguards procedure, and one that in this form is unprecedented among the activities of international organizations (except for the similar controls exercised by some regional nuclear groups), is the carrying out of inspections within a State by Agency officials.³⁸² Indeed, in popular parlance, safeguards and inspections are often considered as synonymous, and the words are often used interchangeably. The credibility and the reliability of the entire safeguards system of course rests on this device - for no matter what solemn undertakings are made by a State and no matter how detailed are the reports submitted, the only assurance of compliance and correctness is that which can be achieved by actual, on-the-spot checks. Though even inspections cannot prevent the diversion of safeguarded items, they are designed as far as feasible to detect and to give early warning of any diversion taking place and in any case to discourage such diversion by making detection probable and concealment difficult and disproportionately expensive.³⁸³

The Safeguards Document (supplemented by the Inspectors Document) lists the principal checks inspectors may carry out and the numbers and types of permissible inspections:

- (a) Routine inspections, for which maximum frequencies (depending for each facility on the quantity of nuclear material it produces, uses or stores) are set out in a table included in the Document;³⁸⁴ the actual frequency and scheduling, however, are determined by the Director General, within the stated limits and guided to some extent by certain criteria set out in the Document.³⁸⁵
- (b) Special inspections that may be carried out if: "unforeseen circumstances require immediate action", or a report submitted to the Agency indicates to it that "such an inspection is desirable", or it is proposed to transfer "substantial amounts" (as defined in the subsidiary arrangements) of safeguarded nuclear materials from the State.³⁸⁶
- (c) Initial inspections to be carried out either before the first operation of a facility or otherwise as soon as it has come under safeguards, in order to verify that the facility is being constructed in accordance with the design reviewed by the Agency.³⁸⁷

21.7.2. Ancillary procedures

Supplementing and supporting the principal safeguards procedures are a number of ancillary ones, two of which are set forth in the Statute while the others have developed as a matter of practice and are either anchored in the Revised Document or are only specified in individual safeguards agreements.

21.7.2.1. Deposit of excess produced material

At the Conference on the Statute, one of the most controversial portions of the draft submitted by the Working Level Meeting was that which required the deposit with the Agency of any special fissionable material produced under safeguards in excess of a State's immediate peaceful requirements.³⁸⁸ The purpose was to prevent States from stock-piling materials readily susceptible of conversion into nuclear weapons. Though this important procedure was maintained in the Statute, as the final significant compromise reached at the Conference, Article XII. A. 5 was reformulated to make it clear that as soon as deposited materials are needed for a legitimate purpose (i. e., a safeguarded peaceful activity) the State concerned may require the Agency to release them - i. e., the Agency does not have the power to make an Article XI project evaluation of the proposed new use.³⁸⁹

Despite the fact that this right of the Agency was obtained after so hard a struggle, or perhaps just for that reason, no attempt has yet been made to implement this provision (even by merely planning Agency depots or considering the staff requirements), nor is any reference to it included in the Safeguards Document. In part this is no doubt so because up to now no State has accumulated, or is likely to accumulate in the near future, large excess quantities of such materials that are subject to safeguards. This situation is apt to change as soon as more power reactors start operating under Agency safeguards, especially in the period before enough reactors designed to consume large amounts of plutonium have been constructed.

21.7.2.2. Storage in sealed facilities

The Revised Document provides for stockpiling source material in sealed storage.³⁹⁰ The purpose is to permit a State to accumulate a large quantity of source materials, which ordinarily would call for a high frequency of routine inspections, and to reduce this frequency (to a maximum of one per year) while at the same time decreasing the likelihood of undetected diversion, by having the Agency agree to the design of the storage facility and arranging to seal it. This provision has not yet been used.

This procedure is quite different from that envisaged by the Statute with regard to excess special fissionable material. For that material, because of its immediate military potential, the custodian would be the Agency; this is not necessary for source material and consequently its storage would be carried out by the State. Also the sealed storage of source material is an option open to a State and not a requirement that may be imposed by the Agency.

21.7.2.3. Restrictions on transfers

Ordinarily the exercise of safeguards consists almost entirely in the gathering and examination of information. The Agency has only very limited powers to direct or prohibit any transactions: aside from those that are stated in Statute Article XII. A. 5, a few can be derived from the Agency's minimum requirements to sustain its safeguards responsibilities.

The Revised Document explicitly prohibits only one type of transaction: "no safeguarded nuclear material shall be transferred outside the jurisdiction of the State in which it is being safeguarded" unless:

- (a) Safeguards will automatically terminate as to such material by reason of its transfer, i. e., by its return to the original supplier;
- (b) Safeguards have been suspended as to the material;
- (c) The Agency has arranged to continue safeguarding the material in the transferee State;
- (d) The material will be subject in the transferee State "to safeguards other than those of the Agency but generally consistent with such safeguards and accepted by the Agency".³⁹¹

This restriction on transfers is necessary in view of the fact that the exercise of safeguards by the Agency always requires that there exist an agreement with the State having jurisdiction over the item to be controlled.³⁹² Thus a special problem arises when such an item is transferred from one State to another, for even if in principle the Agency's safeguards should follow as a matter of right, in law and practice the Agency is powerless to exercise its controls in a State that is unwilling to co-operate and is not bound to do so by a safeguards agreement.

Though this particular legal problem does not arise in the case of intrastate transfers of safeguarded items, it is for practical reasons necessary that the Agency conclude arrangements with a State with respect to each location or facility containing safeguarded items. The Agency has therefore inserted in each safeguards agreement concluded under the Revised Document a prohibition against the transfer of safeguarded items to an unsafeguarded facility before the necessary arrangements for continuing safeguards have been made.³⁹³ In Project Agreements concluded under the First Document this contingency was usually covered by providing that if the State made such a transfer the Board would have authority (by means of the "blank cheque" clause) to establish the necessary additional procedures;³⁹⁴ Safeguards Transfer Agreements concluded under that Document did not contain such a clause, but permitted the Board to decide that the Agency is unable to apply safeguards in certain circumstances (e. g., if safeguarded items were transferred to a facility as to which the State refuses to conclude control arrangements), whereupon the Agency's responsibility was suspended and the safeguards and sanction rights of the Supplying State were restored.³⁹⁵

21.7.2.4. Sanctions

Statute Article XII. C summarizes both the sanctions that might be imposed by the Agency as well as the procedures for their application.

If an inspector detects any violation (called "non-compliance" in the Statute) of a safeguards agreement, he must inform the Director General who must transmit such a report to the Board. The Board then determines whether or not any non-compliance has occurred.³⁹⁶ If the finding is positive it must call on the State concerned to remedy such non-compliance, and must also report its findings to all Members as well as to the Security Council and General Assembly of the United Nations. If the delinquent State refuses to comply within a reasonable time, then the following further measures may be taken:

- (a) The Board may direct that all assistance being provided by the Agency or by its Members be curtailed or suspended; in practice this should be the most effective sanction that the Agency itself can impose and hopefully enforce (without the intervention of the Security Council), assuming that all its Members that are potential suppliers will co-operate;³⁹⁷ its impact depends on the likelihood that a State having established a nuclear programme with the aid of outside assistance will need a continuing flow of such assistance (particularly of nuclear materials) in order to maintain that programme - and thus any extended interruption of that flow may cause crucial parts of the programme to be shut down.
- (b) The Board may call for the return of materials and equipment made available to the State; this provision is reinforced by Article XII. A. 7, which lists this as one of the particular rights and responsibilities that the Agency is to have with respect to safeguarded projects and arrangements.
- (c) The Agency may also suspend any non-complying Member from the exercise of the privileges and rights of membership, in accordance with Article XIX. B.³⁹⁸

Although both the procedural and the substantive aspects of sanctions appear thus to have been dealt with in sufficient detail, actually a number of potential questions are left unresolved:

- (i) Are inspectors unconditionally obliged to report any non-compliance to the Director General, regardless of its reasons or type? The possible violations can be divided into at least the following categories, but though some of them appear to be separately mentioned in the Statute no distinctions are there made among them³⁹⁹ - i.e. all these violations may (but perhaps need not be) considered to be "non-compliance" within the meaning of the Statute:

(A) Use of safeguarded items to further any military purpose - commonly referred to as a "diversion";⁴⁰⁰

(B) An interference with the control system in order to conceal a diversion;

(C) An interference with the control system for some other reason, which may range from convenience (avoiding the burden of making reports), to embarrassment (at an unexplained loss), to nationalistic pride (objecting to outside checks). Of course what appears to be a violation based on one of these grounds could really be one based on a desire to conceal an actual diversion and therefore may have to be responded to as such;

(D) Some other violation of any provision of a safeguards agreement – e. g., disregarding the health and safety measures⁴⁰¹ or the patent clause of a Project Agreement, or the financial obligations of a Transfer Agreement.

- (ii) Does the Director General have any discretion in deciding whether or not to forward an inspector's report of any type of non-compliance to the Board? In particular, can he refuse if the violation is reported by only a minority of a team of inspectors?
- (iii) Does the Board have any discretion in deciding whether to acknowledge the existence of an evident (but minor) non-compliance, and can it appropriately vary the apparently automatic obligation that it must report directly to all Member States and to the United Nations even before the State concerned has had an opportunity to respond to the call to remedy the non-compliance?
- (iv) Are the sanction procedures fully pertinent when safeguards are applied to bilateral or multilateral arrangements or to unilaterally submitted activities, even though in part these procedures appear to refer directly only to Agency projects?
- (v) Is there any substantive difference between the similar sanction stated in Articles XII. A. 7 (Agency's right to "withdraw" items supplied for "the project") and XII. C (Board's right to "call for the return" of items supplied to the "recipient Member(s)")? In particular, should the latter provision be interpreted more broadly, so as to permit the Agency to require the return of items not covered by the agreement being violated, but covered by some other safeguards agreement, or perhaps only covered by some bilateral agreement between Members to which the Agency is not even a party?
- (vi) Are items in every case withdrawn by or returned to the Agency itself, or instead to the original supplier (especially if the item was not supplied under an Agency project)? If so, is the Supplying State obliged to accept such return merely by force of the statutory provision and the Board's order, or must the Agency first conclude a separate agreement to that effect with the supplier?
- (vii) Who is obliged to pay for any expense or damage caused by the imposition of sanctions – and in particular for any items of continuing value that are retransferred pursuant to an order of the Board? Should this burden the administrative budget of the Agency (and thus the entire membership) even if the fault is clearly that of an offending State?
- (viii) Can a Board decision to impose sanctions be challenged by means of the disputes procedures included in every safeguards agreement?
- (ix) Must the sanction procedures be incorporated in safeguards agreements in order to be applicable to a project, arrangement or activity?

The First Safeguards Document did not refer to sanctions at all, and the Revised version contents itself with citing Statute Articles XII. A. 7 and XII. C.⁴⁰² Consequently any answer to the above questions must be sought to some extent in the statutory history, but largely in the safeguards agreements and practices of the Agency. In this connection it is pertinent that no serious non-compliance has yet been noted by an inspector, though a number of minor,

"technical" violations have occurred (e. g., extensive, unexcused delays in submitting reports; transfers of safeguarded items to an unsafeguarded facility without the prior arrangements called for by the relevant agreement). In the light of these transactions and practices the following partial answers to the above questions can be given:

- (1) By an internal instruction the Director General has ordered that he be notified of any detected diversion and of any refusal by a State to comply with a safeguards provision. Up to now no such violation has had to be reported to the Director General, though he has informally been informed of occasional administrative difficulties.
- (2) Since no violation has yet occurred that was serious enough to be reported formally to the Director General (or to be mentioned in the report required to be made to the inspected State on each visit⁴⁰³), no decision has yet been required or made concerning the extent of the Director General's discretion to withhold the report of a minor violation from the Board.⁴⁰⁴ In practice, he is likely to insist that a report of a violation come to him from the Inspector General, and not merely from an individual inspector. The Board, pursuant to its general authority over the Director General,⁴⁰⁵ can of course require reports on any irregularities, but these would not then be made under Statute Article XII. C.
- (3) Most recent safeguards agreements have attempted to modify somewhat the statutory pattern of apparently obligatory reports, by providing that the Board, upon finding a non-compliance and calling on the State concerned to remedy it, "shall make such reports as it deems appropriate".⁴⁰⁶ Whether it is possible to alter in such a way a statutory command has not yet been decided in practice. In this connection account might also have to be taken of the obligation that the Agency undertook in its Relationship Agreement with the United Nations to report to the Security Council and the General Assembly "any case of non-compliance" within the meaning of Statute Article XII. C.⁴⁰⁷
- (4) It would seem that with respect to the sanction rules there is the same necessity of extending by analogy the rules relating to projects, to cover also bilateral and multilateral submission arrangements as well as unilateral submissions, as is apparent with respect to other safeguards provisions.⁴⁰⁸
- (5) Quite probably no substantive difference was intended between Articles XII. A. 7 and XII. C; the two-fold recital is apparently due to the desire to make Article XII. A a complete catalogue of the Agency's rights vis-à-vis the controlled State, while Article XII. C is a complete recital of all aspects of sanctions. However, this still leaves unanswered the question whether the narrower language of the former, or the broader of the latter should prevail.
- (6) In negotiating the first supply agreements relating to the sales of nuclear materials, the Agency tentatively raised the possibility that the Supplying State would in those agreements undertake to accept the return of any of the supplied material that the Agency might "withdraw" from the Receiving State as a sanction. However, the problem was thought to be too remote to require advance resolution, and no such provision has been included in any sale agreement; only certain lease agreements

allow the Agency to cancel the leases as a sanction measure and thereby to require the lessor to accept the return of the leased items prematurely.⁴⁰⁹ All Safeguards Transfer Agreements enable the Board to arrange for the re-imposition of any suspended safeguards and sanction rights of the Supplying State, if the Agency is unable to continue to apply safeguards because of any non-compliance by the safeguarded State,⁴¹⁰ however, the Agency cannot thereby oblige the Supplying State either to exercise any controls or to demand the return of the items in question.

- (7) The question of who bears the cost of sanctions was raised at the Conference on the Statute in the debate on Article XIV;⁴¹¹ the Co-ordination Committee, to which this question was referred very late in the Conference,⁴¹² decided that no change in the draft Statute was necessary since the question could be dealt with by the organs of the Agency.⁴¹³ In recent Safeguards Transfer Agreements a proviso has been added to the financial clause, to the effect that the normal rules as to the distribution of costs "shall not prejudice the allocation of expenses attributable to a failure by a Party to comply with [the agreement]".⁴¹⁴
- (8) As indicated in Section 21.10, every safeguards agreement has an arbitration clause, and until recently in none had the sanction provisions been excluded from the final decision of the tribunal; but, the agreements either reserve all interim decisions to the Board⁴¹⁵ or, if the arbitral tribunal is authorized to make some such decisions, the Board's authority to make those relating to sanctions has always been reserved.⁴¹⁶ However, in the Mexican Submission Agreement questions relating to non-compliance are definitely excluded from the competence of the tribunal.⁴¹⁷
- (9) It has always been considered necessary to include in safeguards agreements at least a reference to the Board's power to withdraw items supplied, since this sanction, unlike the others (e. g., the reports of the Board to the United Nations), requires the active co-operation of the State concerned and thus in accordance with Statute Article XI.F.4(b) may have to be specified in the safeguards agreement. In all Project Agreements concluded under the First Document this was accomplished simply by specifying that all the paragraphs of Article XII.A (including 7) were relevant.⁴¹⁸ In most other agreements a reference has been made to Article XII.C (whose scope is at least as broad as that of Article XII.A.7).⁴¹⁹

21.7.2.5. Sampling

Both the Safeguards and the Inspectors Documents specify that "sampling" is a permissible procedure during inspections.⁴²⁰ However, neither instrument indicates how this procedure is to be carried out. Potentially a number of legal questions arise:

- (a) How extensive may samples be (i. e., is it permissible to carry off an entire fuel element if it cannot conveniently be disassembled)?
- (b) Must the Agency pay for any samples taken?

- (c) May a State prohibit the transfer of samples on the ground of, or require compliance with, general regulations restricting the export of nuclear materials?
- (d) To what extent can health and safety regulations be used to inhibit the Agency's quest for samples of irradiated materials?

Pending the general resolution of these questions, provisions concerning sampling procedures have been included in some "subsidiary arrangements", and even without these samples have already been taken from certain facilities, on a somewhat ad hoc basis. These were in part analyzed in the Agency's Laboratory and in part in national technical facilities. Presumably, with time and as required by Statute Article IX.I.4, the Agency will more fully develop its own testing facilities⁴²¹ and perhaps even establish regional laboratories.

21.7.2.6. Instrumentation

It has always been recognized that, in principle, there would be advantages if safeguards controls could be exercised, as far as possible, by means of instruments and other devices (such as seals⁴²²) permanently located at the facilities to be controlled. From the point of view of the Agency, the use of such techniques could, once they are sufficiently proven and incorporated in tamper-proof devices, be even more reliable for many purposes and probably also be cheaper than the necessarily intermittent observations of inspectors; from the point of view of the controlled States, the principal advantage would be a reduction in the frequency and intensity of inspections, which are generally considered to be the most objectionable aspect of safeguards. These considerations led to the inclusion in the Preamble of the Non-Proliferation Treaty of a paragraph calling for the development of such instruments,⁴²³ and this provision was echoed in a Resolution of the 1968 Conference of Non-Nuclear-Weapon States.⁴²⁴

The preliminary questions are of course technical, and both the above-mentioned instruments properly stress the need for adequate preliminary research. However, once effective devices have been developed, certain troublesome legal questions will have to be faced:

- (a) May the Agency insist that such devices be incorporated into safeguarded nuclear facilities - in particular those that are still in the course of construction or design? In part, a positive answer might be derived from Statute Article XII. A.1, which requires the Agency to approve the design of each facility "from the view-point of assuring... that it will permit effective application of safeguards"⁴²⁵ However, should a State argue that even without the desired instrumentation the facility can be effectively controlled, albeit by inspectors, the Agency might simply offer a trade-off to be incorporated in the safeguard agreement: more instruments equals fewer inspections. On the basis of its as yet limited experience in dealing with facility operators, the Agency should, however, not be too sanguine about their willingness to accept any design changes, no matter how minor, whose purpose is merely to facilitate safeguards and not in some way to advance the economy of operations.⁴²⁶

- (b) May the Agency require the insertion of a "black-box" into a facility, i. e., of a device whose design is not revealed in order to make any tampering more difficult? As usual, the answer will be expressed in individual safeguards agreements, though the principal consideration in respect to this question must be the sole responsibility of the facility designer and operator for the safety of any device accepted by them.⁴²⁷
- (c) Who is to bear the cost of such instrumentation? This question will have to be answered in the context of the general financial framework of safeguards.⁴²⁸

21.8. INSPECTION PROCEDURES

It is the possibility of performing inspections within a State that makes the Agency's as well as the several other nuclear safeguards systems effective, and that distinguishes them from other international control systems which must rely entirely on reports from States or organizations. Inspectors can both check the truthfulness of the reports received (which constitute the control authority's prime source of information on the safeguarded items) and also detect directly any diversion that has taken or is taking place. Of course it is intended that inspections, and indeed the very possibility that these will be carried out, will deter a State from attempting any diversion. However, this deterrence depends on the belief that the inspection system is effective. It is therefore necessary that the Agency have an unconditional right to dispatch inspectors on relatively short notice and without special agreement as to particular inspections - either as to their timing or the composition of the inspection team.

While inspections carried out within the jurisdiction of a State are the most important means of control, at the same time it is this measure that raises the most complicated political and legal questions. It is therefore in this connection that the pioneering aspects of the Agency's safeguards system become most apparent. Having no precedents to rely on and with only sketchy guidance from Article XII. A. 6 and B of the Statute, an elaborate structure of requirements has been established concerning the introduction of Agency inspectors into a State. These requirements relate in part to the selection of inspectors (a procedure that consists of three stages, each with several steps) and for the rest to the way in which their visits to countries are to be arranged and carried out.

21.8.1. Selection of inspectors

21.8.1.1. Appointment

Article XII. B of the Statute calls for the establishment of "a staff of inspectors". It does not indicate explicitly whether or not these inspectors are to be part of the staff of the Agency, for whose appointment, organization and functioning the Director General is responsible pursuant to Article VII. B. Actually, neither the Statute nor any other safeguards instrument requires that inspectors be officials of the Agency,⁴²⁹ but it has generally been recognized

that without such an institutional tie it is even more difficult for the Agency to assure the States subject to inspection that the inspectors will actually obey their instructions and conform to their numerous important limitations (such as those relating to the disclosure of confidential information).⁴³⁰

The question of how inspectors are to be recruited was first considered extensively in the 1960 Ad hoc Committee on the Agency's Inspectors, which was charged with formulating the Inspectors Document. To counter a proposal that the "teams of inspectors" dispatched on a given visit be selected by the Board and have a specified (politically-geographically balanced) composition, two alternative proposals were advanced to the effect that all inspectors should be appointed by the Board and that all inspectors should be permanent officials of the Agency. The Board did not act on any of these proposals for over a year; finally in June 1961, in connection with the decision by which it put into effect the Inspectors Document, it decided that:

"the Inspector General and all officers of Professional grade of the Division of Inspection would be appointed by the Director General as staff officials of the Agency after he had submitted applications recommended by him to the Board for approval."⁴³¹

Originally the Division of Inspection had been conceived, in the report of the Preparatory Commission, as the unit into which both safeguards as well as health and safety inspectors would be placed;⁴³² however, this dual function became inappropriate in light of the complete separation of the two control activities ordered by the Board, and the establishment of the Division was delayed by the initially slow accretion of the Agency's safeguards responsibilities. Though by 1961 the Agency had minor responsibilities under a few Project Agreements, the Division had not yet been established. But some inspections had to be carried out, and the Director General thereupon interpreted the Board's decision as requiring its approval not only for appointments to the Division but also for the ad hoc use of officials from other Divisions as inspectors; he requested and received permission to use three named officials to perform safeguards inspections on the NORA project "and, pending the appointment of further⁴³³ members of the Division of Inspection, to make use of these three officials as inspectors in case of need." Later this authorization was expanded to include the use of seven other officials.⁴³⁴

In the event, the Division of Inspection was never established, but in June 1964 the Director General announced the creation of the Division of Safeguards and Inspection, with responsibilities covering those of both the former Safeguards Division and the projected Division of Inspection. Through this organizational change the Board's decision of June 1961 appeared to lose most of its specific applicability, since of the posts referred to in that resolution only that of Inspector General⁴³⁵ still remained. Therefore, while requesting authority to appoint his nominees as Inspector General and as Director of the new Division,⁴³⁶ the Director General made other appointments or transfers to the new Division without consulting the Board. However, following the precedents set concerning the temporary authority to use officials as inspectors, the Board's approval is always sought before the Director General first uses any official, whether or not posted to the Division of

Safeguards and Inspection,⁴³⁷ as a safeguards inspector. In other words, authority is sought not for the appointment of a person to the staff but for an official to perform a particular function.

The practice is for the Director General to indicate the names, nationalities and contractual status (as well as sometimes the current assignments⁴³⁸ and grades) of the officials proposed, and also confidentially to supply the members of the Board with summaries of the relevant qualifications of the nominees. The Board thus is given the opportunity to pass both on the personal qualifications of individuals⁴³⁹ and on the national make-up of the entire group of inspectors.⁴⁴⁰ The Board's approval of an official is considered to persist as long as he remains a staff member - though the Director General may remove him from the list of persons available for inspections because of a changed assignment. Recently the Director General has divided the list of officials as to whom he requests authorization into two parts: some persons to be available for any type of inspection, and others to be available for special purposes (according to their technical specialities); however, in effect, he is not restricted in any way in using persons from either group.

Meanwhile, the initial controversy concerning the term of inspectors' appointments has not yet been resolved. Some Governors continue to suggest that these be kept short, so that inspectors would usually be seconded from and in effect be representatives of national nuclear authorities. The majority have, however, inclined to the opposite view: that inspectors should as far as possible be permanent or at least long-term staff members, over whom the Agency would thus have the maximum of disciplinary authority and whose contacts with and loyalty to any particular national authority or commercial interest will be minimal, thus lessening the chance that they would reveal industrial or commercial secrets.⁴⁴¹ In this conflict the Director General has avoided taking a position: though a few inspectors have permanent appointments, up to the end of 1968 most did not; but, yielding somewhat to the second line of argument, the Director General in September 1968 announced to the Board that, after satisfactorily completing an initial probationary two-year contract, inspectors would thereupon generally receive a series of five-year appointments - the maximum fixed-term contracts permitted under the Provisional Staff Regulations.⁴⁴²

Because of the more rapid recruitment of inspectors in the light of the actual and potential increase in the Agency's safeguards responsibilities, the Agency conducted its first formal training course for new inspectors in June 1969⁴⁴³, and further such courses are planned.⁴⁴⁴

21.8.1.2. Designation

From among the officials whom the Director General has been authorized to use as inspectors, he may nominate one, several or all to be inspectors for a particular State.⁴⁴⁵ As a first step he holds informal consultations with officials of the Government regarding the acceptability of the persons he wishes to nominate for that State.⁴⁴⁶ On the basis of these informal consultations, he then makes formal proposals, indicating the name, nationality, grade and qualifications of the nominee. The Government may request further

consultations, but within 30 days of its receipt of the Agency's proposal must indicate whether or not it accepts the officials named. If the answer is positive, then the Director General may make the designation, which continues in effect until either withdrawn by the Director General or later objected to by the Government.⁴⁴⁷

No criteria are stated anywhere regarding the basis on which a Government may object to a proposed or effective designation. However, should it do so repeatedly, then the Director General may submit the matter to the Board if he considers that the inspections provided for in the relevant safeguards agreements are impeded by these refusals.⁴⁴⁸ The Inspectors Document does not indicate what steps the Board can take upon receiving such a report (i. e., whether the Board can then make a designation effective without the approval of the State concerned) - though at the least it might conclude that excessive unreasonable objections constitute non-compliance with the obligation to co-operate with the Agency in the administration of safeguards (an obligation explicitly expressed in all recent safeguards agreements⁴⁴⁹).

The informal and formal consultations can evidently be used by a Government not only to weed out particular individuals, but even entire groups (e. g., nationals of countries in certain geographic areas), and up to now no objection has been raised to this practice.⁴⁵⁰ However, the Director General would have cause to object if a State, through the mechanism of selective rejections, in effect tried to choose the one or two inspectors from the Agency's panel whom it is prepared to welcome; suggestions that Governments be given the explicit power to do just that have been advanced in the Board but have never formally been considered.

An analogy has been detected between the procedure by which an inspector is designated and that by which a State obtains an agrément before accrediting one of its diplomats to a foreign Government⁴⁵¹ It is therefore necessary to mention at least two significant differences: While a State generally has no obligation to receive any diplomat from another,⁴⁵² it may be obliged to accept at least some inspectors; Also, a foreign diplomat can promptly be expelled by declaring him *persona non grata*, but the suggestion that this procedure be applicable to inspectors was specifically rejected in formulating the Inspectors Document.⁴⁵³

Once an inspector has been designated for a State, the Government is obliged to grant and renew his visas as speedily as possible.⁴⁵⁴ For this purpose the Agency has usually requested and the inspectors receive multiple-entry visas valid for at least six months or a year.⁴⁵⁵

21.8.1.3. Dispatch

The final step in introducing a previously designated inspector into a State is his dispatch to perform an inspection. Despite certain proposals advanced in 1960 (during the formulation of the Inspector's Document) to the effect that teams of inspectors should be constituted by the Board, the choice of the official or officials to perform any given visit has been left entirely to the Director General and no requirement concerning the use of "teams" has

been established.⁴⁵⁶ As indicated immediately below, the names of inspectors to be dispatched must generally be notified to the Government some short time in advance.

21.8.2. Visits of inspectors

The maximum number (but not the duration) of routine inspections that may be performed annually is indicated with respect to each facility or other concentration of nuclear materials, in the relevant safeguards agreement or in the subsidiary arrangements thereto,⁴⁵⁷ and the circumstances under which special and initial inspections may be performed are similarly detailed (usually by reference to the appropriate provisions of the Safeguards Document).⁴⁵⁸ It is clear that the carrying out of any of these inspections is a right and not a duty of the Agency.⁴⁵⁹ In practice, usually only about half the permissible number is carried out, whereby the Agency maintains in reserve the legal right to arrange additional visits either randomly or when a specific situation makes this desirable; thus the State rarely has the assurance that during a given period no more routine inspections are permissible.

In addition to inspections, which of course require that a safeguards agreement be in force with the State concerned, the Agency frequently arranges for "pre-operational" visits to assist in negotiating such agreements - and in particular the technical details of the subsidiary arrangements.⁴⁶⁰ Though these visits are usually performed by officials who are qualified as inspectors, they are not classified as inspections and are necessarily arranged informally; consequently the provisions of Section 21.8.1 and those immediately following do not apply.

21.8.2.1. Notice

Pursuant to paragraph 4 of the Inspectors Document, as modified by paragraph 50 of the Revised Safeguards Document, the following periods of advance notice are required:

- (a) Routine Inspections: At least a week; however, if the Agency has the "right of access at all times" (e.g., to a large facility), no notice need be given "in so far as this is necessary for the effective application of safeguards" - but the actual procedures for carrying out such surprise inspections must be specified in the safeguards agreements.⁴⁶¹
- (b) Initial inspections: At least a week.
- (c) Special inspections: At least 24 hours.

21.8.2.2. Discrete, continuous and resident inspections

One important issue relating to control measures that has as yet been only imperfectly resolved relates to the intensity of inspections - in particular, to their duration, continuity, the number of inspectors that may be involved and whether these may take up residence in the controlled State.

The Statute itself, quite properly, gives little guidance. In specifying the limits of the inspection rights of the Agency, Article XII.A.6 merely

permits the dispatch of inspectors who are to have access, "to the extent relevant" and "as necessary" "at all times to all places and data and to any [knowledgeable] person". Potentially this would permit unlimited and constant access — where relevant and necessary.

The First Safeguards Document, the scope of which was limited to small reactors and to other minor facilities, correspondingly restricted the inspection rights of the Agency with respect to these facilities. According to their size and capacity, 0-6 routine inspections were allowed annually — but no limit was placed on their duration or on the number of participants.⁴⁶²

In extending the First Document to include reactors of any size, the original frequency table was projected linearly to a maximum of 12 routine inspections per year; for facilities whose size would by further extrapolation have required an even higher frequency, "the right of access at all times" was provided for.⁴⁶³ While this right was not further defined in the Extension Document, the report of the Working Group responsible for its formulation indicated that such access might be implemented in several ways: an indefinite number of discrete inspections; inspection without prior notice (surprise inspections); or continuous inspection. However, though all these devices (and particularly the last one) could most efficiently be performed by inspectors resident in the State and perhaps even at the facility, the political opposition to this solution was so considerable that it was not even mentioned.

The Revised Document adopted the "access at all times" formulation.⁴⁶⁴ However, of the several ways of implementing it, agreement could only be reached on surprise inspections, which were authorized "in so far as this is necessary for the effective application of safeguards".⁴⁶⁵ For the rest, the Document provided that the actual procedures for implementing such access are to be specified in the relevant safeguards agreement. Though it was immediately recognized that these changes made it appropriate to revise the Inspectors Document, which had been based on the First Safeguards Document and only provided for pre-announced, discrete inspections, no review has yet taken place because of the continuing lack of agreement about resident inspection.⁴⁶⁶

Another step forward was taken in the instrument extending the Revised Document to reprocessing plants. For these, the threshold at which "access at all times" became applicable was set very much lower;⁴⁶⁷ in addition to confirming that no advance notice would be required, a footnote to this provision records the understanding that for facilities above a certain capacity "the right of access at all times would normally be implemented by means of continuous inspections". Again, the specific implementation was made to depend on the particular safeguards agreement. Exactly corresponding provisions were later adopted for conversion and for fabrication plants.⁴⁶⁸

Only one safeguards agreement was concluded under the Extended First Document: that relating to the unilateral submission of the Yankee reactor. Since the United States was a proponent of an extensive interpretation of the access at all times provision, the Submission Agreement authorized the Agency to station inspectors in the United States (a euphemism for resident inspectors), who might carry out continuous inspection or an indefinite number of discrete inspections — without advance notice.⁴⁶⁹

Though the Revised Document appears to direct that the procedure for implementing "access at all times" be included in the safeguards agreement itself, this was soon interpreted as merely requiring inclusion in some formal "supplementary agreement" between the State concerned and the Agency, but which, to preserve flexibility, need not be submitted to the Board for approval.⁴⁷⁰ Whatever the form of the instrument, it should, from the Agency's point of view, specify the visas to be granted to inspectors — preferably requiring a duration of at least 12 months, and permitting an unlimited number of entries as well as extended stays limited only by the duration of the visum; in addition, where technical considerations make this necessary (e. g., when there is a need to carry out continuous inspections over extended periods or to perform a number of surprise visits) or perhaps even where mere economic factors make it desirable (e. g., a great number of discrete inspections must be made in a country or group of countries distant from the Agency), the stationing of one or more resident inspectors, who might even be allowed to bring their dependents, should be provided for.⁴⁷¹ The safeguarded States may in turn insist on special protective devices to make the sudden, unannounced appearance or the long stay of inspectors less onerous.

21.8.2.3. Specification of tasks

The general scope of inspections is described in the Safeguards⁴⁷² as well as in the Inspectors⁴⁷³ Documents, and these provisions are generally completely incorporated by reference into safeguards agreements or the subsidiary arrangements — though in the latter instruments some particular inspection procedures may be particularly described or delimited.

The Inspector General from time to time promulgates general administrative and technical instructions for inspectors. When an official is dispatched to perform an inspection he (or the team) is given specific, confidential instructions concerning the operations he is to carry out; these may refer to parts of the general instructions and must in any case take account of the provisions of the relevant agreements.

21.8.2.4. Duties and rights of and restrictions on inspectors

In carrying out their duties, inspectors are circumscribed by a number of rules in the Statute and in the Safeguards and Inspectors Documents; however these instruments also assign them certain functional rights in addition to the privileges and immunities flowing from the Agency's Agreement on Privileges and Immunities.⁴⁷⁴ The principal duties, restrictions and rights are the following:

- (a) The State may arrange to have inspectors accompanied by its own officials, providing the former are not "thereby delayed or otherwise impeded in the exercise of their functions".⁴⁷⁵
- (b) The visits and activities of inspectors are, subject to the effective discharge of their functions, to "cause the minimum possible inconvenience to the State and disturbance of the facilities inspected".⁴⁷⁶ This speci-

fic obligation of inspectors exemplifies the more general obligations of the Agency to ensure that safeguards are implemented so as to avoid hampering a State's economic or technological development⁴⁷⁷ and are consistent with prudent management practices required for the economic and safe conduct of nuclear activities.⁴⁷⁸

- (c) While inspectors are always instructed to conform to national laws and regulations (including those of the facilities inspected), the Agency is not explicitly required to insist on this restriction; however, most safeguards agreements provide for consultations between the Agency and the inspected State on the best way of harmonizing the activities of inspectors with domestic legal requirements.⁴⁷⁹
- (d) Inspectors may not operate any facility,⁴⁸⁰ may not on their own authority request that the construction or operation of any principal nuclear facility be stopped,⁴⁸¹ and may not through an "initial inspection", hamper or delay the construction, commissioning or normal operation of a facility.⁴⁸²
- (e) Inspectors may, if necessary, require the State to provide appropriate equipment and suitable accommodation and transport.⁴⁸³
- (f) Inspectors enjoy, in addition to the normal privileges and immunities of Agency officials^{483A}, those of "experts on mission for the Agency", i. e., immunity from arrest and detention and from seizure of baggage, inviolability of papers and documents and the right to communicate with the Agency through codes, couriers and sealed bags, and quasi-diplomatic facilities for the exchange of currency and the handling of personal baggage.^{483B} Though in many ways thus treated on par with diplomats, they cannot be declared persona non grata, but can only be expelled after consultation with the Director General.^{483C}
- (g) The State must inform inspectors of the location of, and allow them access to, all safeguarded items covered by the notice of their inspection, and to all data that relates thereto; they must also be allowed access to all data about and to all persons who by reason of their occupation deal with safeguarded items, and the State must direct such persons to co-operate fully with the inspectors.⁴⁸⁴

The first part of this latter provision, which is somewhat obscurely located in the Inspectors Document, is potentially of the greatest importance and at the same time clearly characterizes the nature of the Agency's controls: The inspector arrives with a list of items subject to safeguards (based on submissions, on notices of transfers, on routine reports of production and burn-up and on special reports of losses); he asks to see these items; if he is given access to them and they conform in description, quantity and use to the reported data, he is satisfied; however, if he is not introduced to all the items he wishes to see, he can tentatively (subject to an adequate explanation by the State) signal a non-compliance, without ever searching throughout the State (which he may have a right to do under the "access to all places" provision,⁴⁸⁵ but which is probably a priori a bootless enterprise if there is a real desire to conceal); the potential violation thus having been exposed, it is up to the world community (initially as represented in the Board) to react.

21.8.2.5. Reports

Three types of reports are routinely made after any inspection:

- (a) An internal report by the inspector(s) to the Inspector General.
- (b) Information on the "results" of the inspection, sent by the Agency to the inspected State.⁴⁸⁶ In practice, these reports merely consist of a short statement that no violation has been found — since even if some technical non-compliance was detected it has always been possible to arrange for the situation to be corrected before the report was sent.
- (c) The fact that the inspection was carried out is mentioned in the next subsequent periodic report of the Director General.⁴⁸⁷ Should an inspector find any "non-compliance", he must report it to the Director General, who must then report to the Board.⁴⁸⁸

Finally, the second sentence of paragraph 12 of the Inspectors Document entitles the inspected State to submit a report to the Board if the State disagrees with the report of the inspectors. While through juxtaposition this appears to refer to the reports mentioned in paragraph (b), it actually must relate to a non-compliance report transmitted to the Board — for it would hardly be of interest to a State to raise in that organ a matter which the Agency has confidentially communicated to the State without any indication that it involves non-compliance requiring the attention of the Board.

21.9. FINANCIAL QUESTIONS

21.9.1. Costs of safeguards

It is too early to predict accurately what the cost of safeguarding a given installation will be once the Agency's controls apply to a considerable number of significant nuclear operations around the world.⁴⁸⁹ Certainly such expenditures should never constitute an important fraction of the cost of establishing or operating a facility — and of course they will always be negligible compared to the cost of the nuclear arms race that safeguards are designed to prevent. Still, even though these expenses are small in relative terms, some arrangements must be made for them to be borne.

The draft Statute prepared by the Negotiating Committee, which still provided for safeguards only in relation to Agency projects, did not contain any provision explicitly dealing with the financing of these controls. In the redraft of the Article relating to finances presented by the Canadian representative at the Working Level Meeting, it was provided that the cost of implementing safeguards, whether with respect to Agency projects or to any bilateral or multilateral arrangements, would be considered as an "administrative expense" to be apportioned among the Members;⁴⁹⁰ the Soviet representative proposed an amendment which would have eliminated the costs of safeguards in relation to bilateral and multilateral arrangements from the administrative budget⁴⁹¹. The Meeting, at the suggestion of South Afri-

ca,⁴⁹² adopted a compromise, which left intact the Canadian proposal now appearing in Article XIV. B. 1 (b) and added the provision which now appears as Article XIV. C.⁴⁹³

At the Conference on the Statute these provisions were not changed or seriously challenged.⁴⁹⁴ However, several amendments tentatively proposed during the last days of the Conference, which would have clarified the attribution of expenses incurred in safeguarding unilaterally submitted activities⁴⁹⁵ (a possibility that the Conference itself had added to Article III.A.5) as well as those related to the imposition of sanctions,⁴⁹⁶ were turned down by the Co-ordination Committee as unnecessary; the Committee suggested that the organs of the Agency would be able, with the agreement of the States concerned, to fill any hiatus.⁴⁹⁷

Statute Article XIV. B. 1 (b) therefore provides that the cost of safeguarding Agency projects or bilateral or multilateral submissions is to be considered as an "administrative expense" (all of which are apportioned among all Member States according to a scale annually established by the General Conference). Article XIV. C foresees that the safeguards agreements relating to such submissions (e. g. , Safeguards Transfer Agreements) might provide for the recovery of some of these costs by the Agency - presumably from the Governments parties to the agreement. The Statute makes no explicit provision concerning the costs incurred with respect to unilateral submissions.

Even though the Statute thus appears to cover adequately the principal situations, it actually leaves some large areas of doubt. These include:

- (a) Are the expenditures referred to in the Statute only those incurred by the Agency itself (e. g. , travel costs of inspectors) or do they include those that might be incurred by the State or the facility operator (e. g. , in preparing safeguards reports to the Agency⁴⁹⁸ or in shutting down a facility for an inventory control or in complying with any special Agency requirements regarding the chemical processing of irradiated materials⁴⁹⁹)?
- (b) How should expenses attributable to the failure of a party to comply with some provision of a safeguards agreement (e. g. , the imposition of sanctions or perhaps merely an unnecessary inspection caused by a misleading report) be allocated?
- (c) Is it obligatory that safeguards agreements relating to bilateral or multilateral submissions include a provision for the Agency to recover its costs and, if so, to which Government (to that of the Receiving State, which has benefitted from assistance, or to that of the Supplying State, which is now relieved of the task of applying safeguards itself) should they be charged?
- (d) Can it be assumed that the silence of the Statute with regard to the costs of safeguarding unilaterally submitted activities means that the same rule should apply, *mutatis mutandis*, as applies to the control of bilateral and multilateral arrangements? ⁵⁰⁰

The Safeguards Document does not deal with finances, and thus gives no reply to any of these questions. The Inspectors Document is similarly

unhelpful, except that it provides that if inspectors request and receive accommodations, transport or the use of any equipment, reasonable compensation shall be paid "if agreed on".⁵⁰¹ Consequently any relevant questions must be resolved in the safeguards agreements themselves.

None of the Project Agreements include any provision regarding the distribution of expenses. This may in part be due to the fact that up to now the projects related to relatively small reactors, whose control rarely involves any special costs; also, since these Agreements relate to assistance provided to a Member State by or through the Agency, it would in any case not seem appropriate to impose explicitly any costs on the organization. As a result, the Agency and the Government each bear those expenses incurred by it, subject to ad hoc reimbursement in special situations.

All Safeguards Transfer Agreements and all except the first Unilateral Submission Agreement provide that costs incurred in connection with safeguards should ultimately be borne by the Agency, regardless of whether they were originally incurred by it, by the State, or by the controlled facility.⁵⁰² This approach has repeatedly been challenged as not taking account of the possibility of the Agency recovering expenses pursuant to Statute Article XIV. C. However, the majority of the Board have adopted it,⁵⁰³ at least on a tentative basis, pragmatically in order not to discourage submissions to Agency safeguards and also on the more basic ground that the imposition of international controls is in the interest of the world community rather than in that of the States directly concerned.⁵⁰⁴ The subsidiary arrangements circumscribe this liability by providing that certain expenses will not be charged to the Agency (such as those incurred by the State in preparing routine reports or in having its officials accompany inspectors); furthermore, costs are only reimbursed by the Agency if before they are incurred the Agency is informed of the proposed charge and has given its agreement.⁵⁰⁵

The financial section of most recent Transfer and Submission Agreements specifically leaves open the allocation of expenses that might arise due to the failure by any party to comply with its safeguards obligations.⁵⁰⁶

Because of the mounting costs of both the preparation and the implementation of safeguards⁵⁰⁷ and the controversy as to how these are ultimately to be met, the Board decided to segregate all safeguards expenditures in a separate Section of the 1970 and subsequent budgets.⁵⁰⁸

21.9.2. Liability

21.9.2.1. Physical damage

As discussed at greater length in Sections 23.1 and 29.1, the nuclear energy industry has from its very beginning been notably damage and liability conscious. Thus the remote possibility that inspectors might cause a catastrophic disaster at a nuclear installation has frequently occupied the attention of the drafters of safeguards instruments, and at least some of the opposition to safeguards can be attributed to fears on this score.

The Statute itself does not deal with the possible liability the Agency might incur in implementing its control or other functions.⁵⁰⁹

The first occasion when certain aspects of this question were raised, other than en passant, was during the consideration of the Secretariat's first

draft of the Inspectors Document.⁵¹⁰ Without dealing at all with the possible liability of the Agency or its inspectors for damages caused by the latter or with the general question of their possible claims should they be injured in carrying out their duties, it was merely proposed to oblige States being inspected to inform inspectors of any health hazards and to provide that if the latter disregarded such warnings they would do so at their own risk. The Board's Ad hoc Committee on the Agency's Inspectors decided to delete this provision on the ground that it raised too many complex issues of the possible reciprocal liability of the Agency and its inspectors vis-à-vis the State and its installations; however, the Committee recommended that these points be considered when negotiating safeguards agreements.

Subsequently, but before the Inspectors Document was placed into effect, the Secretariat prepared and the Board in April 1961 considered a study on "The Agency's Liability for the Actions of its Inspectors" — which also dealt briefly with the possibility of claims directly against inspectors and with the potential liability of the inspected State to the Agency or its inspectors. On its main subject the principal conclusions were:

- (a) Catastrophic accidents can only occur in connection with a nuclear facility. Therefore inspectors should be prohibited from operating any nuclear facility. Operators of safeguarded facilities should be informed of this restriction, and also that any request made by an inspector for the carrying out of a particular operation is always subject to all applicable safety considerations and thus the operator must assume the responsibility in complying with it; if he does not believe that he can do so safely, he must indicate to the inspector and if necessary to the Agency why safe compliance is not possible. By these means any possibility of a major accident for which the Agency might be liable can be eliminated.
- (b) Inspectors might cause relatively minor accidents involving nuclear materials (e.g., in connection with sampling⁵¹¹).
- (c) Inspectors might be involved in non-nuclear accidents, either while carrying out their inspection duties or while off duty.
- (d) While compliance with certain operational requests made by inspectors might result in considerable expense, the Agency's liability is unlikely to become involved, for if the request is reasonable it is covered by the State's general obligation to comply with the safeguards agreement, and if it is unreasonable the State can and should appeal to the Board before complying.

The Secretariat thus concluded that, in view of the limited scope of Agency inspections, serious damage attributable to the Agency would be most unlikely. Both as to such claims and as to those that the Agency might raise against a State, the general principles of international law should be sufficient to govern their substantive disposition. Thus this matter need be dealt with in safeguards agreements only if it were desired to vary or to limit the normal rules on liability, perhaps in line with one of the nuclear liability conventions then being evolved.

The Secretariat also examined the advisability of obtaining insurance to cover its inspectors. It was found possible to cover them by the Agency's general liability policies; however these, while containing some radiation damage coverage, explicitly exclude nuclear incidents in reactors.⁵¹² Indeed, insurance companies were unwilling to give any quotations relating to such accidents, in part because of the novel functions of inspectors, and in part because these would usually be carried out in countries not covered by any of the nuclear insurance pools. However, in the light of the Secretariat's conclusion recorded under (a) above, such coverage was not considered vital.

As a result of these considerations, neither the Inspectors Document, nor either of the Safeguards Documents, contain any general provision concerning liability.⁵¹³ However, particular provisions have been included in a number of safeguards agreements:

- (i) Except for the NORA Project Agreement and the First US 4 Reactors Submission Agreement, no safeguards agreement concluded under the First Safeguards Document contained any provision concerning liability.
- (ii) Since the NORA Supply Agreement provided for the lease to Norway of fuel to which the USAEC retained title, that Agreement included a hold-harmless clause running from the Agency to the USAEC and from Norway to the Agency;⁵¹⁴ in addition, because of the relatively close involvement of the Agency in the conduct of this project, a hold-harmless clause was also included in the Project Agreement, which was formulated broadly enough to cover the Agency's inspectors.⁵¹⁵
- (iii) The US 4 Reactors Submission Agreement, which in effect was a practice exercise for the benefit of the Agency, contained a clause by which: on the one hand the Agency agreed to hold harmless the Government and persons who might claim under it, but on the other hand the Agency was assured of coverage under the "Price-Anderson Act" should a nuclear incident occur in one of the reactor facilities.⁵¹⁶
- (iv) In connection with all safeguards agreements concluded under the Revised Document, some provision is always made concerning liability:

(A) If possible, a clause along the following lines is included:

"[The Government] shall ensure that any protection against third-party liability, including any insurance or other financial security, in respect of a nuclear incident occurring in a nuclear installation under its jurisdiction shall apply to the Agency and its inspectors when carrying out their functions under this Agreement as that protection applies to nationals of [the State]."⁵¹⁷

- (B) In some agreements this provision is so drafted as to relate to particular national legislation (e.g., the US Price-Anderson Act).⁵¹⁸
- (C) If a State is bound, by national legislation or international treaty, not to discriminate against the Agency or its officials in this field, but is unwilling to restate such obligation in the safeguards agreement, then the Director General in presenting the agreement for the Board's approval places on record his understanding of the extent to which the Agency is protected without such a provision.

- (D) If the safeguards agreement is trilateral in form then each of these alternatives is separately available with respect to each of the two Governments. ⁵¹⁹

21.9.2.2. Disclosure of confidential information

A potential liability of particular concern in connection with international safeguards arises from the possibility that inspectors or other Agency officials may reveal confidential information of commercial value. Though the legal consequences of such a disclosure are not dealt with in the Statute,⁵²⁰ Article VII.F provides that "the Director General and the staff... , subject to their responsibilities to the Agency, ... shall not disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Agency".⁵²¹ This prohibition was considered important enough to be listed in the "General Principles to be Observed in the Provisional Staff Regulations of the Agency",⁵²² and was consequently included in expanded form in Provisional Staff Regulation 1.06.⁵²³

In the above-mentioned study of The Agency's Liability for the Actions of its Inspectors, the Secretariat concluded that if an inspector should violate this obligation, the Agency might be rendered liable to the owner of the affected information. Therefore, to reduce the possibility of improper disclosures, inspectors should be informed and reminded of the existing prohibitions, of the possible penalties that could be imposed on them pursuant to the Staff Regulations and Rules,⁵²⁴ and of the likelihood of the Agency waiving their immunity from private suit⁵²⁵ — but it was recognized that such disciplinary measures were most likely to be effective with respect to permanent or long-term staff members. Though the possibility of obtaining fidelity insurance was mentioned, later exploration disclosed that no coverage could conveniently be obtained.

Paragraph 41 of the First Safeguards Document in effect merely repeated the statutory prohibition. Since nothing was thus added to the existing and generally binding rule, this paragraph was not especially referred to in the Project Agreements concluded under that Document. However, at the request of Governments, the paragraph was incorporated by reference into several Safeguards Transfer and Submission Agreements, and a further rule was added: that the Agency itself should not publish or communicate, except under narrowly specified conditions, any information obtained by it under these Agreements.⁵²⁶

In the Revised Document, paragraph 13 again repeats the statutory prohibition, but adds the additional requirement that "the Agency shall take every precaution to protect commercial and industrial secrets". In addition, paragraph 14 prohibits, except under three specified conditions, the publication or communication by the Agency itself of "any information obtained by it in connection with the implementation of safeguards" — a prohibition which is not restricted to confidential or valuable information. These two paragraphs of the Document are among those that are now routinely incorporated into all safeguards agreements.⁵²⁷

The Conference of Non-Nuclear-Weapon States, after considering special documentation on this subject,⁵²⁸ included in its principal safeguards resolution a recommendation to the Agency that it incorporate, in safeguards agreements concluded pursuant to the Non-Proliferation Treaty,

"the rules laid down against. . . industrial espionage, by the statute of the International Atomic Energy Agency, the decisions of the Board of Governors, and the directives of the Director General. . ." ⁵²⁹

To assure compliance with these restrictions, and to avoid any possible liability arising out of their violation, the Secretariat has promulgated several internal instructions:

- (A) In the "Administrative and General Instructions for Safeguards Inspectors" these officials are reminded of the multiple prohibitions in the Statute, the Staff Regulation and the Safeguards Document, and are further instructed not to "disclose unnecessarily any other [i. e., unclassified] information they might obtain, [nor to] seek to obtain any confidential information not necessary for the efficient performance of their inspections".
- (B) The Department of Safeguards and Inspection has established a special procedure for receiving, marking, filing, reproducing and circulating documents which safeguarded Governments indicate are confidential, as well as any papers based on information contained in such documents. These procedures bypass the Agency's Central Registry, which is instructed not to open incoming safeguards mail that is appropriately marked.

21.10. SETTLEMENT OF DISPUTES

Paragraph 12 of the Revised Safeguards Document explicitly provides for consultations between the Director General and States regarding the application of the Document - i. e., the implementation of safeguards agreements.

Should a matter not be susceptible of settlement at that level, then either the Director General or the State can submit it to the Board of Governors. For this purpose, Procedural Rule 11 (c) of the Board⁵³⁰ provides that any Member State may require the Board to convene within 72 hours to consider any matter of an urgent character arising out of Statute Article XII.A.6 (that relating to inspections). It is only after a question has been considered by the Board without an agreement with the State having been reached, that a genuine dispute might be considered to exist between the Agency and the State.

The Statute does not contain any special provisions concerning the settlement of disputes that might arise out of the implementation of safeguards.⁵³¹ But Article XI.F.6 requires that every Project Agreement "Make appropriate provision regarding settlement of disputes" - and there is no indication that these provisions should not automatically apply with respect to the safeguards to which the project is to be subject.

The lack of a standing tribunal,⁵³² such as those established with respect to both the ENEA⁵³³ and the EURATOM⁵³⁴ control systems and to which questions regarding the implementation of safeguards can immediately be referred, has two serious disadvantages: the likelihood of delays in obtaining interim decisions if first an ad hoc tribunal must be established (which necessitated the introduction of the special provisions explained at the end of this Section); and the possibility that a series of ad hoc tribunals established pursuant to a number of similar safeguards agreements concluded in relation to either the Non-Proliferation or the Tlatelolco Treaty, may reach different decisions with respect to identical legal provisions. More fundamental is the question whether it is proper for the Board of Governors, which is a carefully balanced international political body with responsibilities for safeguards vis-à-vis the community of nations as a whole, to yield (e.g., on the extent to which the Agency might perform inspections it considers necessary) to no matter how respectable a group of three or five arbitrators — only one of whom is selected solely by the Agency.

Neither the First nor the Revised Safeguards Document contains any provision regarding the settlement of disputes. However, paragraph 14 of the Inspectors Document provides that disputes between a State and the Agency arising out of the exercise of the functions of inspectors are to be settled in accordance with the disputes clause of the pertinent safeguards agreement — thus deliberately excluding the disputes procedure of the Privileges and Immunities Agreement, the substantive provisions of which are to be applied to inspectors.⁵³⁵

Every safeguards agreement contains an arbitration provision along the lines of that first developed for the JRR-3 Project and Supply Agreements.⁵³⁶ Depending on the form of the agreement, the bilateral or the trilateral variation of that provision is used.⁵³⁷ In most agreements no restriction is placed on the power of the arbitral tribunal to make a final and binding disposition of any type of dispute, but in both the Bradwell and the Mexican Submission Agreements the reservation of the Board's powers with respect to sanctions is formulated broadly enough to apply to both interim and final decisions.⁵³⁸

With respect to interim measures during the pendency of a dispute, two types of provisions have evolved:

- (a) All Project Agreements provide that, during the pendency of a dispute, the decisions of the Board (on any aspect of safeguards) shall, if they so provide, be given effect immediately;⁵³⁹ basically the same provision is used in the US 4 Reactors Submission Agreement⁵⁴⁰, and in almost all other Safeguards Transfer Agreements concluded under the Revised Document⁵⁴¹ the Board is empowered to make interim decisions applying to all aspects of these safeguards agreements, except the purely financial ones.
- (b) All Transfer Agreements concluded under the First Document,⁵⁴² the Japan/UK Agreement under the Revised Document,⁵⁴³ as well as the Yankee and Bradwell Submission Agreements,⁵⁴⁴ empower (by means of a slight addition to the arbitration clause) the arbitral tribunal to make binding interim decisions or orders, except on questions involving the ability of the Agency to apply safeguards (in case of inability the

Agency can generally refuse to accept, or may suspend, its responsibility to apply safeguards and thereby may effect the continued imposition or the reimposition of the controls of the Supplying State) and those relating to non-compliance and sanctions; as to those, the Board's power to make binding interim decisions is reserved.⁵⁴⁵

21.11. INTERACTION WITH OTHER SAFEGUARDS SYSTEMS

Although the Agency administers the only world-wide safeguards system in the nuclear energy field, two other types of systems are in operation. One of these includes the safeguards exercised on a bilateral basis by the United States, the United Kingdom, and by some other principal suppliers of nuclear assistance. The other includes regional safeguards systems, two of which are administered by two overlapping European organizations: the European Atomic Energy Community (EURATOM) and the European Nuclear Energy Agency (ENEA) of the Organisation for Economic Co-operation and Development; in addition the Agency for the Prohibition of Nuclear Weapons in Latin America is expected to administer a rudimentary system supplementary to that of the IAEA.

It is not intended to compare here the various safeguards systems,⁵⁴⁶ or even to present the principal features of the other systems, but only to consider their possible interaction with that of the Agency. For this purpose it is sufficient to note that the actual control procedures of all these systems, though largely based on quite different legal approaches and techniques,⁵⁴⁷ are in many ways similar to those prescribed by Article XII.A of the Agency's Statute. In part this is so because these procedures constitute the logical elements of any nuclear control system, in part because practically all the parties to the instruments embodying these systems participated in the Conference on the Statute (which took place after the conclusion of many of the early bilateral agreements but before the formulation of the two European agreements), and finally because it was always recognized that it would be desirable to achieve technical compatibility among the different systems.

The interaction of these safeguards systems with that of the Agency — or with each other — can fundamentally take three forms: overlapping (duplication), supersession or collaboration.

21.11.1. Overlapping

It is easy to see how two or more safeguards systems might come to overlap, i.e., a particular item or operation might become subject to more than one safeguards authority. This can arise, for instance, if the Agency supplies or assists in the supply of a reactor, and consequently safeguards both that reactor and any special fissionable material produced in it;⁵⁴⁸ at the same time the nuclear fuel is received from another supplier who insists (as the Agency does whenever it is the supplier) on safeguarding the fuel, as well as the reactor while it contains the fuel and any special fissionable material produced in or by its use.⁵⁴⁹ These situations actually do arise,

and they will occur more and more frequently as international trade in nuclear materials becomes more and more fluid and multilateral. Thus in Denmark the Agency was applying safeguards, under the Denmark/UK Safeguards Transfer Agreement,⁵⁵⁰ to the British supplied and fuelled DR-3 reactor, while the United States was still applying its safeguards to that reactor because it supplied the heavy water;⁵⁵¹ in Norway the Agency may be required to safeguard the Halden reactor under a proposed Norway/USA Safeguards Transfer Agreement, while at the same time ENEA is controlling the reactor because it constitutes a joint project of that organization.

Such duplication or even further multiplication of controls is of course troublesome for the operator of the controlled facility, even if every effort is made to harmonize the control systems; moreover, though duplication may improve the certainty of the controls it may also result in weakening them if the several authorities (under pressure from the controlled State) start to rely on each other implicitly without any formal collaboration (as discussed in the following Sections). However, control systems of the type administered by the Agency are not mutually exclusive, since they require only that the items covered not be used for any military purpose, that certain information be made available about the actual use of such items, and that inspectors be given access to them. One of the few possibilities of genuine incompatibility (i. e., of one system establishing a requirement with which the State cannot comply without violating another system) arises from the possible obligation to deposit certain excess material with the safeguarding authority⁵⁵² — since the same material cannot be deposited with more than one authority; another might arise from the related requirement that each control authority approve the means of reprocessing irradiated fuel.⁵⁵³

No provision of the Agency's safeguards system deals directly with the problem of overlapping controls — it is neither stated that such situations be avoided, nor that certain measures be taken or consequences drawn if they occur. Indirectly, the Agency is expected to take into consideration the existence of other controls on items it is responsible for safeguarding, because of the injunction in paragraph 17 of the Revised Document that each "safeguards agreement shall take account of all pertinent circumstances at the time of its conclusion", and because paragraphs 9 and 10 require the Agency's safeguards to be administered in as unobtrusive a manner as possible.

21.11.2. Supersession

Duplication of safeguards is obviously undesirable.⁵⁵⁴ Consequently, supersession of one safeguards system by another is foreseen in a number of instruments relating to safeguards. In principle such supersession might be of three types: transfer, reliance or delegation.

21.11.2.1. Transfer of control

The Agency's Statute foresees the possibility that States may request the Agency to apply its safeguards to bilateral or multilateral arrangements — a term broad enough to include international organizations.⁵⁵⁵ Under this authority the Agency has already assumed responsibility for administering

safeguards with respect to a number of bilateral agreements between Member States. While neither the Statute nor the Safeguards Document specify that such assumption need necessarily result in the termination or interruption of the bilateral controls, in practice every Safeguards Transfer Agreement provides for the suspension of the original safeguards;⁵⁵⁶ as a matter of fact, such suspension is one of the principal inducements for the controlled State to agree to the imposition of Agency safeguards – and contrarywise States are unlikely to agree to such an imposition if thereby the number of authorities exercising controls in their territories is increased. Thus in respect of these arrangements we can speak of a "transfer" of safeguards to the Agency – though actually only the responsibility is transferred and not the precise rights and functions of the original control authority, since these are newly established between the Agency and the safeguarded State in the safeguards agreement and the instruments ancillary thereto.⁵⁵⁷

The Statute makes no provision for the Agency itself to transfer its safeguards responsibilities to any other authority. Although not prohibited, such a transfer would be contrary to the objective of establishing a single nuclear safeguards system with as universal a scope as possible.

21.11.2.2. Reliance on other system

As indicated previously, if an item safeguarded by the Agency is transferred from the jurisdiction of the State with which the applicable safeguards agreement was concluded, then the Agency must bring the item under an appropriate agreement with the receiving authority if it is to continue its control. If this is not possible, the Agency will in general prohibit the transfer, and must always do so if the item in question was controlled under a Project Agreement.⁵⁵⁸

However, in respect of other types of safeguards agreements another possibility is provided for in paragraph 28(d) of the revised Safeguards Document, which is now routinely incorporated into all non-project safeguards agreements and which in fact had been anticipated by ad hoc provisions in practically all such agreements concluded under the First Document:⁵⁵⁹ the Agency may permit a transfer if the item will be subject, in the Receiving State, to safeguards other than those of the Agency but generally consistent therewith and accepted by the Agency.⁵⁶⁰ Neither the Safeguards Document nor any safeguards agreement indicates on what criteria (technical, political or other) the decision of the Agency to rely on such other system is to be based, nor whether any agreement between the Agency and the new safeguarding authority is required. In principle no such formality is necessary if the Agency can satisfy itself by other means of the reliability of the alternative system.

In certain situations another safeguarding authority that is considering whether to permit the transfer, beyond its territorial jurisdiction, of items under its control, might terminate its safeguards in reliance on those of the Agency. This possibility is explicitly foreseen by Article 2(b) of the European Security Control Convention⁵⁶¹ when ENEA safeguarded material is to be transferred to a State not party to the Convention.

21.11.2.3. Delegation of control

The third method of supersession is delegation — which lies between the two described above. It assumes an agreement between two (or more) safeguarding authorities that, to avoid duplication of control in a given State with respect to particular items, one authority is to delegate to the other certain safeguards functions in defined situations provided that it receives from the other specified current information on the safeguarded items. This device might, for instance, be useful if a State desires to transfer Agency safeguarded materials for temporary processing in another State that is unwilling to accept Agency safeguards because it is already subject to the controls of another authority; if the amounts to be transferred are so large as to preclude termination by reason of reliance on the other system (which would in any case be somewhat inappropriate because the material is to be returned to Agency controls after it has been processed and retransferred⁵⁶²), the Agency could permit the transfer if the other control authority explicitly agrees to assume responsibility vis-à-vis the Agency.

Such a delegation, from ENEA to EURATOM, is explicitly foreseen in Article 16 (a) of the European Security Control Convention. It is not included in the Agency's Statute or in the Safeguards Document, but has been mentioned from time to time. Since in the Revised Document the Board has held that in certain situations the Agency may rely entirely on another authority, then a fortiori it should be able to delegate its control functions (at least temporarily), and since it may accept the complete transfer of other safeguards it should be able to accept a delegation if the functions to be exercised are consistent with its operations.

Among the many divergent preliminary proposals for the control Article of the Non-Proliferation Treaty, several would have required the Agency, though assigned general responsibility for all safeguards to be carried out in relation to the Treaty, to delegate to regional organizations in general, or to EURATOM in particular, the exercise of controls within their territories. These proposals were sponsored principally by or on behalf of the EURATOM States, which considered their organization to be well-established, reliable, intimate and inoffensive, and correspondingly feared the Agency with its wider political participation; conversely they were strenuously opposed by the Soviet Union, which distrusted this very intimacy on the ground that the West European States (and particularly Germany) could not be trusted to police themselves. Ultimately this dispute could not be resolved and was instead relegated to the Agency, through the somewhat obscure provision in Article III.4 of the Treaty calling on the Agency to conclude safeguards agreements with States "either individually or together with other States". In effect this leaves it to the Agency's Board of Governors to reach a solution (or at least to sanction one reached in some other forum) that will satisfy the still widely divergent views of the East and West European States — without which it is likely that one group or the other will boycott the Treaty. It remains to be seen whether such a solution will involve any actual delegation by the Agency of part or all of its control responsibilities and whether such delegation (particularly if it is extensive) will also provide for the Agency to verify the results of controls exercised by EURATOM.⁵⁶³

21.11.3. Special relations

While overlapping or supersession of safeguards are different methods of reacting to particular situations involving actual or potential duplication of controls as to particular items, it appears desirable to establish some more basic relations among the several safeguards systems — respecting the distinct political rationale of each but avoiding as far as possible a proliferation of, and inevitably competition among, different control measures. Not only should these measures be kept uniform, but if possible they should be administered jointly, or co-operatively or at least uniformly.

21.11.3.1. Co-operation

With respect to the development of control measures, there are certain devices for achieving co-ordination. As to bilateral safeguards (which in any event are being rapidly phased out by the transfer of these responsibilities to the Agency), co-operation with the Agency results almost automatically from the representation of all the principal Supplying States on the Board. Consultations with ENEA can and do take place under Articles III.1 and IV of the Co-operation Agreement.⁵⁶⁴ Despite the lack of a formal agreement with EURATOM,⁵⁶⁵ informal technical contacts as to safeguards methodology have taken place.

In the actual administration of safeguards there are a number of points where co-operation would be desirable — but no arrangements to this end have yet been made. For example, in considering the intensity of controls to be applied to nuclear materials it may be desirable to know both whether the same materials are subject to other controls and also whether the State possesses facilities in which such materials might be processed, and whether these facilities in turn are under any control.⁵⁶⁶ In particular, when the Agency suspends or even terminates safeguards as to specified nuclear materials because others have been substituted,⁵⁶⁷ it is desirable to know whether the latter are already subject to another safeguards system — for in that case the total amount of material under control in the State would be reduced by the transaction, and correspondingly the amount of unsafeguarded material is increased.

21.11.3.2. Special tasks

It seems unlikely that the Latin American Agency to be established under the Tlatelolco Treaty⁵⁶⁸ will set up any controls duplicating those of the IAEA, and therefore no problems of overlap, supersession or co-ordination should arise once the IAEA enters into the safeguards agreements foreseen in the Treaty. However, in implicit recognition of the fact that the IAEA system is at present limited to the control of items notified to it (and does not enable the organization to search in a State for unregistered items or activities), the Treaty authorizes the Latin American Agency to conduct special inspections at the request of any Contracting Party.⁵⁶⁹ Though it is not indicated whether these inspections might be delegated to the IAEA, earlier drafts of the Treaty would have provided for that possibility, and

indeed such a solution is not precluded by the actual instrument. It is specifically foreseen that the IAEA will observe any peaceful nuclear explosions to ensure that these are carried out without violating the Treaty.⁵⁷⁰

Though the Agency has already entered into one unilateral Safeguards Submission Agreement motivated by the Treaty,⁵⁷¹ it has not yet taken any position on whether it will assume any of the other responsibilities foreseen for it in that instrument: the carrying out of special inspections designed to find and expose unregistered activities or to assure the peaceful nature of explosions. It should, however, be clear that there is no statutory obstacle. The Agency's authority under Statute Article III.A.5 "to apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement" and under Article XII.A.6 to dispatch inspectors "who shall have access... to all places... as necessary... to determine whether there is compliance... with any... conditions prescribed in the agreement between the Agency and the... States concerned" is certainly broad enough to enable it to perform these tasks. The only objection could therefore be that these functions are not foreseen in the current Safeguards Document — but the scope of that Board-promulgated instrument is not a measure of all that the IAEA may do in the safeguards field.

21.11.3.3. Verification

The Non-Proliferation Treaty does not itself establish any control system, so that no problem of duplicating its safeguards or co-ordinating them with those of the Agency can arise directly.⁵⁷² However, it is expected that the Agency will work out a special regime with EURATOM, some of whose members have up to now shown no willingness either to substitute the Agency's controls for those of their own organization or to permit the Agency to duplicate these. It is therefore possible that the Agency will more or less completely delegate its safeguards functions to EURATOM with respect to the five non-nuclear-weapon members of the latter, provided that the Agency might verify the controls exercised by EURATOM, in accordance with a special agreement between the two organizations, which would specify to what extent such verification would relate only to the methodology of the regional controls (e.g., how often are inspectors actually dispatched, and where) and to what extent also to actual results (e.g., review of data on the quantity of nuclear material at each controlled installation). An exclusive reliance on verification would have the advantage, from the point of view of the States concerned, that they themselves would only be exposed to a single set of controls — those of EURATOM. The Agency would of course have to develop special procedures for exercising such a specialized secondary control function, for which there is as yet no precedent or guidance.

21.12. SAFEGUARDS FUNCTIONS OF AGENCY ORGANS

With minor exceptions neither the Statute, nor the Safeguards and the Inspectors Documents, nor any safeguards agreements indicate which organs of the Agency are to take the actions or decisions called for by these instru-

ments. Thus, largely lacking formal guidance, the distribution of functions in this field has been and still is being developed by practice. In the Documents and agreements this lack of definition (achieved by generally referring to the "Agency" rather than to a particular organ) is deliberate, so as neither to hinder unnecessarily the introduction of more practical and flexible administrative practices requiring extensive delegations to lesser and to subsidiary organs, nor to endow such organs with independent powers not foreseen in the Statute.⁵⁷³

In connection with the Board's role in the implementation of safeguards, it should be noted that all its decisions (except budgetary ones) require only a simple majority.⁵⁷⁴ However, in the course of formulating the Revised Safeguards Document, an informal understanding was reached that certain decisions (a request to stop the construction or operation of a facility; a determination that a principal nuclear facility should be considered as "substantially supplied" under a Project Agreement)⁵⁷⁵ would require a two-thirds majority.

At the Conference of Non-Nuclear-Weapon States a great deal of dissatisfaction was expressed with the current composition of the Board of Governors, both in connection with the promotional aspects of the Agency and more especially in connection with the exercise of safeguards. This was reflected particularly in Resolution F,⁵⁷⁶ whose Preamble alleges the maldistribution of the Board and which:

"Recommends the establishment, within the International Atomic Energy Agency and under its Board of Governors, of institutional machinery on safeguards of which both countries supplying nuclear materials, and member countries, whether possessing nuclear facilities or not, shall form part".

No action has yet been taken by the Agency on this proposal, though steps have been taken to adjust the composition of the Board.⁵⁷⁷

Independently of this proposal, others have recently been advanced for the establishment of a Board Committee on safeguards, which could on a current basis supervise the ever more extensive activities of the Director General in connection with the implementation of the ever more important safeguards function. In particular, the Soviet Governor in July 1967 proposed the establishment of a special committee consisting of the Governors of those States that were also represented on the Eighteen-Nation Committee on Disarmament (which would incidentally not help in correcting the alleged nuclear-power bias of the Board) to consider certain structural aspects of the administration of safeguards. On the other hand, the Director General has proposed the establishment of an "external audit" body for safeguards, to report to the Board and the General Conference and apparently to be elected by the latter.⁵⁷⁸ The Safeguards Committee (1970)^{578A} is, because of its potentially large and in any event undefined membership (transcending that of the Board), not suitable for carrying out a delicate supervisory function, and will probably restrict itself to the wide range of pending policy questions.

21.12.1. Promulgation of the Safeguards and Inspectors Documents

The formulation, review and revision of Safeguards and Inspectors Documents is primarily the function of the Board, under Statute Articles VI.F and VII.B (final sentence). The Director General participates in this procedure to the extent requested to do so by the Board: in connection with the formulation of the First Safeguards Document and of the Inspectors Document, as well as the several extensions of the First and of the Revised Safeguards Documents, he has prepared and presented to the Board or to its Committees (Working Groups) various draft proposals; no such requests were made in connection with the revision of the extended First Safeguards Document and consequently the Secretariat's participation was formally limited to assisting the Chairman of the Working Group established by the Board — though in practice the drafts presented by the latter were also based largely on the work of the Secretariat.⁵⁷⁹

These Documents are not among the instruments that must be submitted to the General Conference pursuant to Article V.E of the Statute. Nevertheless, both the First and the Revised Safeguards Documents, and the extension to the former, have only been promulgated by the Board after texts provisionally approved by it had been "noted" by the General Conference. As pointed out above, the precise legal character of the Conference's participation was, purposely, not clarified.⁵⁸⁰

As the Board has itself promulgated each version of these Documents, it has not, through their previous submission to the Conference, become bound so to submit any extension or revision. The repeated and substantially unvarying practice of such submission can at most create a political expectation and not a legal requirement. Nor can one invoke the principle that an instrument can only be varied by a procedure of at least equal solemnity with that by which it was adopted, if the submission to the Conference, whether under Statute Article V.D. or V.F.1, was not part of the legally necessary procedure. However, the Board may be under some obligation to respond to the Conference's request to report to it the results of any reviews of the Document.⁵⁸¹

That the Board's submission of several of these instruments to the Conference was based merely on political considerations and not on legal necessity, is suggested by the following:

- (a) While the Inspectors Document, whose legal status is essentially the same as that of the Safeguards Document, was transmitted to the Conference solely for information both before and after it was placed into effect,⁵⁸² it was never submitted for consideration;
- (b) After the provisionally approved First Safeguards Document⁵⁸³ had been considered by the General Conference, the Board amended several of its provisions before promulgating it, without reporting these changes to the Conference;
- (c) Before the Conference had had an opportunity to consider the provisionally approved Revised Safeguards Document, the Board already approved several safeguards agreements based on the new version;⁵⁸⁴
- (d) The extensions of the Revised Document to reprocessing plants, and later to conversion plants and to fabrication plants, were provisionally ap-

proved by the Board and thereupon applied by the Secretariat and incorporated into several safeguards agreements, while the texts of the extensions were only reported to the Conference for information.⁵⁸⁵

21.12.2. Conclusion of safeguards agreements

The negotiation of safeguards agreements has always been performed by the Director General. Though initially, in respect of Project Agreements, it was suggested that before entering into consultations with the States concerned he should first submit the project request to the Board, the practice soon became established that the Secretariat commences and usually concludes the negotiations before the Board even considers the project;⁵⁸⁶ as a matter of fact, the Director General generally requests approval of a project or safeguards arrangement only when he can simultaneously submit the proposed texts of the related agreements.

Statute Article XI.E requires the Board to approve each project; however, no such requirement is stated with respect to bilateral, multilateral or unilateral requests for Agency safeguards. Though the Statute does not require that the Board approve the texts of safeguards agreements (even of Project Agreements), the uniform practice has been for the Director General to seek the Board's approval of these texts - which are usually presented in extenso, but recently more and more frequently by means of a mere reference to a previously approved instrument. However, the Director General in September 1968 received authority to conclude Project and Safeguards Submission Agreements relating to quantities of nuclear materials below the exemption limits.⁵⁸⁷

All early safeguards agreements provided for signature "by the Director General", and more recently "by or for the Director General". The approval by the Board of the text of the agreement thereby automatically authorizes the Director General to sign or arrange for the signature of the agreement. Whether or not entry into force follows directly on signature, the Director General has always made all arrangements and decisions relating to the entry into force of safeguards agreements - including sometimes the imposition of long delays while subsidiary arrangements were under negotiation.⁵⁸⁸

Safeguards agreements that authorize the issue of "safeguards letters", invariably require that the Director General first consult with the Government concerned and that the Board then approve the additional control provisions. These are subsequently set out in a letter signed by the Director General.⁵⁸⁹

Recent safeguards agreements provide that the "Agency" shall enter into certain "supplementary agreements" or "subsidiary arrangements". The invariable practice has been for the Director General to negotiate and approve these instruments without reference to the Board.⁵⁹⁰ Similarly the Director General has agreed to amend, at the request of the Governments concerned, a Safeguards Transfer Agreement so as to refer to a later version of the Safeguards Document than had been included in the text originally approved by the Board.^{590A}

21.12.3. Implementation of controls

The normal implementation of safeguards has been left entirely to the Director General. Thus the Director General decides, without reference to the Board:

- (a) The acceptance of items submitted to safeguards under open-ended agreements. Up to now all items notified have been accepted, though often after a delay to permit the Secretariat to draft the necessary subsidiary arrangements or to obtain certain clarifications from the Governments; whether or not a refusal to accept a notification would have to be referred to the Board has therefore not yet been decided.
- (b) The granting of exemption from and the suspension or termination of safeguards, whether by substitution or otherwise.⁵⁹¹ Only the First Safeguards Document required that the exemption of small reactors be accomplished by decision of the Board,⁵⁹² and even under that Document the Board sometimes delegated this authority, explicitly or implicitly, to the Director General.⁵⁹³
- (c) Authorizations to a State to transfer safeguarded items within or without its jurisdiction, to the extent that such authorization need be given by the Agency.⁵⁹⁴

However, the Board has reserved to itself the authority to request a safeguarded State to stop the construction or operation of a principal nuclear facility.⁵⁹⁵

21.12.4. Inspection procedures

The present practice is that only those Agency officials may act as inspectors, on a permanent or ad hoc basis, as have been proposed by the Director General and approved by the Board.⁵⁹⁶

Approved Agency inspectors may be nominated by the Director General to States that have concluded safeguards agreements, and if a positive response is received the Director General may designate them without reference to the Board. He need only consult the Board if a State repeatedly refuses to accept proposed designations.⁵⁹⁷

The selection of inspectors to perform a particular inspection is within the sole discretion of the Director General. In the course of the preparation of the Inspectors Document, suggestions were unsuccessfully advanced that this selection should be performed or approved by the Board. The Director General also decides on the number, timing and objectives of all types of inspections, though as to certain special inspections he must subsequently submit certain information to the Board.⁵⁹⁸

21.12.5. Sanctions

With respect to sanctions, Article XII.C of the Statute specifically delineates the responsibility of the several organs. The Director General has the task (and possibly the binding obligation) of forwarding an inspector's report

on non-compliance to the Board. The Board must determine whether any non-compliance has occurred, and if it so finds it is authorized (and probably obliged) to make certain reports and also to impose other sanctions.⁵⁹⁹ Should the Board recommend the suspension of the privileges and rights of a non-complying Member, then under Statute Articles V. E. 3 and XIX. B it is for the General Conference to decide whether to accomplish such suspension.⁶⁰⁰

21.12.6. Settlement of disputes

Safeguards agreements do not provide, nor have any precedents been established, as to the distribution of responsibilities in connection with the settlement of disputes. Thus it is not yet clear whether it is the Director General or the Board that must decide whether, from the point of view of the Agency, a formal dispute exists and whether the Agency should request the convening of an arbitral tribunal. Similarly there is uncertainty as to who should designate the arbitrator on behalf of the Agency and who should call on the President of the International Court of Justice (or on any alternative official named) to appoint any necessary arbitrators not otherwise designated or elected.⁶⁰¹

21.12.7. Distribution of responsibilities within the Secretariat

The Director General or the Acting Director General personally sign all safeguards agreements, "safeguards letters" and "supplementary agreements".⁶⁰² Subsidiary arrangements are signed by the Inspector General "for [the] Director General".

In conformity with Provisional Staff Regulation 1.03,⁶⁰³ the submission of any proposal to the Board is done in the name of and thus requires at least the implicit approval of the Director General.

The Director General has not made any formal, specific delegations of authority in connection with safeguards. However, in practice, all other decisions on the implementation of safeguards are made by the Inspector General.⁶⁰⁴ The Director General has specified that he be informed should any question of non-compliance by a State arise.⁶⁰⁵

21.12.8. Appeals against decisions of the Secretariat

Paragraph 12 of the Revised Safeguards Document requires the Director General to hold consultations with States concerning the application of safeguards. It is clear from the history of this provision that it was intended to enable a State to apply directly to the Director General for a decision on any safeguards issue. Thus a State can obtain a decision from the Director General even on questions otherwise delegated to the Inspector General.

Rule 15 (c) of the Provisional Rules of Procedure of the Board enables any Member State to include on the provisional agenda of that organ any item, and under Rule 11 (c) a Member may even require the Board to convene within 72 hours in connection with any question relating to inspections.⁶⁰⁶ Using these provisions a State can in effect appeal to the Board from any decision of the Director General. Under Statute Articles VI. F and VII. B the Board can then reverse the decision.⁶⁰⁷

Under Rule 12 (c) of the Rules of Procedure of the General Conference⁶⁰⁸ any Member State may require the inclusion of any item on the provisional agenda of the Conference. A State can consequently complain to the Conference about any decision taken by the Board on safeguards, but the Conference's authority to take any action on such a matter is restricted to the making of recommendations to the Board pursuant to Statute Article V. D. or possibly the request for a report pursuant to Article V. F. 2.⁶⁰⁹

21.13. SAFEGUARDING PEACEFUL EXPLOSIONS

The Agency does not now have any procedures for safeguarding peaceful nuclear explosions. Indeed, the exercise of such controls would constitute a considerable departure from the types of operations foreseen under its current safeguards system, which would at the very minimum and already at a preliminary stage require the Secretariat to acquire expertise in a field in which it currently has none at all. However, there is nothing in either the current system or in the Statute which would prevent such a step should this be desirable, and indeed the Agency may find itself obliged to exercise such controls.

The need or the opportunity to safeguard peaceful nuclear explosions may come about in a number of ways:

- (a) If the Agency should assist such explosions as an Agency project, a possibility enhanced by Article V of the Non-Proliferation Treaty;⁶¹⁰
- (b) If, as proposed at the 1968 Conference of Non-Nuclear-Weapon States, a new organization should be established to promote such explosions, with the proviso that all necessary controls be carried out by the Agency;⁶¹¹
- (c) If the Agency should be requested to observe nuclear explosions in Latin America, as foreseen by the Tlatelolco Treaty;⁶¹²
- (d) If States should on any other basis or for any other reason request the Agency to exercise such controls.

Of these situations, only the first would require the Agency to apply safeguards, pursuant to Statute Articles II, III. A. 5, and XI. F. 4. A contractual obligation with respect to Latin American States might arise if a co-operation agreement to this effect were to be concluded with the Agency for the Prohibition of Nuclear Weapons in Latin America, as foreseen in Article 19(1) of the Tlatelolco Treaty.

Should the Agency come to exercise such safeguards, these would, depending on the circumstances and on the nature of the legal relationships on the basis of which the Agency and the States are acting, be designed to obtain some or all of the following assurances:

- (i) That no special fissionable material (and in particular entire explosive devices) are diverted from the site of the proposed explosion, which might require the Agency to exercise physical custody of such devices if they do not remain under the full, uninterrupted control of the State having produced them.

- (ii) That no one (i. e. , neither the State having produced the explosive device, nor any observer from the beneficiary State or from any other) gains any militarily significant data from the carrying out of the explosion, which in any case would involve the prevention of any monitoring not directly required by the peaceful object of the explosion;⁶¹³ beyond that, to prevent nuclear-weapon-States from gaining some advantage from merely being able to explode a new device (assuming that a comprehensive test-ban treaty has barred all military explosions), it might be arranged that these States deposit with the Agency a large number of already proven types of explosive devices to be used for the indefinite future — whereby further experimentation in this field would be prevented.⁶¹⁴
- (iii) If the explosion takes place within the territory of a party to the Tlatelolco Treaty, that there be observed the restrictions of that instrument as well as any special procedures announced in connection with the particular explosion.⁶¹⁵
- (iv) If the explosion takes place within the territory or under the jurisdiction or control of one or more parties to the Non-Proliferation Treaty, that there be observed the restrictions of that instrument, in particular those relating to the transfers from nuclear-weapon States to non-nuclear-weapon States of nuclear explosive devices or the control over them.⁶¹⁶
- (v) If the explosion takes place within a State party to the Partial Test Ban Treaty (assuming that instrument remains unmodified), that there be observed the restrictions in that instrument relating to underground explosions.⁶¹⁷

21.14. SUMMARY

The Agency's safeguards system is not an automatic or inherently universal one, but is a careful construct based on a number of interrelated international agreements. The Statute establishes the authority of the Agency to apply safeguards, but does not by itself impose safeguards on any State. The motivation for a State to submit to safeguards may be provided by the desire to receive assistance from the Agency or by some bilateral or multi-lateral arrangement between States, which either establishes a supplier-receiver relationship or requires reciprocal or co-ordinated submission. The actual safeguards are prescribed by means of safeguards agreements to which both the Agency and the State to be controlled must be parties, and which are negotiated on the basis of a "safeguards system" promulgated by the Board; the details of the control arrangements are generally set forth in less formal instruments complementing these agreements.

Agency safeguards are based on the consent of the controlled State, a consent relating not only to the imposition of safeguards per se but also to the particular items to be covered and to the control measures to be used; only the detailed application of these measures is not subject to approval by the State. An approach of this type does not lend itself to simplicity and is perhaps the principal reason for the complexities to which so much of this Chapter is devoted. The other, related reason is the lack of automati-

city and universality of the system; once it will, pursuant to the Non-Proliferation Treaty or otherwise, apply to all nuclear items and activities in a controlled State, all the subsidiary rules about exemption, suspension, substitution and termination can be eliminated; if it were to apply to all (Member) States it would be possible to simplify the present multilayered structure of agreements. Finally, a control system implemented by an international organization is inherently more complicated than one administered by a single State, for the latter is not accountable to anyone (even to the controlled State) for the domestic procedures by which it decides on exercising particular control measures, while the former has a responsibility both to the State under control and to its entire membership to comply strictly with its own internal law relevant to these controls.

Until agreement is reached, probably in a United Nations forum, on universal disarmament, or at least until the Non-Proliferation Treaty becomes fully effective, Agency safeguards will have to depend on this complex "contractual" structure. However, this structure is flexible enough to make possible a very broad, world-wide coverage without any departure from the principles so far established.

It may be expected that many of the solutions developed by the Agency in establishing its safeguards system will be relevant to any disarmament control system. These include in particular the arrangements relating to inspectors, and the type of legal guarantees that States will insist on in submitting to international controls. To this extent the Agency's experience should provide useful precedents and examples.

NOTES

1 Safeguards is consequently the only aspect of the Agency that has been thoroughly explored in the periodical literature. The following Articles relate primarily to IAEA safeguards: Berger, *op. cit.* Annex 5, No. 5; Botzian, *op. cit.* Annex 5, No. 6A; Cory, *op. cit.* Annex 5, No. 11; deVries, *op. cit.* Annex 5, No. 13; Eschautier, *op. cit.* Annex 5, Nos. 17 and 18; Finkelstein, *op. cit.* Annex 5, No. 19; Fischer, *op. cit.* Annex 5, No. 23; Gorove, *op. cit.* Annex 5, Nos. 25 and 26; Hall, *op. cit.* Annex 5, No. 27; Kenton, *op. cit.* Annex 5, No. 39; Lendvai, *op. cit.* Annex 5, No. 42A; Martino, *op. cit.* Annex 5, No. 43; McKnight, *op. cit.* Annex 5, No. 43A; Načev, *op. cit.* Annex 5, No. 43B; Peil, *op. cit.* Annex 5, No. 46; Rosen, *op. cit.* Annex 5, No. 52; Scheinman, *op. cit.* Annex 5, No. 54; Seaborg, *op. cit.* Annex 5, No. 55; Shimoyana, *op. cit.* Annex 5, No. 57; Simsarian, *op. cit.* Annex 5, No. 58; Stoessinger, *op. cit.* Annex 5, No. 60 (pp. 140-148); Szasz, *op. cit.* Annex 5, Nos. 61 and 62; Willrich, *op. cit.* Annex 5, No. 73; Wolff, *op. cit.* Annex 5, No. 75; Yamano, *op. cit.* Annex 5, No. 78; Evolution of IAEA Safeguards, 7 IAEA Bulletin 3-11 (No. 2, 1965); Reinhard Rainer, "The legal aspects of safeguards", Legal Series No. 5, IAEA, Vienna (1969), pp. 287-298; Frank Arsenault, "Some practical aspects of safeguards implementation", *ibid.*, pp. 299-305; Vladimir Shmelev, "Some technical aspects of safeguards", *ibid.*, pp. 307-314. Other Articles that relate to safeguards in general are cited in Szasz, *op. cit.* Annex 5, No. 62 (Annex B); see also Mason Willrich, International Control of Civil Nuclear Power, Bulletin of the Atomic Scientists 31-38 (March 1967); Safeguards Against Diversion of Nuclear Materials from Peaceful to Military Purposes: Report on a Forum Seminar, Atomic Industrial Forum Inc. (September 1965); "International control of nuclear energy", Appendix II to Report of Mr. Housiaux, Document 309, reproduced in Proceedings of the Assembly of the Western European Union (10th Sess., First Part), pp. 88-105 (1964). In addition, the following Articles on the formulation of the Statute give useful insights into the early development of safeguards: Bechhoefer, *op. cit. supra*, pp. 356 et seq., 571 et seq.; Fischer, *op. cit.* Annex 5, No. 20, pp. 626-632.

2 Section 21.4.1.1.1.

3 Section 2.1; UN doc. A/PV.470, paras. 114, 117, 122.

- 4 Section 16.3.
- 5 Section 1.1 and note 2 thereto; 1 U.N.T.S. 123. The term later gained general currency and is used in both the Tlatelolco and the Non-Proliferation Treaties (infra notes 47, 60); however, in the EURATOM Statute (infra note 155) the term "safety control" appears in the official English translation, and in the ENEA Convention (infra note 46) the term "security control" is used (even in the title).
- 6 Section 21.7.2.4. The safeguards consultants (infra note 67), concluded that: "The purpose of safeguards under the [Non-Proliferation] Treaty is to detect the diversion of significant quantities of nuclear material from safeguarded uses to the manufacture of explosive devices or for purposes unknown, and to deter such diversion by the risk of early detection".
- 7 This point was emphasized by the US representative at the opening of the Conference on the Statute (IAEA/CS/OR.3, p.12).
- 8 Such a decision might be reached in connection with the exercise of controls in relation to the Tlatelolco and Non-Proliferation Treaties (Sections 21.3.2.2(ii) and 21.3.2.3(iv)).
- 9 Its negative response to that question led India to propose at the Conference on the Statute that no Agency assistance (requiring safeguards) be rendered to States with military programs (IAEA/CS/OR.28, p.67).
- 10 Section 21.6.2.2.
- 11 Sections 21.6.2.3.1-3.
- 12 Section 21.8.1.
- 13 Sections 21.4.3.3 and 21.8.2.4.
- 14 Section 21.8.2.
- 15 Section 21.9.2.2.
- 16 Section 21.9.1.
- 17 Section 2.1.
- 18 Section 2.2.1(b).
- 19 Section 1.4.
- 20 Section 2.4; WLM Doc.2.
- 21 Section 2.5.
- 22 Interesting to note, however, is Professor Rabi's (US) statement that the Agency's safeguards would be restricted to the control of "known specified systems", i.e., would not involve random searches (PV/1/Rev.1, p.13).
- 23 India, a proponent of the inclusion of a detailed list of control measures in Article XII, explained that the purpose was to establish clearly the authority of the Agency against any assertion that particular measures were outside the scope of the Statute (WLM Doc.19 (Rev.1), Attachment 2).
- 24 WLM Doc.31, Annex IV para.2(e).
- 25 Ibid., para.3(b).
- 26 See in particular the amendments formally proposed: IAEA/CS/Art.III/Amend.7, para.2; /Art.III/Amend.12, para.1; /Art.XII/Amend.1-5; /Art.XIV/Amend.2, para.1.
- 27 Section 5.1.5.1(i); INF/CIRC/42/Rev.5, Part I, para.12.
- 28 Section 5.1.5.2(ii); INF/CIRC/42/Rev.5, Part I, para.10.
- 29 Section 15.1.2.3.
- 30 Section 21.2.1.4(c).
- 31 Section 21.2.1.5(a).
- 32 IAEA/CS/OR.32, pp.37-40; IAEA/CS/COORD/2/Add.1, para.12. IAEA/CS/OR.36, pp.14-15; IAEA/CS/COORD/2/Add.1, paras.27-28. IAEA/CS/OR.37, p.96.
- 33 IAEA/CS/10, paras.9, 13, 16. Sections 2.8.4(f)(ii) and 2.8.5.
- 34 Though the word "assistance" is used throughout this study, it should be understood that the term is also meant to refer to transactions in which the recipient pays the full, unsubsidized price of the nuclear items received - as is generally true with respect to Agency projects pursuant to Statute Article XI.B (Section 17.6). Nevertheless, as long as there is no completely free, competitive market in nuclear items, there is an element of grant in many of these transactions, which is reflected by the use of "assistance" in Statute Article XI.A.
- 35 See the "spectrum of transactions" described in Section 16.5.1(1)-(6).
- 36 For example, the Tlatelolco Treaty (infra note 47).
- 37 For example, the Non-Proliferation Treaty (infra note 60).
- 38 Sections 13.3.1-2.

- 39 The final sanction in Article XII.C (suspension from the exercise of the privileges and rights of Agency membership) cannot be applied meaningfully to Non-members; otherwise the statutory provisions cause no difficulties. The Revised Safeguards Document contains only a single, probably unintentional reference to membership (INFCIRC/66/Rev. 2, para. 82). A Non-member might insist on an amendment of Board Rule of Procedure 11(c) (GOV/INF/60 – Section 21. 4. 3. 1) to allow it to convene the Board quickly if an urgent question involving an inspection should arise.
- 40 It is in respect of the German Democratic Republic (East Germany) that this question is most likely to arise, since the final clauses of the Non-Proliferation Treaty are carefully drafted (Article IX.1 providing for three co-equal Depositary Governments, including the USSR) to allow it to become a party thereto – and indeed it is listed as one of the 49 States (including altogether 11 Non-members of the Agency) that became parties to NPT on its entry into force on 5 March 1970 (IAEA Bulletin, Vol. 12, No. 2, p. 5 (1970) – page 4 of which states flatly that safeguards agreements will also have to be concluded with Non-members that are parties to the Treaty). Thereby it is obliged (by Article III. 4 of the Treaty) to enter into a safeguards agreement with the Agency (Section 21. 3. 2. 3(a)); indeed, the East German Government has already announced its readiness to do so (GC(XII)/INF/105, Part V, reiterated in GC(XIII)/INF/116, final paragraph). In their circumlocutory discussions of the possibility of East German participation in the Treaty, the American and British representatives, in explaining their UN General Assembly votes in favour of the Treaty, were careful not to preclude the possibility that that Government might become subject to Agency safeguards (UN doc. A/PV. 1672, pp. 52 and 72-73 (prov.); the US comments also appear in 59 State Dep't Bulletin (1968)). In addition, the East German and Soviet Governments formally requested the Agency (by letters dated 23 and 12 December 1969) to conclude a safeguards agreement with the former covering enriched uranium to be supplied to it from the USSR. See also the proposal recorded in footnote 45.
- 41 For example, Agreement between the Federal Republic of Germany and the United Kingdom for Co-operation in the Peaceful Uses of Atomic Energy (252 U. N. T. S. 93), Art. V.
- 42 For example, Agreement between Australia and Canada for Co-operation in the Peaceful Uses of Atomic Energy (391 U. N. T. S. 191), Art. IV. 2.
- 43 For example, Agreement for Co-operation Concerning Civil Uses of Atomic Energy between India and the United States, 488 U. N. T. S. 21, Article VIII.
- 44 For example, Agreement for Co-operation between Korea and the United States Concerning Civil Uses of Atomic Energy (240 U. N. T. S. 129), Article VI(A) as amended (578 U. N. T. S. 268).
- 44A For example, the bilateral agreement between Romania and the United Kingdom resulting in the Safeguards Submission Agreement by the former set forth in INFCIRC/117, or that between Canada and China leading to the submission by the latter recorded in INFCIRC/133. In December 1969 the German Democratic Republic and the USSR informed the Agency of the conclusion of such a bilateral, foreseeing that the Agency will apply safeguards to nuclear materials transferred to East Germany.
- 45 Such an arrangement was proposed to the Federal Republic of Germany at the Tenth General Conference by Poland, Czechoslovakia and the German Democratic Republic (GC(X)/OR. 103, para. 56; /OR. 104, para. 114; GC(X)/INF/91).
- 46 Convention on the Establishment of a Security Control in the Field of Nuclear Energy, Multilateral Agreements, Legal Series No. 1, IAEA, Vienna (1959) p. 187.
- 47 UN doc. A/6663; the text also appears in The United Nations and Disarmament 1945-1965, UN Publ. Sales No. 67. I. 9, Appendix IX. A partial history of the relevant negotiations appears in the last cited document at pp. 216-220, and a more complete one in UN doc. A/CONF. 35/DOC. 16, Part I(B). Dr. Reinhard Rainer gives an excellent summary in "The Treaty for the Prohibition of Nuclear Weapons in Latin America (Tlatelolco Treaty)", Legal Series No. 5, IAEA, Vienna (1969), pp. 315-323. These negotiations as well as the provisions of the Treaty are also summarized in UN doc. ENDC/241, parts I, B and II.
- 48 Articles 14(1) and 20(1).
- 49 In this study, "Agency" always means the IAEA; the Agency for the Prohibition of Nuclear Weapons in Latin America, established by Article 7 of the Tlatelolco Treaty, will be referred to as the "Latin American Agency" (though its recently adopted acronym is OPANAL, based on its Spanish initials).
- 50 Section 21, 8. 2. 1.
- 51 By UNGA/RES/2286(XXII) and again by UNGA/RES/2456, B(XXIII).
- 52 Sections 15. 1. 2. 2(b) and (c), 15. 1. 2. 3.
- 53 Section 15. 1. 2.

- 54 Article 16(1)(b).
- 55 Agreement between IAEA and Mexico for the Application of Safeguards under the Treaty for the Prohibition of Nuclear Weapons in Latin America, INFCIRC/118.
- 56 INFCIRC/118, Article 2, Section 21.5.4.1.
- 57 INFCIRC/118, Article 3.
- 57A OPANAL/RES/11(I) (reproduced in UN doc. A/7681), para. 4.
- 58 Such an agreement is foreseen in Article 19(1) of the Tlatelolco Treaty. It is likely that from the point of view of the Agency, such an agreement would be considered as one "establishing an appropriate relationship" within the meaning of Statute Article XVI. A, and thus require General Conference approval (Section 12.5.2). By 30 June 1969, 13 States had ratified the Treaty, and of these 12 had waived the special requirements for its entry into force and had thus become parties; consequently in September 1969 the General Conference of the Latin American Agency was convened for the first time.
- 59 Circulated under the cover of UN doc. A/5985.
- 60 The text of which is annexed to UNGA/RES/2773(XXII) and is also reproduced in INFCIRC/140. The formulation of the treaty is recounted by the US Arms Control and Disarmament Agency in International Negotiations on the Treaty on the Non-proliferation of Nuclear Weapons, USACDA Publ. No. 48 (Jan. 1969). See also Willrich, *op. cit.* Annex 5, No. 74.
- 61 UNGA/RES/2773(XXII). Furthermore the Conference of Non-Nuclear-Weapon States in its Resolution E (UN doc. A/7277, para. 17) recommended that all non-nuclear-weapon States enter into safeguards agreements with the Agency, and this resolution in effect also received the endorsement of the General Assembly in UNGA/RES/2456(XXIII), paras. A.2-4.
- 62 Section 21.6.2.3.3.6.
- 63 This point was recognized, discussed and discounted as a practical loophole in a Statement to the Press published by the US State Department on 14 March 1968 on the "Relationship of NPT to Nuclear-Powered Warships".
- 64 Section 17.5.
- 65 This was confirmed by the testimony of William Foster, the principal US negotiator of the Treaty, in his testimony on its ratification, Hearings on Nonproliferation Treaty before the Committee on Foreign Relations of the Senate, 90th Cong., 2nd Sess., p. 52 (1968); S. Exec. Rep. No. 9, 90th Cong., 2nd Sess., p. 5 (1968).
- 66 For example, "Guiding Principles re Article III Enunciated by U.S. Representative at the 18-Nation Disarmament Conference on January 18, 1968", quoted in Senate Hearings, *op. cit.* supra note 65, p. 10.
- 67 GC(XIII)/405, paras. 3, 6, 94-124 (*passim*). In June 1969 the Board also received the summary of three reports prepared by a group of consultants the Director General had appointed to advise on the impact of NPT on the Agency's safeguards work.
- 68 See statement by Italy to UN General Assembly (UN doc. A/PV.1672, p. 62 (*prov.*)).
- 69 UN doc. A/CONF.35/DOC.4, (in particular para. 35), which was especially called to the attention of the Agency's Members by INFCIRC/121. Section 21.6.2.4(i).
- 70 Section 17.2.2.1.
- 71 Even though this term was used on the cover pages of both the First and the Revised Safeguards Documents (and indeed appears in the title of the latter) to characterize those instruments, its meaning is not necessarily so restricted. Thus in some early Safeguards Transfer Agreements (e.g., South Africa/USA, INFCIRC/70, Section 24) "the Agency's safeguards system" was defined to mean the First Safeguards and the Inspectors Documents, and more recently it has sometimes been used in a still broader sense to include the statutory provisions relating to safeguards, the ancillary provisions in the several instruments mentioned in Section 21.4.3, and even the generally used standard clauses of safeguards agreements (Section 21.5.6).
- 72 Unlike certain specialized instruments foreseen in the Statute (e.g., Staff Regulations, Section 24.1.3; Rules Regarding the Acceptance of Voluntary Contributions, Section 25.5.1.2) none are foreseen there with regard to safeguards, except as implied by the word "establish [safeguards]" in Article III. A. 5. This statutory hiatus also resulted in the controversies concerning the proper organ to promulgate such a document (see this Section as well as 21.12.1).
- 73 Mentioned in GC(III)/73, para. 237.
- 74 Section 11.1.4.
- 75 GC(IV)/108/Rev. 1.
- 76 Sections 7.2.2(d) and 21.12.1.
- 77 Not coincidentally, the Committee was chaired that year by Dr. Randers, who had previously acted as *ad personam* Chairman of the Special Working Group.

- 78 GC(IV)/142.
- 79 GC(IV)/RES/71.
- 80 GC(IV)/RES/71, para. 5.
- 81 INFCIRC/26, para. 5.
- 82 GC(VI)/INF/48.
- 83 INFCIRC/26, para. 4.
- 84 GC(VII)/235.
- 85 GC(VII)/258.
- 86 GC(VII)/RES/144.
- 87 GC(XIII)/270, para. 134.
- 88 Before the third series of meetings of the Working Group, the composition of the Board had changed on the adjournment of the Eighth General Conference. The Board thereupon decided that the Group should reflect the new membership of the Board, but that any of its ex-members that had participated in the earlier sessions of the Group could continue to do so, though without a vote (Section 8.4.5.2(B)).
- 89 GC(IX)/294. At the same time the Board agreed that pending the final adoption of the new system, the Agency would negotiate further safeguards agreements on the basis of either system, depending on the preference of the States concerned (GC(IX)/299, para. 179).
- 90 GC(IX)/319.
- 91 GC(IX)/OR.98, para. 34.
- 92 GC(IX)/RES/186.
- 93 Statute Article VI. C and D.
- 94 Also reproduced in UN Juridical Yearbook 1965 (ST/LEG/SER.C/3), pp. 145-156.
- 95 Strictly speaking the word "extension" was not correct, for unlike the First Document, the Revised Document was not limited in its scope to particular types of facilities — i. e., its "General Procedures" are applicable to all facilities; however, it is foreseen (INFCIRC/66, para. 7) that "Special Procedures" would be adopted for each type of facility, and thus the Document needs to be "supplemented" with respect to those types as to which it does not contain such procedures.
- 96 Which was then reissued as INFCIRC/66/Rev. 1.
- 97 *Idem*, Annex, para. 1.
- 98 GC(X)/INF/86.
- 99 GC(XI)/355, para. 99.
- 100 Issued as Annex II to INFCIRC/66/Rev. 2. This document was issued before the Twelfth General Conference had had an opportunity to consider the information document that had been submitted to it.
- 101 Which was done in GC(XII)/INF/99.
- 102 INFCIRC/66/Rev. 2, para. 8.
- 103 Section 21.4.1.1.2.
- 104 UN doc. A/7277, para. 17. The UN General Assembly directed that all these resolutions be transmitted, *inter alia*, to all Members of the Agency and to "the international organizations concerned", and invited the Agency to report to the Secretary-General on action taken concerning the recommendations contained in the resolution (UNGA/RES/2456(XXIII), paras. A.2-4). The Agency's response appears in GC(XIII)/INF/110. Section 15.2.2.
- 105 Sections 21.3.2.2(ii) and 21.3.2.3(iv).
- 106 Section 21.6.2.
- 107 Section 21.13.
- 108 The first and most general one of these (para. 9) is echoed almost verbatim in Article III.3 of the Non-Proliferation Treaty.
- 109 Willrich, *op. cit.* Annex 5, No. 73, at pp. 40-41, aptly characterizes the provisions in this sub-part as "safeguards against safeguards" designed as "general admonitions against overzealous administration of safeguards by the Agency inspectorate".
- 110 Section 21.6.2.
- 111 Section 21.7.1.
- 112 Section 21.6.2.4.
- 113 INFCIRC/26/Add. 1.
- 114 INFCIRC/26, para. 60; see *infra*, note 384.
- 115 Section 21.8.2.1-2.
- 116 Section 21.6.1.2.

- 117 Section 21. 6. 1. 3.
- 118 Section 21. 6.
- 119 Section 21. 5. This practice is somewhat similar to that of the IBRD with respect to its "Loan Regulations" or "General Conditions Applicable to Loan and Guarantee Agreements", which are incorporated by reference into all Loan and Guarantee Agreements concluded by the World Bank; however, unlike the Bank (414 U. N. T. S. 268), the Agency has never presented the Safeguards Document to the UN Secretariat for registration as part of safeguards agreements into which its provisions are incorporated (Section 26. 6. 2).
- 120 Cf. AM. IX/4, para. 18(c), relating to the transfer of title to equipment supplied under technical assistance.
- 121 Such devices have been necessary with respect to the application of controls to principal nuclear facilities or to non-nuclear material and equipment under the Revised Document (e. g., the Denmark/UK Safeguards Transfer Agreement, INFCIRC/63, Section 21, which refers "mutatis mutandis" to the provisions of the Document; and the South Africa/USA Safeguards Transfer Agreement, INFCIRC/98, Section 15(a) and (b), which paraphrases provisions of the Document).
- 122 INFCIRC/84.
- 123 INFCIRC/63 and INFCIRC/107.
- 124 There may, however, be some uncertainty as to which Safeguards Document must be referred to when the Board is required to establish "additional" control provisions under an agreement concluded pursuant to the First Document (see Section 21. 5. 7. 1). On the one hand it would be incongruous and probably confusing to supplement provisions based on one Document by those based on the other — on the other hand the revised version represents the latest "relevant principles established" to which the Board is required to conform.
- 125 As they may under revision provisions routinely incorporated into most safeguards agreements (Section 21. 5. 4. 8).
- 126 In administering safeguards pursuant to the NPT, the Agency might be required, for practical or for political reasons, to place greater emphasis on uniformity.
- 127 GC(IV)/INF/27.
- 128 Meanwhile the Board had already used the provisional Document (e. g., for safeguards provisions relating to the Finnish FIR-1 Reactor project, INFCIRC/24/Add. 1, para. 11).
- 129 Section 21. 8. 1. 1.
- 130 GC(V)/INF/39, Annex. Though suggestions had been advanced that the Inspectors Document should be issued in a combined text with the Safeguards Document, this proposal was never followed up since the provisions regarding inspectors were designed to apply equally to the officials implementing the Agency's health and safety measures, which were set forth in the separate Health and Safety Document (Section 22. 1. 2).
- 131 This question had earlier been raised in the Working Group considering the extension of the First Document (Section 21. 4. 1. 1. 3).
- 132 Section 21. 8. 2. 1.
- 133 GC(V)/INF/39, Annex, para. 12; Section 21. 8. 2. 5.
- 134 Section 21. 8. 2. 2.
- 135 For example, INFCIRC/63, Sections 19 and 23. From some recent agreements, such as the Mexican Submission Agreement in relation to the Tlatelolco Treaty, this paragraph of the Inspectors Document has therefore been omitted (INFCIRC/118, Section 21).
- 136 For example, by referring in paragraph 13 to "the project or safeguards agreement" it implies, contrary to INFCIRC/66/Rev. 2, para. 79, that Project Agreements are not a type of safeguards agreement.
- 137 Section 21. 8. 2. 2.
- 138 Section 21. 8. 1. 2.
- 139 Section 21. 8. 2. 1.
- 140 Section 21. 8. 2. 5(b).
- 141 Sections 21. 4. 3. 3 and 21. 8. 2. 4(f).
- 142 Section 21. 4. 1. 3.
- 143 GOV/INF/60; Section 8. 4. 1.
- 144 A possible circumstance under which this provision might be used is mentioned in Section 21. 10.
- 145 On the other hand, as the representative of India proposed at the 152nd meeting of the Board, Rule 50 might be amended to permit States wishing to appeal a safeguards question to participate as a matter of right, rather than merely by invitation (Section 8. 4. 10(a)).

- 146 GC.1(S)/RES/13, para. 7; Section 24.1.2.
- 147 INFCIRC/6/Rev.2; Section 24.1.3.
- 148 INFCIRC/9/Rev.2; Section 28.3.
- 149 33 U. N. T. S. 261.
- 150 INFCIRC/9/Rev.2, Section 24.
- 151 Section 28.3.5.1.
- 152 This fatuous proviso, which merely emphasizes the obvious point that a safeguards agreement cannot enter into force until all its provisions have been accepted by all parties, has served to confuse the issue whether the Agency must insist on the incorporation of the Privileges and Immunities Agreement; aside from occasional irrelevant reservations (e.g., Mexico, INFCIRC/52, Part II, Section 9), it has only yielded to the opposition of the United States (Section 28.4.1), which has always insisted on substituting a reference to its domestic International Organizations Immunities Act (e.g., INFCIRC/57, Section 15; INFCIRC/98, Section 26). Incidentally, the coverage of inspectors during their official travels outside the country to be inspected is only assured in States that are parties to the Agency's Privileges and Immunities Agreement (Section 18(b), quoted in text above).
- 153 Statute Article XI, F. 4(b); Section 17.2.1.2.
- 154 See, however, note 136 above, which relates to the superseded terminology of the Inspectors Document.
- 155 Thus safeguards administered under the EURATOM Treaty (298 U. N. T. S. 167, Chapter VII) do not require the conclusion of any further agreements, since a sufficient basis is established in that Treaty.
- 156 See statement by India at the Working Level Meeting, WLM Doc. 14(Rev.1), Attachment 2, para. 7.
- 157 Sections 21.10, 21.12.3 and 21.12.8.
- 158 For example, Agreement relating to the Uruguayan URR Reactor, INFCIRC/67, Part II, Annex A.
- 159 Gorove, *op. cit.* Annex 5, No. 25.
- 160 Exactly what rights a Supplying State will waive in transferring safeguards to the Agency is a matter for negotiation between the two States, with which the Agency is not directly concerned. Thus, from the point of view of the Agency, it would not matter if the Supplying State would maintain certain control rights (Section 21.11.1), nor would it matter if that State agrees to waive certain rights (such as a buy-back option on all produced plutonium) which are not solely related to bilateral safeguards. The Agency's position is thus different from that of EURATOM, which under Article 77(b), of its Treaty (298 U. N. T. S. 167) is apparently obliged to enforce precisely the terms of bilateral engagements to which its members are parties.
- 161 For example, Denmark/UK Safeguards Transfer Agreement, INFCIRC/63, Sections 3 and 4.
- 162 For example, the proposals in GC(X)/OR.103, paras. 44 and 45. No such agreements have yet been concluded, and if the Non-Proliferation Treaty should be widely adopted it is possible that none or only a few ever will be. However, the Chinese and Romanian Safeguards Submission Agreements (INFCIRC/133 and /117 - discussed at the end of Section 21.5.5.5) in effect constitute prototypes of a vestigial, unilateral Safeguards Execution Agreement, since they relate to bilateral agreements between China and Canada, and between Romania and the United Kingdom, in which the latter in each pair in effect relied on the Agency to apply appropriate safeguards.
- 162A For example, INFCIRC/57 and /86.
- 163 For example, INFCIRC/117 and /133; Section 21.5.5.5 (final two paragraphs).
- 164 For example, INFCIRC/118; Sections 21.3.2.2-3.
- 165 Sections 21.11.2-3.
- 166 However, Article III, 4 of the Non-Proliferation Treaty indirectly foresees that the Agency might conclude a safeguards agreement with EURATOM (Sections 21.3.2.3(v), 21.11.2.3 and 21.11.3.3). On the other hand, even though the impact of safeguards may fall most directly and heavily on private persons (e.g., on the operators of nuclear facilities), the Agency's safeguards agreements are never concluded with such a person, since even if he agreed he could not authorize the Agency to exercise any quasi-sovereign control functions within his nation's jurisdiction (Section 14.3).
- 167 Section 16.5.1.
- 168 In spite of these reasons for adopting the trilateral form for Safeguards Transfer Agreements, it should be recognized that for most practical purposes these instruments really consist of the fusion of two bilateral safeguards agreements. This becomes apparent by noting the preponderance of purely bilateral arrangements in these instruments, in which one or the other State is not concerned (e.g., in the South Africa/USA Safeguards Transfer Agreement, INFCIRC/98, Sections 16, 22, 24, 25, 26, 28).
- 169 For example, the Argentine RAEP Project Agreement, INFCIRC/62, Part II, Section 5.

- 170 The passive formulation is preferable, for then the Government is obliged to prevent military use by anyone, and not merely to refrain from such use itself. Though generally used in Project Agreements (e.g., INFCIRC/62, Section 4), it has not been adopted in the more numerous Safeguards Submission Agreements (e.g., INFCIRC/63, Sections 2 and 3); however, it does appear in the novel Mexican Submission Agreement under the Tlatelolco Treaty (INFCIRC/118, Section 2). For a discussion of the meaning of the term "military", see Section 15.1.2.
- 171 Such as in technical assistance agreements (Section 18.1.5.2) and in the letters transferring title to technical assistance equipment (AM.IX/4, Annex; Section 18.3.3). Even in safeguards agreements, the undertaking may extend to some items not subject to the control measures, such as material exempted from safeguards (Section 21.6.2.3.1); even though the Agency has relinquished its rights to control such material (on the ground that its quantity appears to be of no military significance and any safeguards measures would be an otiose imposition on both the State and the Agency), the State's obligation to keep it out of military channels continues.
- 172 Sections 21.3.2.2(a) and 21.3.2.3(i).
- 173 INFCIRC/52, Part II, which provided for safeguards, and INFCIRC/82, Part II and INFCIRC/102, Part II, under both of which the supplied material was exempted from safeguards.
- 174 INFCIRC/118, Section 2.
- 175 Article III.2 of NPT may necessitate the imposition of the safeguards required by the Treaty in non-party States, if these desire to receive nuclear materials from any party. Such States would of course not be directly bound by NPT, and thus an undertaking will have to be included in the safeguards agreements with them.
- 176 Such as advanced by the Soviet Union at the Conference on the Statute, IAEA/CS/OR.3, pp.32-35.
- 177 For example, INFCIRC/67, Part II, Section 5 and Annex A, para.2(a)(i).
- 178 For example, INFCIRC/57, Section 1.
- 179 For example, INFCIRC/63, Part III.
- 180 INFCIRC/118, Part III.
- 181 Section 21.6.1.
- 182 INFCIRC/66/Rev.2, para.19(a) and (d)(i).
- 183 *Idem*, para.20.
- 184 Section 21.6.2.2.
- 185 INFCIRC/66/Rev.2, para.19(d)-(f).
- 186 For example, INFCIRC/67, Part II, Annex A, paras.3 and 4.
- 187 Section 21.6.2.3; INFCIRC/66/Rev.2, paras.22-27.
- 188 For example, INFCIRC/67, Part II, Annex A, paras.1 and 2.
- 189 The three categories currently in use correspond roughly to certain classifications explicitly recognized in the First Document, but deleted from the Revised version in an effort to make that instrument appear simpler and clearer than the actual technical-legal relationships actually permit (Sections 21.4.1.2.2 and 21.6):
- (a) Main Part (or Category I) contains the items to which safeguards are, in the former terminology, "attached" (Section 21.6(ii));
 - (b) Subsidiary Part (or Category II) contains the items to which safeguards controls are merely "applied" (*ibid.*, para.(i));
 - (c) Inactive Part (or Category III) contains certain items which would have been classified as "PN" (Section 21.6.2.4) after having been exempted or suspended from safeguards.
- 190 For example, INFCIRC/63, Section 13.
- 191 *Ibid.*, Sections 10-12.
- 192 *Ibid.*, Section 21.
- 193 Section 21.6.2.3.3.4.
- 194 INFCIRC/34, Part II, Annex A, paras.6-10.
- 195 INFCIRC/36, Annex B.
- 196 Section 21.5.7.3.
- 197 INFCIRC/98, Section 22.
- 198 INFCIRC/67, Part II, Annex A, para.6.
- 199 For example, INFCIRC/34, Part II, Section 8. The operation and the limitations on the use of these "blank-cheque" provisions are discussed in Section 21.5.7.1.

- 200 For example, INFCIRC/85, Section 24. This provision was actually implemented when the three parties to the Safeguards Transfer Agreement agreed to amend it by substituting a reference to INFCIRC/66/Rev.2 for the original reference to INFCIRC/66 (INFCIRC/85/Mod.1).
- 201 INFCIRC/135, Section 33; see also *id.*, Section 32 for a provision such as the one cited in the preceding note.
- 202 INFCIRC/118, Section 28(a).
- 203 *Idem*, Section 1(k). Though this appears to be an unusual and potentially broad blank-cheque, the concession by Mexico is not as extensive as would appear at first sight, since the actual control measures in relation to new types of facilities must still be agreed in "subsidiary arrangements".
- 204 *Idem*, Section 28(b).
- 205 For example, INFCIRC/70, Section 19.
- 206 INFCIRC/66/Rev.2, paras.9-14.
- 207 For example, INFCIRC/98, Section 21.
- 208 For example, INFCIRC/98, Sections 24 and 25; with respect to the United States, Section 26 of this Agreement incorporates the national International Organizations Immunities Act (Section 28.4.1).
- 209 INFCIRC/118, Section 23(a)-(c).
- 210 Section 21.7.2.4.
- 211 Section 21.9.1; e.g., INFCIRC/63, Section 25.
- 212 Section 21.9.2; e.g., INFCIRC/63, Section 26.
- 213 Section 21.10; e.g., INFCIRC/63, Sections 27-28.
- 214 Section 21.5.6; e.g., INFCIRC/70, Section 26.
- 215 Section 21.6.2.3.3.5.
- 216 For example, INFCIRC/29, Part II, Section 27; Part I, Sections 4 and 8(a)(iii).
- 217 Sections 16.5.1(6) and 21.5.5.5 (penultimate paragraph); e.g., INFCIRC/133, Section 25.
- 218 For example, INFCIRC/98, Section 33. The Mexican Submission Agreement remains in force as long as Mexico remains a party to the Tlatelolco Treaty (INFCIRC/118, Section 31(a)).
- 219 For example, INFCIRC/98, Section 33.
- 220 Section 26.3.6.
- 221 INFCIRC/3, Part II; Section 17.2.2.1.
- 222 INFCIRC/3, Part II, Article III.2.
- 223 *Idem*, Article III.1.
- 224 *Idem*, Article III.4.
- 225 INFCIRC/24, Part II, respectively Articles V and VI; Section 17.2.2.2.
- 226 INFCIRC/29, Part II; Section 17.2.2.4.
- 227 INFCIRC/29, Part II, Section 15.
- 228 *Idem*, Section 17.
- 229 INFCIRC/32, Part II; Section 17.2.2.5.
- 230 INFCIRC/32, Part II, Section 7.
- 231 For example, INFCIRC/34, Part II, Section 8.
- 232 INFCIRC/36. The submission by the United States had been made in part in order to counter criticisms to the effect that safeguards were only applied to the less powerful, less developed States, and in part to permit the Agency to experiment with the application of its new safeguards system to medium size facilities (which were much larger than those to which its early Project Agreements applied). However, it proved to be impossible to reach agreement on the provisions relating to the privileges and immunities of inspectors and to their rights of access, and consequently, in the vain hope of avoiding the establishment of unfortunate precedents, the agreement was approved and concluded on the understanding (in part reflected in the Preamble) that it would not be considered a full, genuine safeguards agreement. Therefore no privileges and immunities or sanction provisions of any kind were included.
- 233 INFCIRC/26, paras.19, 20, 24-37; Section 21.6.
- 234 INFCIRC/36, Article II.
- 235 *Idem*, Articles IV-VI.
- 236 INFCIRC/47, Section 6 and Annex A.
- 237 *Idem*, Sections 2 and 3.
- 238 *Idem*, Section 10. This proved to be a crucial innovation, copied in modified form in many agreements, later codified as paragraph 28(d) of the Revised Safeguards Document and still later tentatively offered as a possible way of resolving the IAEA/EURATOM safeguards deadlock that had held up the negotiations of NPT (Section 21.3.2.3).

- 239 *Idem*, Sections 5 and 14(a).
- 240 *Idem*, Section 14. *Infra*, Section 21.7.2.4.
- 241 *Idem*, Section 20. *Infra*, Section 21.10.
- 242 For example, INFCIRC/70, Section 14.
- 243 INFCIRC/57.
- 244 Section 17.2.2.3; INFCIRC/53, Part I, Section 7.
- 245 Section 17.2.2.11; INFCIRC/62, Part II.
- 246 INFCIRC/79.
- 247 INFCIRC/62, Part II, Section 5.
- 248 INFCIRC/63.
- 249 INFCIRC/67, Part II.
- 250 INFCIRC/86, Part I.
- 251 INFCIRC/110.
- 252 For example, INFCIRC/98, Sections 2-4, 9, 10, 20, 22.
- 253 INFCIRC/85 and INFCIRC/107, Part I.
- 254 INFCIRC/125 and INFCIRC/119.
- 255 INFCIRC/119, Section 9(a); INFCIRC/125, Section 10.
- 256 For example, Philippines/USA; INFCIRC/69 to /120; South Africa/USA; INFCIRC/70 to /98; Argentina/USA; INFCIRC/79 to /130. Peculiarly, these superseding agreements usually make no reference to the earlier instrument and thus on their face appear not to provide for continuity of controls.
- 257 INFCIRC/118.
- 258 *Idem*, Section 1(i). *Supra*, Section 16.1(a)(ii); *infra*, Section 21.6.1.1(b).
- 259 *Idem*, Part III.
- 260 *Idem*, Section 10; see, however, Section 31(b).
- 261 *Idem*, Section 2.
- 262 *Idem*, Section 3.
- 263 Section 21.3.2.2(ii).
- 264 INFCIRC/118, Section 23(b).
- 265 Section 21.8.2.2.
- 266 INFCIRC/118, Section 31(a). *Infra*, Section 21.6.2.3.3.5.
- 267 *Idem*, Section 28(b).
- 268 Sections 17.2.2.9-10.
- 269 INFCIRC/118, Section 29.
- 270 INFCIRC/133. A similar Agreement, relating to the proposed transfer of a German reactor to China, had already been approved by the Board in September 1967, but has not yet been signed.
- 271 Section 16.5.1(6).
- 272 INFCIRC/117.
- 273 Section 21.6.2.3.1.
- 274 Section 17.3.
- 275 Section 26.3.6. Up to now such model texts were formulated or negotiated by the Secretariat without any specific Board authorization. However, 18 months after the Director General had announced that the Secretariat was studying a model for the Submission Agreements to be concluded pursuant to the NPT (GC(XII)/OR.119, para. 31), the Board established a Special Committee (Section 21.3.2.3 (final paragraph)) with the prime task of advising it concerning the formulation of these Agreements. Board approval of a model text would of course strengthen the Secretariat's efforts to keep both the form and the substance of such instruments as uniform as possible. See also *supra* note 57A and the text to which it relates.
- 276 These documents, though available to all Member States "for official use", are not published (Section 34.4).
- 277 Section 21.12.2.
- 278 Sections 17.3 and 21.5.5.5 (final paragraph).
- 279 Section 17.2.1.2 at note 47.
- 280 For example, INFCIRC/63, Section 31.
- 281 For example, INFCIRC/36, Section 19.
- 282 For example, INFCIRC/76, Section 26. *Infra*, Section 26.5.2.3.
- 283 For example, INFCIRC/70, Section 26.
- 284 For example, INFCIRC/3, Part II, Article III.2; INFCIRC/34, Part II, Section 8.
- 285 INFCIRC/3, Part II, pp.12-15.

- 286 INFCIRC/24/Add. 1.
- 287 INFCIRC/3/Mod. 2, Part I.
- 288 Section 21. 6. 2. 3. 1.
- 289 INFCIRC/66/Rev. 2, para. 50; see also paras. 41 and 51.
- 290 For example, INFCIRC/86, Part I, Section 14.
- 291 Also, unlike the safeguards letters (Section 21. 5. 7. 1) which of course are technically not agreements, and unlike the subsidiary arrangements (Section 21. 5. 7. 3) which are considered to be merely administrative, the supplementary agreements are registered by both the Agency and the United Nations (Section 26. 6).
- 292 INFCIRC/107, Part II. However, the Transfer Agreement to which this Supplementary Agreement relates has been superseded by that set out in INFCIRC/125.
- 293 INFCIRC/86, Part II.
- 294 For example, INFCIRC/63, Section 19.
- 295 However, as the formal safeguards agreements become ever more uniform and non-specific, and at the same time relate to more and more important facilities, it has been suggested that the Board should review these arrangements in which most of the vital control details are specified.
- 296 In recent "arrangements" these provisions no longer appear, since the inspection frequency formulae in the Safeguards Document (INFCIRC/66/Rev. 2, paras. 57, 60, 64, 68; Annex I, para. 3; Annex II, paras. 3, 4), which are incorporated by reference into all safeguards agreements, are considered to be self-executing.
- 297 Section 21. 9. 1. These provisions too no longer appear in those "arrangements" that relate to safeguards agreements in which these formalities are spelled out in sufficient detail (e. g., INFCIRC/118, Section 24).
- 298 INFCIRC/26, paras. 20, 28-31.
- 299 INFCIRC/26, paras. 19, 24-27, 32-37.
- 300 This deletion was foreshadowed by the omission of any reference to "attachment" from the US Four Reactors Submission Agreement (INFCIRC/36) and later from all the Transfer Agreements to which the United States became a party (e. g., Japan/USA, INFCIRC/47) - Section 21. 5. 5. 3.
- 301 Rather than attempting to eliminate the distinction it might have been clearer, in pseudo-scientific terminology, to refer in the first case to items on which safeguards are "focused", and in the second to items that are "vectors" of safeguards.
- 302 Section 21. 6. 2.
- 303 Which is the isotope specified in the Statute. However, the Safeguards Document, in dealing with plutonium, always refers to the total amount (e. g., INFCIRC/66/Rev. 2, paras. 21(a)(1), 22(a), 72(a)), without distinguishing among the several isotopes; since the isotopes of plutonium are practically always mixed and since any mixture containing plutonium-239 is always considered as a special fissionable material, this distinction makes little legal difference; a problem would only arise in the remote contingency that the Agency might have to control some pure plutonium-240 or 241 - which would technically not be a special fissionable material and yet would have to be reckoned as one in the formulae in paragraphs 21(a)(1) and 72(a) of the Revised Safeguards Document. A decision by the Board to extend the statutory definition to the other isotopes of plutonium (see sub-paragraph (a)(v)) would settle this question but would not appear to be a matter of urgency.
- 304 The Mexican Submission Agreement under the Tlatelolco Treaty specifies (in a clause which the Board agreed should not constitute a precedent) that "Nuclear material" shall mean any source or special fissionable material as defined in Article XX of the Statute, except source material in the form of ore, " (INFCIRC/118, Section 1(i)). Since the word "ore" is not defined (i. e., does it mean only ore in the ground, or also mined material) this is neither a useful definition, nor is it clear whether it was considered that ore is one form of "concentrate" and thus was especially excepted by the clause, or whether ore is not in that category so that the clause merely states the self-evident out of a superabundance of caution. South Africa, especially, has expressed concern that the Agency might some day wish to safeguard uranium mines, and indeed even gold mines producing uranium as a byproduct (UN doc. A/C. 1/PV. 1571, pp. 56-58 (prov.)).
- 305 Sections 21. 6. 2. 2. 1-3.
- 306 The final part of the quoted clause relates to the rule that any nuclear material (whether previously safeguarded or not) automatically becomes safeguarded by being "processed or used" in a safeguarded principal nuclear facility (Sections 21. 6. 2. 2. 2-3).
- 307 Thus Part III, B of the Revised Documents is entitled "Special [Safeguards] Procedures for Reactors", and Annex I "Provisions for Reprocessing Plants"; though Annex II was originally approved with an analogous title (Section 21. 4. 1. 1. 5), this was later revised to "Provisions for Safeguarded Nuclear Material in Con-

- version Plants and Fabrication Plants", without however substantially changing the impact of the provisions on these types of facilities.
- 308 Defined in INFCIRC/66/Rev. 2, para. 80.
- 309 Defined in INFCIRC/66/Rev. 2, Annex 1, para. 7, together with footnote 2 to the Annex.
- 310 Defined in INFCIRC/66/Rev. 2, Annex II, para. 13, together with footnote 1 to the Annex.
- 311 Defined in INFCIRC/66/Rev. 2, Annex I, para. 12, together with footnote 1 to the Annex.
- 312 While this definition explicitly excludes principal nuclear facilities, it is difficult to draw an exact dividing line. If the term "plant" in paragraph 78 is meant to imply a certain size or stability or regularity of operation, then research and development facilities would include those performing the functions described in paragraph 78 but with less stable equipment; alternatively, if the emphasis is placed on the functions listed in that paragraph, then research and development facility would be restricted almost exclusively to research laboratories in which no conversion, fabrication or reprocessing takes place.
- 313 The non-nuclear materials that have been mentioned as having safeguards implications are heavy water (D₂O), reactor-grade (very pure) graphite, and zirconium. The specialized equipment relevant to safeguards includes major, complicated reactor components.
- 314 INFCIRC/66/Rev. 2, para. 20; Section 21.6.2.1.1.
- 315 GC(VII)/RES/144, para. (d).
- 316 For example, INFCIRC/98, Sections 2-7, 9-11, etc.; INFCIRC/118, Sections 1(d), (e), (g), (h), 2, 3, 5, 6, etc. The reason for covering these special items in the first-mentioned agreement (the South Africa/USA Safeguards Transfer Agreement), was that the United States, on the basis of its Atomic Energy Act (42 U. S. C., Secs. 2014(t) and (aa), 2133, 2134, and 2153), has concluded that it may not export such items without safeguards – either its own or those of an international organization.
- 317 This is specifically required by INFCIRC/98, Section 22.
- 318 As was done in the Mexican Submission Agreement, INFCIRC/118, Sections 13 and 14.
- 319 Section 21.3.2.3(ii).
- 320 INFCIRC/66/Rev. 2, para. 19(a), (d)(i).
- 321 This was explicitly stated in the First Safeguards Document (INFCIRC/26, para. 16), but was considered too self-evident for restatement in the Revised version.
- 322 Presumably, the term "supplied" would also apply to toll-enriched material, i. e., to special fissionable material produced from source material owned (free of safeguards) by the Receiving State but processed, with the Agency's assistance, in some foreign isotope separation plant.
- 323 The First Safeguards Document (INFCIRC/26, para. 36) used the term "substantially assisted" in the same context. It was applied, and thus interpreted, only twice: in connection with the JRR-3 reactor (Section 17.2.2.1) the Board decided that the supply of half a core load of natural uranium, which was considerably below the exemption limit for that material, did not constitute "substantial assistance" (INFCIRC/3/Mod. 2, Part I); however, for the NORA reactor (Section 17.2.2.4) it decided that the supply of an entire supplementary core of material above the exemption limit was such assistance (INFCIRC/29, Part II, Annex B, para. 1(b)). The Revised Document presumably sets a slightly higher standard, as suggested by the wording "substantially supplied" and by the debates leading to its adoption – but it has not yet been put to any test; in connection with the Pakistan KANUPP reactor (Section 17.2.2.18) the Board avoided the possibility of a confrontation that could have established a minor precedent: by evading the Director General's recommendation that the supply of 1.7 kilograms of 10.5% enriched uranium for "reactivity booster rods", useful but not essential to the operation of a 137 MW(e) natural uranium reactor, should (according to the JRR-3 precedent) not be considered as the "substantial supply" of the facility, and instead redefining the project most confusingly as merely "the provision by the Agency of assistance in obtaining enriched uranium for use in the form of control (booster) rods in the [KANUPP] reactor. . ." (INFCIRC/116, Part II, Section 1), the Board avoided making any decision regarding the reactor (which was already subject to bilateral Canadian safeguards).
- 324 INFCIRC/66/Rev. 2, para. 19(b), (c), (d)(ii) and (iii).
- 325 Section 16.5.1(1)-(6).
- 326 For example, INFCIRC/63, Section 8.
- 327 However, the Transfer Agreements relating to US bilaterals also cover transfers of non-nuclear materials and equipment (e. g., INFCIRC/98, Sections 9(b)(i) and (iii), 10(b)(i)), and thus in effect adopt the more severe standard set by the "incorporation" rule discussed in Section 21.6.2.2.6.
- 328 However, in the Transfer Agreements relating to US bilaterals these rules are set out in full (e. g., INFCIRC/98, Sections 9(b)(iii), 10(a)(iv), 10(b)(i) and (ii), 12, etc.), sometimes by paraphrasing provisions of the Safeguards Document.

- 329 INFCIRC/66/Rev. 2, para. 19(d) and (e).
- 330 A term defined in INFCIRC/66/Rev. 2, para. 74.
- 331 That provision in the Revised Document is nominally based on Statute Article XII. A. 5, which, *inter alia*, provides that special fissionable material "recovered or produced" under safeguards be used "under continuing Agency safeguards", which an opponent of the provision had characterized as providing for the pursuit of safeguarded material through an infinite number of "generations" (India, LAEA/CS/OR. 38, p. 43). In view of the mild injunction in the Safeguards Document and the vague one in the Statute, a number of States have declined to provide at all for the continuation of safeguards past the normal expiration of a safeguards agreement (Section 21. 6. 2. 3. 3. 5 - e. g., Japan (INFCIRC/119 and INFCIRC/125)). It should also be noted that the First Safeguards Document related "only to first generation produced material" (INFCIRC/26, para. 4), in order to avoid this issue.
- 332 INFCIRC/66/Rev. 2, para. 19(d).
- 333 *Idem*.
- 334 *Idem*, para. 26(b); Section 21. 6. 2. 3. 3. 1.
- 335 *Idem*, paras. 19(f), 25, 26(d).
- 336 *Idem*, Annex I, para. 6(b), and Annex II, paras. 10 and 11. The First Safeguards Document only had a rudimentary provision on this point (INFCIRC/26, para. 29(b)).
- 337 INFCIRC/66/Rev. 2, para. 19(d).
- 338 *Supra* note 323.
- 339 For example, INFCIRC/98, Section 19(b)(i) and 12.
- 340 For example, INFCIRC/24/Add. 1, para. 4(a).
- 341 INFCIRC/66/Rev. 2, para. 21.
- 342 Both the exemption and the suspension quotas are expressed in terms of formulae to permit the notional summation of different types of materials. However, for historical-technical reasons these formulae are different: that relating to suspension (INFCIRC/66/Rev. 2, paras. 24 and 72) is adapted from the First Document; that relating to exemption (*Idem*, para. 21) is somewhat stricter for low enrichment uranium. The Working Group that had formulated the provisions relating to conversion and fabrication plants in May 1968 called attention to this anomaly and suggested that the Board consider how to eliminate it.
- 343 INFCIRC/66/Rev. 2, para. 25. Though characterized as a temporary substitution, it should be recognized that in most instances (e. g., in those in which the original material is reprocessed) there is no way of ascertaining whether it is that material that is returned to safeguards or only equivalent material; more sensibly one might therefore refer to a sequence of two terminations by substitution (Section 21. 6. 2. 3. 3. 3).
- 344 For example, INFCIRC/86, Part I, Section 12; INFCIRC/98, Sections 15, 20.
- 345 INFCIRC/66/Rev. 2, para. 26(b).
- 346 *Idem*, Annex I, para. 6(b), and Annex II, para. 11; Section 21. 6. 2. 2. 5.
- 347 Section 21. 6. 2. 3. 2.
- 348 Though practical problems may arise if the Agency should not be prepared to control the material immediately in its new location. Hence most safeguards agreements provide for the Agency to receive some advance notice of intra-State transfers (e. g., INFCIRC/98, Section 16).
- 349 Section 21. 6. 2. 3. 3. 1.
- 350 For example, INFCIRC/98, Sections 9(b)(11) and 10(d)(1).
- 351 Section 21. 11. 2. 2.
- 352 Section 17. 2. 1. 2(m). The only exceptions are Project Agreements relating only to leased material, which must automatically be returned on the expiration of the project (e. g., the NORA Agreement, Section 17. 2. 2. 4, INFCIRC/29, Part ID).
- 353 Statute Article XVIII. E expressly precludes States from terminating their obligations under Project Agreements by withdrawing from the Agency - i. e., the Agency will continue to control the Ex-member (Section 13. 3. 2).
- 354 For example, INFCIRC/70, Section 27.
- 355 *Supra* note 331.
- 356 For example, INFCIRC/119, Section 32. Transfer Agreements are still customarily tied to the terms of the underlying bilateral agreement, but recently some of these (e. g., Japan/USA of 26 February 1968, TIAS 6517) have been concluded for 30-year periods.
- 357 For example, INFCIRC/98, Section 33.
- 358 A point enshrined, out of an abundance of caution, in INFCIRC/66/Rev. 2, para. 26(f).
- 359 Statute Article III, A. 5.

- 360 Section 21.3.2.3(i) and (ii).
- 361 Thus Mexico, in its Submission Agreement, entered into an undertaking (INFCIRC/118, Section 2) formulated in terms of the Agency's Statute and not of the Tlatelolco Treaty (Section 21.5.4.1).
- 362 This is obliquely recognized in INFCIRC/66/Rev.2, para.17, which requires the Agency to take into account "all pertinent circumstances" in formulating safeguards agreements.
- 363 Including those exempted from safeguards and those as to which safeguards were temporarily suspended; those as to which safeguards were terminated were, however, not included, for the concept of termination implies that the Agency has lost all technical or legal interest in an item (INFCIRC/26, para.21).
- 364 See, in particular, INFCIRC/26, paras.32, 60 and 66.
- 365 GC(VII)/228, para.114, and GC(VIII)/270, para.133.
- 366 By 1969 Canada, Norway and the United States were providing such information (GC(XII)/380, para.112; GC(XIII)/404, para.125).
- 367 UN doc. A/CONF.35/DOC.4. Section 21.3.2.4.
- 368 INFCIRC/118, Sections 1(e), 7 and 9; see also Section 20, specifying circumstances under which the Agency would supply information to "Export States".
- 369 Article 16(b) of the Treaty; Section 21.3.2.2(ii) et seq.
- 370 Article XII, A.1.
- 371 INFCIRC/26, para.42.
- 372 INFCIRC/66/Rev.2, para.30. In fact, the statutory provision had become outmoded by developments in weapons technology. In the early 1950s, plutonium bombs could only be made using relatively pure ²³⁹Pu; while keeping uranium in a reactor for a longer period would increase both the plutonium and the power yield, it would also increase the amount of ²⁴⁰Pu and ²⁴¹Pu produced in and thus mixed with the ²³⁹Pu; consequently if a reactor was designed (with low "excess reactivity") so as to require uneconomically frequent changes of fuel, it could be presumed that it was designed to produce primarily weapons-grade plutonium. Later techniques were apparently developed for using the lower-grade plutonium in weapons, and thus the initial interest in reactor designs lessened.
- 373 Idem, para.31(d).
- 374 Statute Article XII, A.3 (an innocuous provision that represents a compromise reached as the result of one of the hardest fights at the Conference on the Statute - IAEA/CS/3, Article XII, A.3; IAEA/CS/Art.XII/Amend.5; Conference Room Papers 18 and 19; *passim* in the records cited in note 389 below, leading to a climactic debate at the final meeting of the Main Committee, IAEA/CS/OR.38, pp.16-31); INFCIRC/66/Rev.2, paras.33-36.
- 375 INFCIRC/66/Rev.2, para.34.
- 376 Idem, para.36.
- 377 Statute Article XII, A.4; INFCIRC/66/Rev.2, para.37.
- 378 Idem, para.38, Section 33.5.
- 379 Idem, paras.39-40, 55, 59, 63, 67; Annex I, para.2; Annex II, para.2.
- 380 Idem, paras.42-43, 54; Annex II, paras.6, 10.
- 381 Idem, para.41. For some erratic reason this inoffensive provision became controversial during the drafting of the Revised Document, as a result of which this reporting requirement applies only "if so provided in a safeguards agreement", which has been interpreted as requiring a special reference and not the mere incorporation by reference of the entire procedural portion of the Safeguards Document; a special reference to this paragraph now appears routinely in all safeguards agreements (e.g., INFCIRC/98, Section 22; INFCIRC/118, Section 19).
- 382 Statute Article XII, A.6.
- 383 Because of the importance of inspections and the complicated rules regulating them, this safeguards procedure is more fully described in Section 21.8.
- 384 INFCIRC/66/Rev.2, paras.57, 60, 64, 68; Annex I, paras.3-4; Annex II, paras.3-4. The First Document had provided for a special category of safeguards procedures referred to as "nominal safeguards", which in effect consisted of the requirement to submit one routine report annually, and special reports as necessary; special inspections, but no routine ones could be carried out (INFCIRC/26, paras.32(a), (b), 60, 65 (table), 66). This classification was abandoned in the Revised Document, in part because the circumstances under which these relaxed procedures were to be used were not clearly stated, but mostly because the same result followed in any case by application of the table of inspection frequencies (which provides for zero routine inspections for very small facilities).
- 385 INFCIRC/66/Rev.2, paras.49-50; Annex II, para.5.

- 386 *Idem*, paras. 53-54.
- 387 *Idem*, paras. 51-52. Para. 51, like para. 41 (*supra* note 381) requires and therefore uniformly receives special mention in each safeguards agreement.
- 388 But it was not intended that title to the material held by the Agency would pass to it; the organization would only hold the material "in escrow" (WLM Doc. 19 (Rev. 1), first part, para. 2. C).
- 389 IAEA/CS/Art. XI/Amend. 5; IAEA/CS/OR. 24, pp. 43-87, /OR. 27, pp. 12-83, /OR. 28, pp. 16-68; /OR. 29; /OR. 31, pp. 2-4; /OR. 35, pp. 123-132; /OR. 36, pp. 2-13; /OR. 37, pp. 16-105; /OR. 38 (all *passim* but especially at the later meetings).
- 390 INFCIRC/66/Rev. 2, paras. 61-65.
- 391 *Idem*, para. 28.
- 392 Section 21. 5. 1.
- 393 For example, INFCIRC/98, Section 16. This requirement is nominally based on INFCIRC/66/Rev. 2, paras. 30(c), 33 and 37.
- 394 Sections 21. 5. 4. 8 and 21. 5. 7. 1; e. g., INFCIRC/34, Part II, Section 8.
- 395 For example, INFCIRC/70, Section 5.
- 396 This determination, as well as all others relating to the imposition of sanctions, are made by a simple majority vote of the Board (Sections 8. 4. 3 and 21. 12, and note 574 thereto).
- 397 Whether they are obliged to is not entirely clear - see Section 13. 1. 5.
- 398 Section 13. 1. 13.
- 399 At the Conference on the Statute, the Philippines attempted to introduce some categorization of the forms of non-compliance, by suggesting that not all violations are of interest to the UN Security Council (IAEA/CS/OR. 29, pp. 75-76). The Tlatelolco Treaty distinguishes, in Article 20, between "not complying fully" and "a violation of this Treaty which might endanger peace and security", based, however, not on any objective standards but sensibly on the "opinion" of the General Conference of the Latin American Agency.
- 400 Though this term is used frequently in the practice of the Agency as well as in the literature, it does not appear and thus is not defined in either the Statute or the Revised Safeguards Document or the Inspectors Document. It had, however, been defined in the First Safeguards Document (INFCIRC/26, para. 17), though there it meant any "use" of safeguarded items in violation of any condition of a safeguards agreement. The term appears in Article III. 1 of the Non-Proliferation Treaty, in the sense indicated in the text above.
- 401 At the Conference on the Statute, India cited this as a type of violation that should not be reported to the UN Security Council (IAEA/CS/OR. 30, p. 46).
- 402 INFCIRC/66/Rev. 2, para. 18.
- 403 GC(V)/INF/39, Annex, para. 1~~2~~; Section 21. 8. 2. 5.
- 404 Provisional Staff Regulation 1. 03 (INFCIRC/6/Rev. 2), which requires all Secretariat documents to be issued on the responsibility of the Director General, makes it difficult for an inspector to circumvent the Director General and report directly to the Board.
- 405 Statute Article VII. B; Section 10. 3.
- 406 For example, INFCIRC/98, Section 23.
- 407 INFCIRC/11, Part I, A, Article III. 2, Sections 12. 2. 2. 7. 3 and 32. 3. 1-2.
- 408 Section 21. 2. 2 (table).
- 409 For example, INFCIRC/67, Part 1, Section 14(i).
- 410 For example, INFCIRC/98, Sections 6, 7 and 23(a).
- 411 By Costa Rica, IAEA/CS/OR. 33, p. 16.
- 412 IAEA/CS/COORD/2/Add. 1, para. 13.
- 413 IAEA/CS/10, para. 14.
- 414 For example, INFCIRC/98, Section 27.
- 415 For example, INFCIRC/98, Section 30.
- 416 For example, INFCIRC/86, Part I, Sections 18 and 19.
- 417 INFCIRC/118, Section 26 (final sentence).
- 418 For example, INFCIRC/34, Part II, Section 6.
- 419 For example, INFCIRC/98, Section 23(b). The Agency also included a reference to its sanctions powers in its Executing Agency Agreement with the UN Special Fund (Section 18. 1. 4; INFCIRC/33, Article I. 3), and consequently is able to insert an appropriate clause into the trilateral Plans of Operation under which it can "suspend or terminate assistance being provided by or through the Agency, and withdraw materials and equipment made available by or through the Agency".

- 420 INFCIRC/66/Rev. 2, para. 49(b); Annex I, para. 5; Annex II, para. 7. GC(V)/INF/39, Annex, para. 10(c),
421 The 5th Report on IAEA Laboratory Activities (Technical Reports Series No. 90, STI/DOC/10/90) states
that during 1967 one room of the Seibersdorf Laboratory was altered to permit the handling of safeguards
samples (Report, Part IV. 4). See also the 6th Report (STI/DOC/10/98), Part III. 5.
- 422 Seals have already been tested on the Yankee reactor submitted to safeguards by the United States, even
though there is no explicit provision therefor in the Submission Agreement (INFCIRC/57).
- 423 Quoted in Section 21. 3. 2. 3.
- 424 Resolution F, para. 2(a), UN doc. A/7277, para. 17. For the Agency's response, see GC(XIII)/110, paras.
23-26, annexed to UN doc. A/7677. Section 15. 2. 2.
- 425 Section 21. 7. 1. 1.
- 426 The touchiness of this subject is also emphasized by the injunction laid on inspectors in INFCIRC/66/Rev. 2,
para. 52.
- 427 Section 21. 9. 2. 1.
- 428 Section 21. 9. 1.
- 429 The question was briefly debated at the Conference on the Statute (IAEA/CS/OR. 20, pp. 48, 61, 63-64).
Incidentally, an a contrario argument might be based on Statute Article XI. D, which explicitly permits
the use of non-staff members as project examiners. Finally, it should be noted that Section 23 of the
Agreement on the Privileges and Immunities of the Agency (INFCIRC/9/Rev. 2) apparently foresees that
"experts (other than officials. . .)" might perform inspections.
- 430 Only once was a non-staff member sent on an inspection, on a consultant's Special Service Agreement
(Section 24. 9. 2. 1). However, his appointment to the Agency as an inspector had previously been approved
by the Board - though for various reasons he never assumed that post.
- 431 GC(V)/INF/39, para. 2. As formulated, this decision contains a significant gap, since the Director of the
Division of Inspection (a post that now no longer exists) was not covered, since he would normally be an
official not of "Professional" but of "Director" grade (Sections 24. 3. 1. 2. 1. 2-3).
- 432 GC. 1/1, paras. 85 and 124.
- 433 The word "further" referred to the fact that the Board had already approved the Director General's nominee
for Director of the Division; however, the person named never accepted the appointment, and the Division
remained without any staff.
- 434 GC(VII)/228, para. 118.
- 435 The Deputy-Director General level head of the Department of Safeguards and Inspection (Section 9. 4. 3),
a post that had up to then not yet been filled.
- 436 Incidentally, in securing such Board approval the Director General has never committed himself to a
particular term of service for the officials concerned, and he has consequently felt free to extend such
appointments without seeking further formal approval.
- 437 In 1968 this Division was split into two, respectively called "Operations" (which includes the carrying out
of inspections) and "Development".
- 438 As yet, no official is occupied full-time with inspection duties. As a matter of policy, the persons most
fully occupied with this work are assigned to the Division of Operations and perform technical or admini-
strative tasks there - an arrangement designed to benefit the work both at headquarters and in the field.
- 439 These individual qualifications are important not only for the States to be inspected, but may be of par-
ticular significance to the Board, since according to Statute Article XII. C a non-compliance report from
an inspector is apparently a necessary and possibly a sufficient condition for the Board to be seized with a
proposal for the imposition of sanctions (Section 21. 7. 2. 4(i), (ii), (1) and (2)).
- 440 Thus, in considering additions to the lists of inspectors to be made in September 1969, several Governors
as well as the Director General emphasized the importance of geographical distribution, and it was noted
that with the proposed new inspectors 31 nationalities would be represented on the lists. The question of
over-all composition has long been an important latent issue; in particular, the Soviet Governor has
repeatedly urged that one-third of the inspectors come from "socialist countries". Though some attempt
at balancing is made, since the number of approved inspectors is so large (In May 1970 there were 43
names on the "general" and 23 on the "special" list - i. e., the lists are padded with the names of many
officials who are never or only most rarely assigned to perform this function), the studiously balanced
make-up of the group need bear no relation to the selection of the persons actually dispatched on inspections
(Section 21. 8. 1. 3). The Soviet Union has of course noted this and has complained that the Soviet in-
spectors are rarely used (e. g., GC(XI)/OR. 113, para. 39), but in fact the fault there is not that of the
Director General, but of the safeguarded States, which generally refuse the designation of "socialist"

- Inspectors (Section 21.8.1.2), as long as their countries have not agreed to subject themselves to Agency inspection.
- 441 Section 21.9.2.2. See, e.g., GC(XI)/OR.112, para. 45.
- 442 INFCIRC/6/Rev.2, Regulation 3.03(b); also Staff Rule 3.03.2(D) (AM. II/1).
- 443 GC(XIII)/404, para. 124.
- 444 GC(XIII)/405, para. 104.
- 445 Though not barred by any rule, the custom has been never to nominate a national of a State to perform inspections in it.
- 446 This liminal step is not specified in the Inspectors Document, but was adopted informally and later confirmed in a statement by the Director General to the Board.
- 447 Statute Article XII.A.6 (second clause); GC(V)/INF/39, Annex, para.1.
- 448 *Idem*, para. 2.
- 449 For example, INFCIRC/98, Section 5.
- 450 Indeed, the importance of recognizing a State's power to challenge inspectors was emphasized in CNNWS Resolution F, para. 2(c), reproduced in UN doc. A/7277, para. 17.
- 451 This suggestion was first made at the Working Level Meeting (WLM Doc. 19 (Rev. 1), first part, para. 2. D) and resulted in the inclusion in Statute Article XII.A.6 of the clause concerning the "designation" of inspectors.
- 452 Vienna Convention on Diplomatic Relations (500 U.N.T.S. 95), Articles 2 and 4(2).
- 453 It would thus appear that an inspector can only be expelled by the more cumbersome procedure specified in Section 27(b) of the Privileges and Immunities Agreement (INFCIRC/9/Rev.2), which requires prior consultations with the Director General.
- 454 GC(V)/INF/39, Annex, para. 3.
- 455 For example, INFCIRC/86, Part II, para.(2)(a). Where "resident inspectors" (Section 21.8.2.2) are referred to (e.g., *idem*, para.(2)(b) and INFCIRC/118, Section 23) a special clause regarding visas for them and for their immediate families is included.
- 456 A proposal for the establishment of 3-member inspection teams, at least one of whom would come from the Soviet Union, was made at the Conference on the Statute by the Philippines (IAEA/CS/Art.XII/Amend. 4, para. 2), but was later withdrawn (IAEA/CS/OR.30, p.47).
- 457 For example, INFCIRC/36, Annex B, para. 4. Recently, however, no specific numbers have been included in either the agreements or the arrangements, on the ground that the relevant formulae in the Safeguards Document are self-executing once they are properly referred to. For the frequencies applicable to the various reactors under safeguards on 30 June 1969, see GC(XIII)/404, Table 20, final column).
- 458 INFCIRC/66/Rev.2, paras.51-54, 56-58, 60, 64, 68; Annex I, paras.3-4; Annex II, paras.3-6.
- 459 INFCIRC/66/Rev.2, para.47.
- 460 GC(XII)/380, para.122 and footnote 19 thereto.
- 461 As indicated in Section 21.5.7.2, these procedures are in practice usually specified in formal "supplementary agreements".
- 462 INFCIRC/26, paras.54, 57, 60(b). 63-65.
- 463 INFCIRC/26/Add.1, para. 6.
- 464 INFCIRC/66/Rev.2, para.57 (table).
- 465 *Idem*, para.50.
- 466 Section 21.4.2.1.2.
- 467 INFCIRC/66/Rev.2, Annex I, para.3.
- 468 *Idem*, Annex II, paras.3 and 4, and footnote 2 thereto.
- 469 INFCIRC/57, Section 14.
- 470 Section 21.5.7.2. However, in the Mexican Submission Agreement, these provisions appear directly in that instrument (INFCIRC/118, Section 23).
- 471 INFCIRC/86, Part II, para.(2)(b); INFCIRC/118, Section 23(c).
- 472 INFCIRC/66/Rev.2, paras.49-50, 52; Annex I, para.5; Annex II, paras.7 and 10.
- 473 GC(V)/INF/39, Annex, para.10; as pointed out in Section 21.4.2.1.2(d), these provisions are still based on those in the First Safeguards Document.
- 474 Sections 21.4.3.3 and 28.3.5.1.
- 475 Statute Article XII.A.6; repeated in GC(V)/INF/39, Annex, para.5.
- 476 *Idem*, para.7.
- 477 INFCIRC/66/Rev.2, para.9, a provision paraphrased in Article III,3 of the Non-Proliferation Treaty.

- 478 INFCIRC/66/Rev. 2, para. 10. This and the previous paragraph of the Revised Document are also incorporated by reference into the inspection procedures relating to conversion and fabrication plants (*Idem*, Annex II, para. 5).
- 479 Through the routine incorporation of GC(V)/INF/39, Annex, para. 8. However some States, in particular the United States, have preferred to omit this provision (e. g., INFCIRC/77, Section 16, showing the divergent preferences of Portugal and the United States in relation to the same Safeguards Transfer Agreement).
- 480 INFCIRC/66/Rev. 2, para. 48; see Section 21. 9. 2. 1.
- 481 *Idem*, para. 11.
- 482 *Idem*, para. 52.
- 483 GC(V)/INF/39, Annex, para. 6.
- 483A INFCIRC/9/Rev. 2, Section 18(a); *infra* Section 28. 3. 2.
- 483B INFCIRC/9/Rev. 2, Sections 18(b) and 23. Quite similar provisions were recently included by the Latin American Agency in its Headquarters Agreement with Mexico (OPANAL/RES/8(D), Annex, Article 5) and in its Privileges and Immunities Convention (OPANAL/RES/9(I), Annex, Article 6) (both reproduced in UN doc. A/7681).
- 483C *Idem*, Section 27(b); *supra* Section 21. 4. 3. 3.
- 484 *Idem*, para. 9, which is based on, incorporates and in part paraphrases Statute Article XII, A. 6. The Conference of Non-Nuclear-Weapon States narrowly defeated a recommendation that the access of inspectors "to certain strategic points" be regulated or restricted (UN docs. A/CONE. 35/C. 1/L. 9/Rev. 1; /L. 14; see A/7277, Annex IV, paras. 6(c)(2)(e), 6(e)(2)(e), 6(e)(Japan)(3), 14).
- 485 Uncertainty about whether such prying, random inspections are authorized by the Statute and the Inspectors Document caused the United States to exclude or limit, with respect to inspections to be carried out in its territories, paragraph 9 of the Document (e. g., INFCIRC/36, Section 10; INFCIRC/57, Section 14; INFCIRC/70, Section 16); this has no longer been done in more recent agreements (e. g., INFCIRC/98, Section 24).
- 486 This report is to be made to the "State concerned", which has always been interpreted as meaning merely the inspected State, and not any other State party to the same safeguards agreement (Section 21. 5. 3).
- 487 Section 32. 1. 1.
- 488 Statute Article XII, C. Section 21. 7. 2. 4(1), (2).
- 489 Several sets of estimates appear in Hearings on Non-Proliferation Treaty Before the Committee on Foreign Relations of the Senate, 90th Cong., 2nd Sess., pp. 277-288 (1968), supported by extensive statements of assumptions. Briefly summarizing the data for an early and a remote year, these include the following estimates (in millions of dollars):

	Only Non-Nuclear- Weapon States	All States		
	Dr. Taylor	Dr. Taylor	Rep. Hosmer	Brookhaven
1968	2. 0	6. 9	17. 2	-
1971	3. 6	15. 2	36. 0	29. 8
1990	-	518. 0	1170. 8	143. 4

The principal assumption on which the extremely high figures for 1990 are based is that there will be a very great number of nuclear facilities operating. Dr. Taylor and Representative Hosmer both assumed 900 research and test reactors and 4000 power reactors with a capacity of 2.7 million megawatts, together with the necessary ancillary facilities. The cost in mils/kWh would, according to Taylor's figures, decrease from 6 in 1968 to about 3 in 1990, though the percentages of safeguards to total nuclear power costs would increase from 10% to 14% (Hosmer's figures all being about twice as high). The Director General stated at the Twelfth General Conference that all these figures appeared to be much too high (GC(XII)/OR. 119, para. 33). It should also be noted that the estimated total of the Agency's safeguards expenses was only \$634 300 in 1968 (GC(XII)/385, Annex 1), to be raised to \$1272 000 in 1970 (GC(XIII)/405, Table 33).

- 490 WLM Doc. 2(Add. 16), 6 March 1956.
- 491 *Idem*, 12 March 1956.
- 492 *Idem*, 13 March 1956; WLM Doc. 15 (Rev. 1), first part, para. 2, A(a).
- 493 *Idem*, and WLM Doc. 19 (Rev. 1), second part, para. 3, A.
- 494 See IAEA/CS/Art. XIV/Amend. 2, para. 1, which would have amended Article XIV, D to repeat in its substance of XIV, C, defeated for lack of a two-thirds majority (35:31:6) IAEA/CS/OR. 36, p. 19.
- 495 IAEA/CS/OR. 32, pp. 37-38; /OR. 36, pp. 14-16; IAEA/CS/COORD/2/Add. 1, para. 12 and /Add. 2, paras. 27-28.
- 496 IAEA/CS/OR. 33, p. 16; IAEA/CS/COORD/2/Add. 1, para. 13.
- 497 IAEA/CS/10, paras. 13, 14, and 16.
- 498 Statute Article XII, A. 4; Section 21. 7. 1. 3.
- 499 Statute Article XII, A. 5; Section 21. 7. 2. 1.
- 500 Section 21. 2. 2 (table).
- 501 GC(V)/INF/39, Annex, para. 6. This provision is routinely incorporated into all safeguards agreements (e. g., INFCIRC/98, Section 24), and in most agreements concluded under the Revised Document it is specifically provided that the Agency shall reimburse governments for such expenses (e. g., *idem*, Section 27).
- 502 For example, INFCIRC/98, Section 27; INFCIRC/118, Section 24.
- 503 In which at one point they received the support of a legal opinion by the Director of the Legal Division, who pointed out in a statement to the Board on 17 September 1965, that Article XIV, C was facultative, i. e., that it permitted but did not require the Agency to arrange to recover its safeguards costs. This followed an inconclusive study of this issue in the Board's Administrative and Budgetary Committee in the spring of 1965, which was in part based on a "History of the relevant statutory provisions" prepared by the Secretariat for the Committee; that paper also recalled the inconclusive recommendations of the Preparatory Commission relevant to this point (GC. 1/1, para. 173, footnote 4; GC. 1/INF/2, Regulation 3. 07(a) and an extensive debate, during the first series of meetings of the Board, on draft Financial Regulation 3. 07(a) (now set forth in INFCIRC/8/Rev. 1).
- 504 This was the principal reason advanced by Canada in presenting its proposals as to present Statute Article XIV, B. 1(b) to the Working Level Meeting. At the Conference of Non-Nuclear-Weapon States a proposal was briefly advanced but then dropped that the Conference recommend that "the cost of the safeguards procedures should be charged to the IAEA budget" (UN doc. A/CONF. 35/C. 1/L. 2, but omitted from A/CONF. 35/C. 1/L. 9/Rev. 1; A/7277, Annex IV, paras. 8(b)(2)(e), 8(c)). However, some States (e. g., India - see GC(XII)/COM. 1/OR. 81, paras. 9-10) have consistently maintained that safeguards is a cost associated with nuclear operations and should be borne by those benefitting from the facility requiring controls, and that any other policy would soon hopelessly distort the Agency's Regular Budget and place unjustified burdens on the many States on which it is assessed (Sections 25. 2. 1 and 25. 3).
- 505 Abbreviated provisions of this type appear in the text of the Mexican Submission Agreement, INFCIRC/118, Section 24(b).
- 506 For example, INFCIRC/98, Section 27 (final sentence). However, the recent Japan/USA Safeguards Transfer Agreement (INFCIRC/119, Section 27) does not contain this explicit qualification since it merely repeats the corresponding provision of the Agreement it superseded (INFCIRC/47, Section 19).
- 507 See chart "Growth of Agency Safeguards" following Table 21 in GC(XIII)/404.
- 508 GC(XIII)/405, paras. 6-7, 11, 94-124.
- 509 Unlike, for example, the ENEA Convention (*supra* note 46), which contains special reparation provisions in Articles 9(d) and 13(c) and (d).
- 510 Section 21. 4. 2. 1. 1.
- 511 Section 21. 7. 2. 5.
- 512 Section 29. 3.
- 513 Excepting the precautionary provisions in INFCIRC/66/Rev. 2, paras. 11 and 48, prohibiting inspectors from themselves operating, or from requesting the operator to shut down, any principal nuclear facility.
- 514 Section 17. 2. 2. 4. INFCIRC/29, Part I, Section 24.
- 515 INFCIRC/29, Part II, Section 21.
- 516 INFCIRC/36, Section 14.
- 517 For example, INFCIRC/98, Section 28(a).
- 518 For example, *idem*, Section 28(b).
- 519 For example, *idem*, Section 28.

- 520 This, too is a subject explicitly covered by the ENEA Convention (supra note 46), in Article 9(c),
521 This provision was added to the Statute as a result of a Swiss initiative at the Conference on the Statute
(IAEA/CS/Art. VII/Amend. 5/Rev. 1).
- 522 GC.1(S)/RES/13, para. 7. Section 24.1.2,
523 INFCIRC/6/Rev. 2. Quoted in Section 21.4.3.2.
- 524 For example, Staff Rule 13.03.4, which enables the Agency to require a staff member to reimburse it
"for any financial loss suffered by the Agency as a result of his negligence or of his having violated any
regulation, rule or administrative instruction" (AM. II/1),
525 As it may be required to do pursuant to Section 21 or 25 of the Agreement on Privileges and Immunities
(INFCIRC/9/Rev. 2).
526 For example, INFCIRC/70, Sections 16 and 19.
527 For example, INFCIRC/98, Section 21. The two paragraphs are set out in Section 31.1.6 below.
528 UN doc. A/CONF.35/DOC.10, Part IV.
529 UN doc. A/7277, para. 17, Resolution F, para.2(c). It is not clear whether this recommendation, which
was initiated by the Swiss representative (A/CONF.35/C.1/L.2), is meant to add anything to the Agency's
current practice, recited above, of incorporating the pertinent provisions of the Safeguards Document into
all safeguards agreements. The Agency's reply appears in GC(XIII)/INF/110, paras. 31-34, which was
annexed to UN doc. A/7677.
530 Quoted in Section 21.4.3.1.
- 531 Chapter 27 indicates why the provisions of Statute Article XVII are not usable for this purpose. However,
at the Conference on the Statute both the British and the American representatives thought otherwise
(IAEA/CS/OR.33, pp. 67 and 76).
532 The establishment of which (or the use of some other standing court) in connection with safeguards was
recommended at the Conference on the Statute (IAEA/CS/OR.12, p. 26).
533 ENEA Control Convention (supra note 46), Part III and Annexed Protocol on the Tribunal Established by
the Convention.
534 EURATOM Treaty (298 U. N. T. S. 167), Articles 81-83 and 136-160.
535 In drafting the Inspectors Document, (Section 21.4.2.1.1), the Director General realised that if the
entire Privileges and Immunities Agreement (with its own disputes clause based on advisory opinions of
the ICJ; INFCIRC/9/Rev.2, Section 34) were incorporated by reference into a safeguards agreement con-
taining its own disputes settlement procedure, a potential conflict would result concerning the procedure
to be used if a dispute relating to the rights of inspectors should arise. He therefore proposed, in the first
draft of the Document, that the settlement procedure of the P & I Agreement apply to such controversies,
The Board saw the difficulty but adopted exactly the opposite solution (Section 27.2.1.2, fourth paragraph).
536 INFCIRC/3, Part I, Article IV, and Part II, Articles III, 4 and V.
537 Section 27.2.2.1.
538 INFCIRC/86, Part I, Section 19; INFCIRC/118, Section 26 (final sentence).
539 For example, INFCIRC/67, Part II, Section 15.
540 INFCIRC/36, Section 18.
541 For example, INFCIRC/98, Section 30.
542 For example, INFCIRC/70, Sections 21 and 22.
543 INFCIRC/125, Sections 29-30.
544 INFCIRC/57, Sections 18 and 19; INFCIRC/86, Part I, Sections 18 and 19.
545 The suggestion that at least this power would have to be reserved to the Board was made by the American
representative at the Conference on the Statute (IAEA/CS/OR.33, p. 76).
546 A detailed comparison between IAEA and EURATOM safeguards appears in the Senate Hearings (supra note
489), pp. 266-276.
547 Thus the EURATOM system is one based directly on its Treaty, while the Agency's is basically a contractual
one, depending ultimately on the provision of a series of safeguards agreements. The Tlatelolco Treaty,
though largely relying on the IAEA for implementation, also contains the novel accusatory feature in
Article 16(1)(b).
548 Section 21.6.2.2.1.
549 Sections 21.6.2.1.1, 21.6.2.2.1 and 21.6.2.2.6.
550 INFCIRC/63.
551 Now the American safeguards too have been assumed by the Agency (INFCIRC/112).
552 As required by IAEA Statute Article XII, A. 5 (Section 21.7.2.1). Similar requirements are stated in
Article 80 of the EURATOM Treaty and in Article 4(b) of the ENEA Control Convention.

- 553 IAEA Statute Article XII, A, 5.
- 554 The CNNWS consequently recommended that "rules should be drawn up to avoid duplication of safeguards procedures and consequent commercial discrimination" (Resolution F, para. 4, reproduced in UN doc. A/7279, para. 17). The Agency's response appears in GC(XIII)/INF/110, paras. 38-41, which was annexed to UN doc. A/7677.
- 555 Statute Article III, A, 5.
- 556 For example, INFCIRC/98, Section 6.
- 557 See especially Section 21.5.4.1.
- 558 INFCIRC/66/Rev.2, para. 28, Section 21.6.2.3.3.4.
- 559 For example, INFCIRC/70, Section 10.
- 560 This provision of the Safeguards Document refers only to transfers of nuclear materials, since strictly speaking only these are subject to safeguards. However, when a safeguards agreement requires the control of other types of items, the rules relating to out-of-State transfers may be applied to these as far as possible (e. g. , INFCIRC/63, Section 21).
- 561 *Supra*, note 46.
- 562 Though this possibility is explicitly foreseen in INFCIRC/66/Rev.2, para. 26(e).
- 563 The IAEA/EURATOM conflict as to safeguards under NPT is discussed by Scheinman, *op. cit.* Annex 5, No. 54, pp. 38-42.
- 564 INFCIRC/25, Part I, A, Section 12.5.3.1.
- 565 Section 12.5.3.2. While EURATOM has no agreement with the Agency requiring the two organizations to co-operate, the bilateral agreement which the Community has concluded with the United States requires the former to seek to co-ordinate its safeguards procedures with the Agency (338 U. N. T. S. 135, Art. XII, A). Though up to now no formal steps have been taken to comply with this requirement, the EURATOM/USA bilateral has also opened another channel for introducing the Agency's ideas on controls to the Community: its Secretariat holds periodic meetings with USAEC representatives on safeguards methodology, and the latter are reasonably au courant with developments in the Agency.
- 566 Section 21.6.2.4.
- 567 Sections 21.6.2.3.2 and 21.6.2.3.3.3.
- 568 Section 21.3.2.2 and footnote 49 thereto.
- 569 Article 16(1)(b).
- 570 Article 18(2), (3).
- 571 INFCIRC/118.
- 572 Section 21.3.2.3.
- 573 Cf. Sections 7.2.2, 9.3.2 and 9.3.5.
- 574 Section 8.4.3. A proposal that the imposition of sanctions require a two-thirds majority was defeated at the Conference on the Statute (IAEA/CS/Art. XII/Amend. 3; IAEA/CS/OR, 38, pp. 31-35). At the Senate Hearings (*supra* note 489), pp. 122 et seq., Chairman Seaborg of the USAEC suggested that important safeguards agreements might have to be approved by a two-thirds vote.
- 575 INFCIRC/66/Rev.2, paras. 11 and 20 (Sections 21.6.2.1.1 and 21.6.2.2.7). However, this understanding was reflected neither in any amendment of the Board's Rules of Procedure nor in a formal determination (under Rule 37) that a qualified majority would be required (Section 8.4.3).
- 576 *Supra* note 104.
- 577 Section 8.2.1.2 (end).
- 578 GC(XI)/OR. 111, para. 30, which refers to an unidentified earlier proposal (probably made in 1966).
- 578A Section 21.3.2.3 (end).
- 579 Sections 21.4.1.1.1-5 and 21.4.2.1.1-2.
- 580 Section 21.4.1.1.1.
- 581 For example, GC(IV)/RES/71, para. 5. Such a request appears to fall directly within Statute Article V, F.2.
- 582 Respectively in GC(IV)/INF/27 and GC(V)/INF/39.
- 583 GC(IV)/108/Rev.1.
- 584 For example, the Denmark/UK Transfer Agreement, INFCIRC/63.
- 585 GC(X)/INF/86 and GC(XII)/INF/99.
- 586 Section 17.2.1.
- 587 Section 17.3.
- 588 Sections 21.5.6(a)-(c), 26.5.2.2.1 and 26.5.2.4.
- 589 Sections 21.5.4.8 and 21.5.7.1.

- 590 Sections 21.5.7.2-3.
590A INFCIRC/85/Mod.1; see *supra*, note 200.
591 Section 21.6.2.3.
592 INFCIRC/26, para. 36.
593 For example, INFCIRC/37, Part III, Annex A, para. 4(b).
594 Section 21.6.2.3.3.4.
595 INFCIRC/66/Rev. 2, para. 11.
596 Section 21.8.1.1.
597 Section 21.8.1.2.
598 Sections 21.8.1.3 and 21.8.2.3; INFCIRC/66/Rev. 2, para. 53.
599 Section 21.7.2.4.
600 Section 13.1.13.
601 Section 27.2.2.4.2.
602 Section 26.5.2.2.1.
603 INFCIRC/6/Rev. 2.
604 The Deputy-Director-General level head of the Department of Safeguards and Inspection (Section 9.4.3).
605 Section 21.7.2.4(1).
606 GOV/INF/60, Section 21.4.3.1.
607 Section 10.3.
608 GC(VII)/INF/60.
609 Section 10.1.
610 Section 17.5.
611 For example, UN doc. A/CONF.35/DOC.15, Annex I, Article VI.
612 Section 21.3.2.2(b).
613 UN doc. A/CONF.35/DOC.3, Parts G-K.
614 *Idem*, Part K.
615 Treaty Article 18(3), Section 17.5(b), UN doc. A/CONF.35/DOC.3, Part I.2.
616 *Idem*, Part I.3.
617 *Idem*, Part I.1, Section 17.5(a).

CHAPTER 22. HEALTH AND SAFETY

PRINCIPAL INSTRUMENTS

- IAEA Statute, Articles III.A.6, IX.I.3, XI.E.3, XII.A.1,2,5,6, XII.B, XII.C, and probably XI.F.4(b), XII.A.4,7, XIV.B.1(b), XIV.C
- Health and Safety Document (INFCIRC/18)
- Inspectors Document (GC(V)/INF/39, Annex), in particular paras. 9(b), 11
- Privileges and Immunities Agreement (INFCIRC/9/Rev.2), Sections 18(b), 23
- Agency Safety Standards, for example:
- Basic Safety Standards for Radiation Protection (Safety Series No.9, STI/PUB/147)
 - Regulations for the Safe Transport of Radioactive Materials (Safety Series No.6, STI/PUB/148)
 - Safe Handling of Radioisotopes, Manual and Addenda (Safety Series Nos. 1-3, STI/PUB/1, 10, 11)
- General Conference Resolutions commending Agency standards to States (GC(III)/RES/54, GC(IV)/RES/74, GC(VIII)/RES/174)
- Project and similar Agreements, for example:
- Uruguayan Lockheed reactor (INFCIRC/87, Part II), Articles V, VI, IX, Annex B
 - Master Agreement for Assistance in Furthering Projects by the Supply of Materials (e.g., as concluded with Turkey, INFCIRC/83, Part I), Section 10
 - Radiotherapy Equipment for Morocco (INFCIRC/74), Article IV
 - NPY Joint Programme (INFCIRC/55), Article IX and Annex D
 - Middle Eastern Radioisotope Centre (INFCIRC/38), Article XIII
 - Supplementary Agreements for the Provision of Technical Assistance by the IAEA (e.g., with India, 19 October 1964), Article II
- Research Contract, standard form

The peaceful uses of nuclear energy present two peculiar hazards to the world community: that of diversion to military purposes and that of widespread damage to health and property. Corresponding to each of these hazards the Statute requires the Agency to establish a control system: one of these, "Safeguards", is the subject of the previous Chapter; the other, the standards and measures relating to "Health and Safety", is discussed in this one.

Superficially the basic statutory provisions authorizing these two types of controls (Article III.A.5 and 6 respectively) appear to be quite similar, and some of the subsidiary provisions (e.g., those in Article XII.A) are almost inextricably related. But, while an intimate connection or at least considerable similarity between these functions might thus have developed, upon closer examination the apparent parallelisms are shown to be superficial while the genuine differences are fundamental.

The primary purpose of safeguards is to protect the international community against a potentially massive threat – and this protection can only be afforded by controls exercised directly by the Agency, since a State in which these controls are exercised may have no necessarily credible interest in assuring their effectiveness. On the other hand the health and safety threat is inherently a local and only more remotely an international one; while the careless handling of irradiated materials could lead to extensive damage and some destruction (spectacularly through a nuclear explosion and the

accompanying radiation, and more subtly but no less dangerously or extensively through the release of uncontrollable radioactive contamination), this would almost always affect primarily a limited area – usually in the State bearing the heaviest responsibility for the disaster. The international interest is thus somewhat tenuous and speculative: the possible pollution of international waters; the spread of contamination from an installation located close to a border; local damage to foreign lives and property; possible legal recourse against a foreign supplier; and finally the psychological set-back that the development of nuclear energy would suffer everywhere from any major disaster anywhere in the world. Thus, though the international interest in the safe operation of all nuclear activities is real and substantial, it is not so direct as to justify (as the international community is at present constituted) the vesting of an international organization with the rather extraordinary powers that safeguards require. Consequently, while the safeguards function is focused on the exercise of controls, and the development of the "system" is only of ancillary import – the health and safety activities consist: primarily of the establishment of standards to be applied to nuclear operations, secondarily of arrangements to apply these standards to particular operations, and only tertiarily of the control of the effectiveness of this application – in effect a direct reversal of the priorities relating to safeguards.

There is yet another difference between the two control systems, which may become more evident as both are more fully developed and are applied to more significant activities: while safeguards are considered politically obnoxious, they should generally not be particularly costly, at least for the operator of the controlled facility; but the ensurance of a proper level of safety, while on its face purely helpful to the State concerned, may prove to be most expensive indeed (for example, if it should be necessary to redesign a reactor or even only the pressure vessel, or if a nuclear facility is required to be located in a less populated and therefore remote area) without offering the possibility of passing the extra cost to the Agency or to anyone else. Thus it can be foreseen that if the Agency should take a tough-minded approach to its safety responsibilities, then sooner or later some of the measures it urges will be resisted for reasons more tangible than those that explain much of the hostility towards safeguards.

22.1. BASIC PROVISIONS

22.1.1. The Statute

22.1.1.1. Development

The first US Sketch of the Statute already foresaw that the Agency would provide "Services concerned with developing codes for public health and safety in connection with the utilization of fissionable materials". In reviewing the project proposals submitted by Member States, it would consider the "Adequacy of proposed health and safety measures for handling and storing

materials and for operating facilities" and would have "continuing authority to prescribe . . . health and safety regulations" to projects to which it allocated nuclear materials from its stocks.¹

The Negotiating Group draft closely followed the ideas of the US Sketch. It would have required the Agency to:

"Conduct its activities in such a manner as to assist in the development and enforcement of high standards and practices of public health and safety in relation to fissionable and radioactive materials."²

Other provisions, closely anticipating Articles XI.E.3 and XII.A.2 of the final text, provided for the Agency to make certain that adequate "health and safety measures" were being applied to Agency assisted projects.³

The Working Level Meeting refined the health and safety provisions to a close semblance of those in the final text of the Statute. The principal substantive additions were the assignment to the Agency of authority to develop health and safety standards, and to apply these standards to voluntarily submitted bilateral and multilateral arrangements (a provision similar to that which was simultaneously added to the basic safeguards clause).⁴

The Conference on the Statute made only two significant changes. It required the Agency's development of health and safety standards to be carried out "in consultation and, where appropriate, in collaboration with the competent organs of the United Nations and with the specialized agencies concerned"; though it made this addition in response to strong demands from several specialized agencies, it declined to follow ILO's request to delete the parenthetical reference to "standards for labour conditions".⁵ The Conference also, in imitation of its decision with respect to safeguards, provided for the application of the Agency's standards even to purely domestic nuclear activities, at the request of the State concerned.⁶

22.1.1.2. Explicit provisions

Article III.A.6 is the central provision establishing and defining the Agency's interest in nuclear safety. In its structure it closely resembles Article III.A.5, relating to safeguards. Two distinct but related functions are foreseen: the development of safety standards and the application of these standards, both to the Agency's own operations and to those carried out by others if the activity is in any way assisted by or associated with the Agency, or submitted to its control multilaterally, bilaterally or unilaterally.

Article IX.I.3 requires the Agency "as soon as practicable [to] establish . . . as may be necessary: . . . Adequate health and safety measures". Though on its face this provision is quite general and merely appears to add urgency to Article III.A.6, it must be read in the context of Article IX which deals with the function of the Agency in acquiring and storing stocks of nuclear materials; this obligation, though broadly stated, is thus directly dependent on the Agency's dormant function as a recipient and supplier of nuclear materials.⁷

Article XI.E.3 requires the Board, before approving a project for which a Member State has requested assistance, to give "due consideration to:

... The adequacy of proposed health and safety standards for handling and storing materials and for operating facilities".

Article XI.F.2 requires Project Agreements to provide that all transfers of special fissionable materials to Receiving States be "under conditions which ... meet applicable health and safety standards".

Article XII.A, in listing the rights and responsibilities that the Agency is to have with respect to "any Agency project, or other arrangement where the Agency is requested by the parties concerned to apply safeguards", specifically mentions the power:

- "1. To examine the design of specialized equipment and facilities ... and to approve it only from the view-point of assuring ... that it complies with applicable health and safety standards ... ;
- "2. To require the observance of any health and safety measures prescribed by the Agency;
- ...
- "5. To approve the means to be used for the chemical processing of irradiated materials solely to ensure that this chemical processing ... will comply with applicable health and safety standards ... ;
- "6. To send ... inspectors ... who shall have access ... as necessary to ... determine whether there is compliance ... with the health and safety measures referred to in sub-paragraph A-2 of this article. ... "

Article XII.B assigns to the staff of inspectors established by the Agency "the responsibility of examining all operations conducted by the Agency itself to determine whether the Agency is complying with the health and safety measures prescribed by it for application to projects subject to its approval, supervision or control, ... " By Article XII.C this responsibility is extended to making similar determinations of compliance with respect to Agency projects and the other arrangements referred to in Article XII.A.

22.1.1.3. Implied provisions

Though the above list exhausts the explicit statutory references to health and safety, it is necessary, before completing the catalogue of relevant statutory provisions, to consider whether and to what extent the term "safeguards", as it appears in the Statute, may not also sometimes include and refer to health and safety and thus add a number of relevant provisions. This is not merely a theoretical exercise, for the possible applicability of a number of significant provisions (in particular Articles XI.F.4(b), XII.A.4, XII.A.7, XIV.B.1(b) and XIV.C) depends on the results of this analysis.

An examination of most of the relevant provisions of the Statute suggests that the two control functions are entirely separate, though in many ways parallel, and this conclusion is supported by historical evidence indicating that to the extent that the various bodies responsible for formulating the Statute expressed themselves on this point they considered the two functions to be different. Thus Article III.A.5 and 6 provides separately for safeguards and for health and safety and this parallelism is repeated in Article IX.I.2 and 3; in addition, Articles XII.A.1, XII.A.5, XII.A.6, XII.B and XII.C. specifically refer separately to these two functions.

This clear distinction is, however, obscured by the fact that Article XII, though entitled "Agency safeguards", includes numerous health and safety provisions in paragraphs A.1, A.2, A.5, A.6, B. and C. It can of course be argued that these several references to health and safety measures merely require the Agency, whenever it for any reason applies controls against military diversion, to enforce also certain minimal health and safety standards, even if safeguards is the only basis of its association with the activity. However, while this construction might appear reasonable, it has never been followed by the Agency: thus in none of the agreements by which materials or facilities have been submitted to Agency safeguards, either bilaterally or unilaterally,⁸ has any provision been made for the application of health and safety measures.

It would, however, still not be unreasonable to reject an interpretation supported merely by the slender thread of the title to an article of the Statute (even though that instrument contains no explicit rule requiring that such headings be disregarded). Nevertheless, weak as the statutory basis might be, the organs of the Agency have consistently assumed that certain references to "safeguards" also relate to health and safety controls:

- (a) Statute Article XI.F.4(b) has always been interpreted as requiring the introduction into all Project Agreements of appropriate health and safety provisions -- and this has been done even with respect to arrangements (e.g., technical assistance or equipment supply projects) for which no safeguards against diversion were required.⁹ Of course it might be argued that these provisions can be independently supported by the catch-all wording of Article XI.F.7, but in fact reliance has always been placed on XI.F.4(b).
- (b) The Health and Safety Document explicitly indicates that Statute Article XII.A applies to projects, arrangements and activities with respect to which the Agency has only health and safety responsibilities.¹⁰
- (c) Article XIV.B.1(b) has been relied on, from the earliest years of the Agency, to justify the allocation of all health and safety expenditures (such as for biological research) to the Administrative (Regular) Budget -- even though that Article follows a general reference to "the safeguards referred to in Article XII" by an explicit reference to Article III.A.5 (but not to III.A.6).¹¹ Similarly, it may be presumed that if any arrangement or activity is ever submitted to the Agency's health and safety controls pursuant to the final clauses of Article III.A.6, then Article XIV.C would apply as it does to safeguards submission arrangements.

It may therefore be concluded that, in addition to the explicit statutory references to health and safety, the just-cited provisions also relate to this type of control even though they apparently only refer to "safeguards". Such a construction must indeed be considered for each such statutory passage, excepting only those explicitly restricted to controls against military diversion (e.g., Articles III.B.2 and XI.F.4(a)) or where parallel provisions are made concerning the two types of controls (e.g., Articles III.A.5 and 6, and IX.I.2 and 3).

22.1.2. The Health and Safety Document

22.1.2.1. Development

The First Safeguards Document was designed to facilitate the negotiation of safeguards agreements (and in particular Project Agreements) after the awkward preparations for the JRR-3 project.¹² The Health and Safety Document had precisely the same origin and purpose. As a matter of fact, the JRR-3 Project Agreement¹³ as well as the Secretariat's first draft of a safeguards document reflected the view that the Agency's health and safety programme, or at least its enforcement in Member States, was merely a branch of safeguards.

As already mentioned, the Board was dissatisfied with the draft document that the Secretariat had prepared; though this dissatisfaction related to several points, the only point settled in June 1959 was that a clear distinction should be made between safeguards and health and safety controls – that there should be no "health safeguards". Though the Board took no formal decision, the views of its members were clear, and in November the Director General presented a separate draft setting forth principles on which the Agency's health and safety standards could appropriately be based and proposed measures to ensure observance of these standards. A revised version was issued a month later, and discussed by the Board in January 1960. By March 1960 the Director General had once more revised his draft and the Board, in contrast to the painful progress it was then making on the First Safeguards Document, approved the Health and Safety Document on 31 March 1960. There was no pressure to submit this instrument to the General Conference (in spite of its structural and legal similarity to the Safeguards Document) and it was merely published by the Secretariat in the INFCIRC/ series.¹⁴

Paragraph 40 of the Document called for its resubmission to the Board no later than January 1962, and for biennial review thereafter. The Secretariat did, in fact, present a tentative revision to meet the first deadline, but at the same time it asked the Board to defer its consideration to permit the preparation of more extensive changes. The Board silently acquiesced in the postponement, but in the event no further revision has been submitted to it nor have any of the biennial reviews been carried out. Nor has the Director General made use of his special authority to revise the Appendix,¹⁵ in which certain quantitative standards relevant to particular provisions of the Document are set out.

22.1.2.2. Provisions

The Health and Safety Document consists of a series of miscellaneous provisions, which by no means cover the entire range of the Agency's health and safety activities, but for the most part deal only with the circumstances requiring, and the method of imposing, health and safety controls with respect to Agency projects. It deals only superficially with the Agency's research activities in this field, and does not at all touch on the application of controls to the Agency's own activities that are explicitly required by Statute Articles III.A.6 and XII.B. Almost nothing is said about how the Agency's health

and safety standards are to be developed, and only slight mention is made of the application of controls to arrangements or activities voluntarily submitted – a point of similarity to the original Safeguards Document, whose lacuna in this respect was, however, largely cured by the Revised Document. The opening paragraphs define the terms "standards" and "measures" as follows:

"1. 'Safety standards' shall mean norms, regulations or recommendations established to protect health and minimize danger to life and property.

"2. Agency safety standards shall mean safety standards promulgated by the Agency under the authority of the Board of Governors. These standards shall in so far as is possible harmonize with standards published by international organizations of recognized competence in the matter and be designed to invite international acceptance. Such standards shall include:

- (a) The Agency's basic safety standards – standards prescribing maximum permissible levels of exposure to radiation and fundamental operational principles; and
- (b) The Agency's detailed operational standards – standards complementary to the Agency's basic safety standards; i. e. :
 - (i) The Agency's specialized regulations – safety prescriptions relating to particular fields of operation; and
 - (ii) The Agency's codes of practice – guidance on safety practices relevant to particular fields of operation.

"3. 'Safety measure' shall mean any action, procedure or condition to ensure observance of safety standards." (Footnotes omitted)

While these definitions are of course intended to apply within the Document itself, they can also be used to illuminate the meaning of the same terms as used in the Statute: "standards" in Articles III. A. 6, XI. E. 3, XI. F. 2, XII. A. 1 and XII. A. 5; and "measures" in Articles: IX. I. 3, XII. A. 2, XII. A. 6, XII. B and XII. C – though it may be doubted whether the statutory draftsmen actually had precisely this (or indeed any) distinction in mind when variously using these two terms.

Part II of the Document states a number of general introductory principles, largely relating to the purpose of the Document and the method of concluding health and safety agreements.¹⁶

Part III specifies in broad terms the information that a State is to provide to the Agency on requesting project assistance, in order to make possible a determination of whether and which type of health and safety controls will have to be applied.

Part IV establishes the basic conditions for the application of safety standards. First, on the basis of the information provided by the State, the Agency evaluates whether the assisted operation¹⁷ may lead to a radiation hazard; if so, safety standards must be applied as long as such hazard persists, unless: the amount of radiation involved is minimal, or the Agency's

assistance in producing it is not (in the Board's view) substantial,¹⁸ or the Agency's connection with the radioactive material becomes too remote. The standards to be applied are those of the Agency, unless the State proposes to use others which the Agency judges to be consistent therewith and equally effective.

Part V provides for the "measures" to be taken whenever the Agency is responsible for the application of "standards" (whether or not they are its own) to an operation. Two types of measures are provided for. For every controlled operation the State is required to submit certain reports to the Agency — though these, unlike the routine safeguards reports, need to cover almost nothing but any mishaps (e. g., radiation overexposures) that may have occurred. In addition, if the Agency evaluates the potential hazards to be higher than a specified minimum, then it may require the submission of more detailed information both on the potential hazards and on the safety measures (including administrative devices) the State proposes to take; these measures are subject to review and revision by the Agency.

Part VI specifies the circumstances under which the Agency may perform health and safety inspections, and indicates their maximum frequency. It includes a short list of the types of examination that may be performed during inspections.

The final Part of the Document deals with changes in the safety standards and measures in a number of situations: a revision of the Document itself by the Agency; the modification of the Agency's "standards"; and the possible modification of the standards or measures applied to a particular operation, either at the initiative of the Agency or of the State concerned.

An Appendix contains two Tables which respectively classify isotopes according to their radiotoxicity and indicate the quantities of these that may be used in various types of laboratories — data which is required to implement certain provisions in the Document.¹⁹

22.1.2.3. Legal Status

The legal status of the Health and Safety Document is the same as that of the Safeguards Document.²⁰

It has no binding force on Member States. Even without an express disclaimer (as contained in the Safeguards Document), this conclusion follows from the general inability of any organ of the Agency to promulgate rules binding on States.²¹

Even more than the Safeguards Document, the Health and Safety Document constitutes one of the Board's guidelines to the Director General on the negotiation of Project Agreements.²² It defines the types of assisted operations to which health and safety controls should be applied, and the nature of these controls. In those agreements that the Director General concludes on his own authority, he is presumably bound to conform the health and safety provisions to the ones specified in the Document; in those that he presents to the Board for approval, he may depart from the Document (though he never yet has) and point out such variation to the Board — which, having promulgated the Document, may also suspend its applicability to

particular situations, subject to any relevant statutory obligations and to the general prohibition against capricious discrimination among Member States.

Some portions of the Document, particularly in Parts V and VI, are so drafted as to permit incorporation into agreements with Member States. By such incorporation the affected provisions (relating largely to the procedures for submitting, approving and controlling the application of health and safety measures) of course gain legal force. However, as the Document deals largely with the procedure for determining the conditions of applicability of health and safety provisions to particular operations, it is not useful merely to incorporate by reference the entire Document into any agreement.²³ Therefore the declaration sometimes made by a Member State, that in connection with a particular project it is prepared to "accept the Health and Safety Document" is in effect meaningless and should generally be replaced by a statement of acceptance of the "Agency's safety standards promulgated in accordance with the Health and Safety Document".²⁴

Finally, in one marginal situation the Document as a whole may, without direct incorporation into an agreement, have some legal force affecting both a Member State and the Board. A number of Project Agreements foresee the possibility that the Agency's assistance may eventually be used in connection with operations quite different from those for which explicit health and safety provisions are included in the Agreement. Against this contingency, these instruments include a "blank cheque" clause, such as has already been described and discussed in connection with safeguards:²⁵ this clause permits the Board, in stated contingencies, to determine unilaterally appropriate health and safety measures "subject to Article XII.A of the Statute and to any relevant principles that have been or may be established thereunder"²⁶ — and these relevant principles are presumably largely those set out in the Health and Safety Document (as possibly revised from time to time).

22.1.3. The Inspectors Document

The Inspectors Document,²⁷ whose development is traced and provisions are discussed in Section 21.4.2 in its relation to safeguards, is by its terms equally applicable to inspection carried out in connection with health and safety controls pursuant to Part VI of the Health and Safety Document. To be precise, of the fourteen paragraphs of the Inspectors Document, eleven are equally applicable to both safeguards and to health and safety controls; sub-paragraph 9(a) and paragraph 10 relate only to safeguards, while correspondingly sub-paragraph 9(b) and paragraph 11 relate only to health and safety.

The legal status of the Inspectors Document with respect to health and safety is also precisely the same as with respect to safeguards.²⁸ Principally it constitutes a guide to the negotiation of agreements; secondarily its provisions are incorporated, in whole or in pertinent part, into all agreements under which the Agency is authorized to perform any health and safety inspections.²⁹ In those agreements in which both safeguards and safety

controls are provided for, the dispositions relating to inspectors are generally combined into a single provision, which does not distinguish between the two types of inspectors.

22.1.4. The Privileges and Immunities Agreement

The Agreement on the Privileges and Immunities of the IAEA differs from the Convention on the Privileges and Immunities of the Specialized Agencies, from which it is otherwise derived, in granting special rights to inspectors; these have already been mentioned in connection with safeguards.³⁰

The two pertinent provisions are Sections 18(b) and 23 – both of which refer to "inspectors under Article XII of the Statute". As indicated above, that Article, in spite of its title, has consistently been interpreted as applying also to health and safety controls, whether these arise independently of, in conjunction with, or ancillary to safeguards against diversion. No doubt has ever been expressed regarding the applicability to health and safety inspectors of these special provisions in the Privileges and Immunities Agreement.

As required by paragraph 13 of the Inspectors Document, the Privileges and Immunities Agreement has therefore been incorporated into all Project Agreements under which the Agency has the right to carry out health and safety inspections, including those under which no safeguards controls are authorized.³¹

22.2. AGENCY SAFETY STANDARDS

22.2.1. Functions and definitions

Article III.A.6 of the Statute authorizes the Agency "To establish or adopt ... standards of safety for protection of health and minimization of danger to life and property (including such standards for labour conditions)...". The function of developing safety standards (for which no real parallel exists in the field of safeguards against diversion) has become one of the most significant and useful activities of the Agency.³²

Though Article III.A.6 continues by providing for the application of these "standards" to certain operations, and further references appear to the application of "standards" in Articles XI.E.3, XI.F.2, XII.A.1 and XII.A.5, the Statute contains no definition of this term. This lacuna has therefore been filled by the Health and Safety Document, whose initial paragraphs (quoted in Section 22.1.2.2) attempt to supply the needed precision. Standards in general are defined to include "norms, regulations or recommendations", and three types of "Agency standards" are foreseen:

- (a) Basic Safety Standards;
- (b) Detailed Operational Standards: Specialized Regulations; and
- (c) Detailed Operational Standards: Codes of Practice.

Thus the term is used very broadly, ranging from recommended exposure limits to "guidance on safety practices".

The Statute several times, in Articles IX.I.3, XII.A.2, XII.A.6 and XII.B uses the term: "health and safety measures", and these "measures" are also referred to in Article XII.C. Though a comparison of the contexts in which this term is used rather than "standards" does not reveal a clear pattern or distinction, some differences in the use of the terms can be discerned. Paragraph 3 of the Health and Safety Document attempts to make the distinction clear, by defining "safety measures" to mean "any action, procedure or condition to ensure observance of safety standards", thus differentiating between norms (legislation) and the actual procedures for their application (execution). In the Statute and in the Agency's practice, however, the distinction is not precisely along these lines, but rather that "standards" are established abstractly without reference to any particular operation (though the "Codes of Practice" relate to "fields of operation"), while "measures" are requirements determined with respect to a specified operation.

22.2.2. Formulation

22.2.2.1. Legal requirements

Though the development of safety standards is a significant function of the Agency, the Statute gives almost no guidance on the procedure by which this should be done. The only relevant provision is the clause added to Article III.A.6 by the Conference on the Statute, at the insistence of the specialized agencies (in particular ILO and WHO), that the Agency is to act "in consultation and, where appropriate, in collaboration with the competent organs of the United Nations and with the specialized agencies concerned".³³

The Health and Safety Document, which might be expected to fill any statutory gap on this point, is no more helpful. Paragraph 2 defines "Agency safety standards" as those "promulgated by the Agency under the authority of the Board of Governors" and requires that they "shall in so far as is possible harmonize with standards published by international organizations of recognized competence in the matter". An indirect hint is given by paragraph 37, which requires that any change in a standard be the subject of "consultations with the main organizations concerned and . . . be submitted to the Board of Governors for its approval"; it may be presumed that if this is the procedure required to modify a standard, then a similar procedure is required to establish one. Finally one more rule appears in footnote 1 to the Document, requiring the Basic Safety Standards to "be based, to the extent possible, on the recommendations of . . . (ICRP)" — which of course is a substantive rather than a procedural disposition.

22.2.2.2. Competent organs

Since the principal relevant instruments, the Statute and the Health and Safety Document, give so little procedural guidance as to the formulation of safety standards, it is not surprising that they do not indicate the respective functions and powers of the Agency's principal organs in this field. Any analysis must thus rest empirically on the practice of the initial decade.

22.2.2.2.1. The General Conference

Though Statute Article V.D empowers the General Conference to "make recommendations to the membership of the Agency" (a right not explicitly granted to the Board), and one of the principal functions of the Agency's standards is to serve as models to be copied or adapted by Member States, the Conference has never established more than a toehold in this field. Thus, after the Regulations for the Safe Transport of Radioactive Materials were first approved by the Board, and again after the approval of the revised text, the General Conference passed Resolutions commending these standards to the Member States;³⁴ this was clearly done under Article V.D, since the Board had not requested a decision pursuant to Article V.F.1.³⁵

It is true that the Long-Term Programme refers to the "norms and standards, which are issued under the authority of the Board of Governors and the General Conference".³⁶ But this description was either made mistakenly or merely represents a politic attempt to boost the significance of the General Conference over that assigned to it by the Statute as well as by practice.

22.2.2.2.2. The Board of Governors

Relying presumably on its general authority under Statute Article VI.F,³⁷ the Board has assumed the dominant role in the formulation of safety standards. It formalized this function in the Health and Safety Document, which defines the Agency's standards as those "promulgated . . . under the authority of the Board . . ." and requires Board approval for the modification of any standard.³⁸

The Board has exercised its role almost exclusively through the formal approval it has given to standards of the three types listed in paragraph 3 of the Document; only cautiously has it made limited delegations to the Director General to supplement certain standards with explanatory materials, or to make minor changes. The Board has, however, rarely amended the text of the instruments proposed to it by the Director General, and has only infrequently been a forum for any searching discussion of proposed standards. It has also refrained from establishing a priori any formal procedural requirements for the development of standards, either in general or with reference to particular texts — though in considering whether to approve a given proposal of the Director General it frequently focuses its principal attention, post hoc, on the drafting procedure that had been followed (i.e., on the range and thoroughness of the consultations undertaken), in order to assure itself that there is at least a procedural guarantee of the adequacy and acceptability of the standard.

22.2.2.2.3. The Secretariat

Neither the Statute nor the Health and Safety Document assign any explicit function to the Secretariat in the development of safety standards. Nevertheless, it is clear that the Secretariat has become the leading factor in this field. The Director General decides what standards are to be developed,

what procedures to follow, and when the draft is ready for Board consideration; the Secretariat generally prepares most, if not all of the successive drafts.

More recently the Secretariat's function has been given a limited extension by the grant, in connection with some of the standards, of permission to make limited modification from time to time without previous Board approval. This power is closely circumscribed, as in the authority granted to the Director General in relation to the revised Regulations for the Safe Transport of Radioactive Materials:

"After obtaining such technical advice as he may need, to arrange for the inclusion of further technical data in the revised Regulations, and to make such changes of detail as will be needed from time to time to keep them technically up to date, to the extent that such steps can be taken without amendment by the Board of the principles and rules set forth in the revised Regulations, provided that he shall give 90 days' advance notice of intended changes to Member States and that comments received thereon shall be taken into consideration by the technical advisers."

22.2.2.3. Outline of procedure

The procedure for developing or revising the Agency's safety standards differs from instrument to instrument, according to the Director General's discretionary conclusion of what is appropriate and necessary. Through experience certain organs and approaches have been found useful and are thus resorted to again and again.

22.2.2.3.1. Initiation

The initiative for formulating new safety standards or revising existing ones rests almost exclusively with the Director General — though his decisions are of course influenced by pressures from Governments for (or against) the development of certain standards. The Board rarely intervenes in this process, and when it appears to do so through the inclusion of a passage in its Annual Report or the Programme and Budget,³⁹ this usually follows the Secretariat's draft.

The preparation of certain of the standards is, from the beginning, a joint project with some other international organization. Then all important preliminary steps are taken jointly by the respective Secretariats, and at the end approval may be given separately by the appropriate organs of both organizations.⁴⁰ Such intensive collaboration differs from the mere consultation with other organizations which is required by the Statute and is described further below. In 1970 WHO agreed to co-sponsor a number of the Agency's existing safety standards and it is expected that in the future such co-sponsorship will become a matter of course.

The background work and the first draft of a new set of standards is generally prepared within the Secretariat, either by staff members or frequently by consultants engaged for this purpose.

22.2.2.3.2. Panels and Committees

An important role in the development of each set of standards is played by one or more panels of experts, or by committees of governmental representatives. Both these types of bodies are convened by the Director General, to advise him by bringing to bear on the draft (or on some limited aspect thereof) a broader and sometimes better range of expertise than is available within the Secretariat and at the same time to ensure that the points of view of the principal interested and informed Governments and international organizations are taken into account.

In principle, there is a clear distinction between panels and committees. The members of the former are selected by the Director General, are paid for their services and reimbursed for their expenses by the Agency, and act in their individual capacity, i. e., they do not represent the States of which they are nationals.⁴¹ Members of committees are selected by Governments (i. e., by those invited to do so by the Director General), are not paid by the Agency and officially represent governmental points of view. In practice, the distinction is less apparent: in selecting members of panels, the Director General invariably consults the Governments concerned;⁴² both on panels and committees there is ordinarily only one person from any State (if the nationality of the representatives of international organizations is disregarded), though he may be supported by advisers; the Governments appointing members of committees usually indicate that they reserve their full freedom of action with respect to its conclusions — i. e., that they do not consider themselves bound by the decisions of their "representatives"; finally, when a given standard is sometimes considered by a succession of panels and committees, the membership of these bodies is usually partly or even largely identical — i. e., Governments choose as their official representatives on committees the same persons whom the Director General had appointed, at their recommendation, to serve on earlier panels.

There is no rule prescribing which Governments the Director General will invite to suggest panelists or to nominate committee members. The principal nuclear States are always represented, since they command the largest pools of expert talent. For the rest, an attempt is made to secure some representatives from other States — and not surprisingly preference appears to be given to those regularly represented on the Board, presumably in the expectation that this will eventually ease Board approval of the standard in question.

Except when a standard is developed in collaboration with another international organization, the statutory requirement of consultation is usually met by inviting certain interested international organizations to be represented at or to send observers to the panels and committees.⁴³ Whatever the nature of the body, and whether the IGO representative is to act as a member or only as an observer, he is selected by his organization and not by the Agency. His nationality is not taken into account in considering the overall balance of the organ.

22.2.2.3.3. Consultation with Governments

At one or more stages in the process of developing a set of standards, the Director General sends drafts to and requests comments from the Govern-

ments of all Member States and the international organizations concerned. Depending on their nature and gravity, these comments are examined by the Secretariat, by the panel or committee that had approved the draft, or sometimes by a newly convened body. For particularly important or controversial instruments this process of consultation, examination of comments, and revision of drafts may be repeated several times — until the Director General concludes that the largest possible consensus has been achieved.

22.2.2.3.4. Approval by Board

When a proposed set of safety standards has, in the opinion of the Director General, been sufficiently perfected, he submits it to the Board of Governors for approval. Though naturally the text itself is presented to the Board, the Governors rarely engage in a technical debate; however, generally a period of several months is allowed before the meeting at which a decision is requested, during which the Governors can individually secure domestic expert advice on the basis of which they may then present particular proposals or questions (which frequently reflect points raised in the preparatory panels and committees by the representatives of the same Government). Instead, the Board examines the procedure followed in formulating the proposed standard, in an attempt to satisfy itself that all potentially interested authorities have been sufficiently consulted and that all major issues have been resolved or at least thoroughly examined.

The approval of the Board is recorded in a resolution, a draft of which is generally presented by the Director General as part of his proposal. No standard formula of approval has yet evolved. In view of the somewhat ambiguous and in any case multiplex legal status of an "approved" standard, the resolution always consists of several parts and includes an appropriate selection of the following provisions:

- (a) A statement of approval — which sometimes is qualified as being merely "provisional";
- (b) An authorization or directive to the Director General to promulgate the proposed text as an Agency safety standard;
- (c) A recognition of the desirability of a review, perhaps to be carried out within a stated period; for this purpose the Director General is sometimes requested to solicit further comments from Member States;
- (d) An authorization for the Director General to promulgate certain limited changes on his own authority,⁴⁴ and sometimes an invitation to supplement the approved standards with explanatory notes or other ancillary materials that need not be submitted to the Board;
- (e) An authorization to apply the standard to the Agency's own operations, and perhaps also to national operations assisted by the Agency;
- (f) An invitation to Member States to take the standard as a basis for their domestic regulations, or perhaps a direct recommendation that Member States should conform; sometimes this is coupled with a request that States periodically notify the Agency of the extent of their application of the standard and of the reasons for any departures therefrom;

- (g) A recommendation to international organizations in general or to certain ones in particular, to apply the standard internationally or to include it in an instrument being formulated by another organization.

22.2.2.3.5. Publication

Following approval by the Board, each safety standard is issued as a volume of the Agency's Safety Series. In a sense, it is this publication which amounts to the "promulgation" of the standard. While on the one hand it would be erroneous to ascribe any particular legal effect to the form or date (which may be different in each of the official languages) of publication, that version does constitute the first definitive text as the one approved by the Board is often modified in minor ways before publication.

Certain Manuals and Reports, whose preparation involves essentially all the same steps as that of the standards – except for Board approval – are published by the Director General in the Safety Series on his own authority. To what extent the legal effect of these instruments differs from those of the approved standards is discussed in Section 22.2.4.

22.2.2.4. Examples of procedure

Outlined below are two instructive examples of the procedure by which standards are developed. These serve to demonstrate the potential length, complexity and thoroughness of such a project; however, they are not quite representative, since far fewer steps are involved in developing some of the simpler, subsidiary standards.

22.2.2.4.1. Basic Safety Standards

The "Agency's Basic Safety Standards [for Radiation Protection]" are the only standards specifically called for by the Health and Safety Document.⁴⁵ They are particularly important because the "maximum permissible levels of exposure to radiation" and the "fundamental operational principles" they establish must be reflected in all the subsidiary standards – and to the extent some of these were originally drawn up before the Basic Standards, the earlier versions have had to be revised to conform.

(a) Original Standards

- (1) The first draft was prepared by the Secretariat, on the basis of ICRP recommendations issued in 1958 and 1959⁴⁶ and taking into account applicable ICRU and ILO recommendations;
- (2) The Secretariat's draft was revised by a Panel of Experts from 11 Member States and 7 international organizations,⁴⁷ meeting from 27 October to 2 November 1960;
- (3) The Panel's draft was circulated for comment to all Member States and interested organizations;
- (4) The Panel was reconvened from 29 May to 2 June 1961 and revised its draft on the basis of the comments that had been received;

- (5) The Panel's revised draft was submitted to the Board by the Director General in September 1961;
- (6) Several changes were proposed by Governors in writing, and certain of these were accepted by the Director General;
- (7) The draft was discussed in the Board in February 1962;
- (8) On the basis of the Board's discussion and further comments by individual Governors, the Secretariat prepared certain revisions and cleared these with the Chairman of the Panel;
- (9) The modified draft was approved by the Board on 14 June 1962;
- (10) The Basic Safety Standards were published in the Safety Series in November 1962.⁴⁸

(b) Revised Standards

- (11) The Director General addressed a request to the Member States to communicate to the Agency their practical experience in applying the Basic Safety Standards;
- (12) The Standards were reviewed by a new Panel of Experts meeting from 16 to 20 November 1964, on the basis of the governmental comments and a new set of ICRP recommendations;
- (13) A draft revision was prepared by the Secretariat on the basis of the Panel's work and submitted to the Board in June 1965;
- (14) The revised Standards were approved by the Board on 17 September 1965, which at the same time authorized the Director General, from time to time and after specified consultations, to revise the Annexes and make minor "changes of detail in the Standards themselves" to keep them technically up to date;
- (15) The revised Standards were published as the "1967 Edition".⁴⁹

22.2.2.4.2. Transport Regulations

(a) Original Regulations

- (1) The first draft was prepared by the Secretariat, on the basis of existing national and international regulations;
- (2) The Secretariat's draft was considered from 2 to 9 April 1959 by the Panel on the Transport of Radioisotopes and Radioactive Ores and Residues of Low Specific Activity;⁵⁰
- (3) The subject of Transport Regulations was discussed by the Board in a general sense in June 1959;
- (4) The Secretariat's original draft was considered from 13 to 17 July by the Panel on the Transport of Large Radioactive Sources and Fissile Materials;⁵¹
- (5) On the basis of the work of the two Panels, the Secretariat prepared a new draft, which the Director General sent for comment to all Member States and to 28 international organizations;
- (6) The first Panel (on low specific activity materials) was reconvened from 1 to 6 February 1960 to consider the revised draft and the comments thereon;

- (7) The second Panel (on Large Sources) was reconvened from 8 to 13 February 1960 to consider the revised draft and the comments thereon;
 - (8) On the basis of the work of the two reconvened Panels, the Secretariat prepared a third draft, which the Director General submitted to the Board in May 1960;
 - (9) The Board approved the Regulations for the Transport of Radioactive Materials on 13 September 1960, and, *inter alia*, authorized the Director General to invite Member States to notify the Agency of the extent of their application and the reasons for any departures;
 - (10) On 30 September 1960 the General Conference, acting on its own initiative, welcomed the establishment of these "provisional" Regulations and recommended that Member States and international organizations take them as the basis of domestic and international transport regulations;⁵²
 - (11) The Regulations for the Safe Transport of Radioactive Materials were published in the Agency's Safety Series in May 1961.⁵³
- (b) Change in the Regulations
- (12) In January 1962 the Director General requests the Board to modify the approved Regulations, over ILO objections, to substitute the use of a trefoil for the skull and cross-bones as an indication of radiation danger;⁵⁴
 - (13) After negotiation with the ILO Secretariat, the Director General modified his recommendation to provide for the retention of the skull and cross-bones for large radiation sources;
 - (14) On 14 June 1962 the Board approved the compromise change in the Regulations.
- (c) Revision of the Regulations
- (15) Pursuant to the Board's 1960 resolution, the Director General asked Member States for information on the application of the Regulations;
 - (16) From 26 to 30 March 1962 a group of 3 consultants⁵⁵ was convened to discuss certain criticality questions preparatory to a revision of the Regulations;
 - (17) The group of consultants on "criticality considerations" was reconvened from 26 September to 3 October 1962;
 - (18) From 11 to 22 March 1963 a new Panel of Experts⁵⁵ considered the general revision of the Regulations;
 - (19) The report of the Panel of Experts and certain amendments to it were circulated to Member States and international organizations;
 - (20) A group of Consultants on Packaging Tests⁵⁵ met from 21 to 25 October 1963;
 - (21) The comments on the proposed revision received from Member States and international organizations were considered from 2 to 13 December 1963 by a new group of consultants;
 - (22) A Drafting Committee of the latest group of consultants⁵⁵ prepared a revised set of Regulations at meetings from 8 to 10 January 1964;

- (23) A Panel on the Design and Testing of Packaging⁵⁵ considered one aspect of the Regulations from 17 to 21 February 1964;
- (24) A new Packaging Panel,⁵⁵ whose membership differed slightly from the earlier one, was convened from 25 May to 5 June 1964;
- (25) The Board without considering the work of the Packaging Panels, approved the Revised Regulations for the Safe Transport of Radioactive Materials on 11 June 1964 and authorized the Director General to recommend them to Member States;
- (26) On the basis of the work of the Packaging Panels, the Secretariat prepared two revised Annexes for the Regulations;
- (27) The Board "endorsed" the two Annexes on 11 September 1964;
- (28) On 18 September 1964 the General Conference welcomed the Revised Regulations and urged Member States and international organizations to accept the Director General's recommendations relating to them;⁵⁶
- (29) A second Drafting Committee of the December 1963 group of consultants⁵⁵ was convened from 19 to 30 October 1964 to prepare a final text of the revised Regulations;
- (30) The "1964 Revised Edition" of the Regulation for the Safe Transport of Radioactive Materials was published in the Safety Series early in 1965.⁵⁷

(d) Changes in the Revised Regulations

- (31) A Panel of Experts on the Design and Testing of Packaging for Large Radiation Sources With Special Reference to Irradiated Fuel was convened from 15 to 26 March 1965 to consider an aspect of the Revised Regulations;
- (32) The new Panel was reconvened from 7 to 18 February 1966, during part of which period it held joint meetings with representatives of international transportation organizations;
- (33) On the basis of the Panel's report, the Secretariat in April 1966 recommended certain changes in the Revised Regulations;
- (34) The proposed changes were approved by the Board on 15 June 1966;
- (35) The approved changes were incorporated into the "1967 Edition" of the Regulations.⁵⁸

(e) Review of the Revised Regulations

- (36) In March 1969 the Agency was represented at a meeting in Stockholm of the competent authorities of those States having the most extensive trade in nuclear materials, at which problems concerning the Regulations were discussed preparatory to a major review by the Agency in 1970.⁵⁹
- (37) In December 1969, January 1970 and February 1970 three meetings of governmental and IGO experts to initiate a review of the Regulations, to be completed by 1972.

22.2.3. List of safety standards and related instruments

(1) Standards

(a) Basic Standards

(i) Basic Safety Standards for Radiation Protection, (1967 Edition).⁶⁰

(b) Specialized Regulations

(i) Regulations for the Safe Transport of Radioactive Materials (1967 Edition).⁶¹

(c) Codes of Practice

- (i) Safe Handling of Radioisotopes (First Edition with Revised Appendix I).⁶²
- (ii) The Provision of Radiological Protection Services.⁶³
- (iii) The Management of Radioactive Wastes Produced by Radioisotope Users.⁶⁴
- (iv) The Basic Requirements for Personnel Monitoring.⁶⁵
- (v) Radiological Protection in Mining and Milling of Radioactive Ores.⁶⁶
- (vi) Radiation Protection Standards for Radioluminous Timepieces.⁶⁷
- (vii) Safe Operation of Nuclear Power Plants.⁶⁸
- (viii) Safe Operation of Critical Assemblies and Research Reactors.⁶⁹

(2) Related Instruments

(d) Manuals⁷⁰ and Guides

- (i) Safe Operation of Critical Assemblies and Research Reactors.⁷¹
- (ii) The Use of Film Badges for Personnel Monitoring.⁷²
- (iii) Manual on Environmental Monitoring in Normal Operation.⁷³
- (iv) Environmental Monitoring in Emergency Situations.⁷⁴
- (v) Guide to the Safe Handling of Radioisotopes in Hydrology.⁷⁵
- (vi) Respirators and Protective Clothing.⁷⁶
- (vii) Basic Factors for the Treatment and Disposal of Radioactive Wastes.⁷⁷
- (viii) Planning for the Handling of Radiation Accidents.^{77A}
- (ix) Guide to the Safe Design, Construction and Use of Radioisotopic Power Generators for certain Land and Sea Applications.^{77B}

(e) Notes and Addenda to Safety Standards

- (i) Notes on Certain Aspects of the Regulations [for the Safe Transport of Radioactive Materials].⁷⁸
- (ii) Health Physics Addendum [to the Manual on the Safe Handling of Radioisotopes].⁷⁹
- (iii) Medical Addendum [to the Manual on the Safe Handling of Radioisotopes].⁸⁰
- (iv) Technical Addendum [to the Code of Practice on the Management of Radioactive Wastes Produced by Radioisotope Users].⁸¹

(f) Reports

- (i) Radioactive Waste Disposal into the Sea.⁸²
- (ii) Disposal of Radioactive Wastes into Fresh Water.⁸³

- (iii) Radioactive Waste Disposal into the Ground.⁸⁴
- (iv) Methods of Surveying and Monitoring Marine Radioactivity.⁸⁵
- (v) Techniques for Controlling Air Pollution from the Operation of Nuclear Facilities.⁸⁶
- (vi) Treatment of Low- and Intermediate-Level Radioactive Waste Concentrates.⁸⁷

22.2.4. Legal Status

The legal force of the various safety rules issued by the Agency depends on two factors: the nature of each instrument and the Agency's relation to the operation to which it is to be applied.

The Statute refers to one type of instrument in this field: "standards of safety for protection of health and minimization of danger to life and property".⁸⁸ Though the Health and Safety Document, in defining the term "Agency safety standards" does not directly refer to this statutory provision,⁸⁹ it is clear that the intention was not only to explain that expression as used in the Document itself, but also to define the statutory terms. Either the publication setting out a particular Agency standard or the Board's resolution approving it refers directly to the Statute or to the Health and Safety Document, thus indicating that those instruments approved by the Board, whether denominated "Standards", "Regulations" or "Codes" (and in one case even "Manual"),⁹⁰ are meant to be "standards" within the meaning of the Statute and the Document.

The Health and Safety Document defines the Agency safety standards as those "promulgated by the Agency under the authority of the Board of Governors".⁹¹ This formulation does not require the Board itself to approve each such text, but appears to permit either a general or a specific delegation by the Board to the Director General or to some other organ or authority; however, up to now only those documents which the Board has approved have been considered as "standards" in the statutory sense. This term therefore excludes the three types of instruments issued by the Director General directly: Manuals (excepting the Manual for the Safe Handling of Radioisotopes, to which the Board gave its provisional approval and which therefore in effect constitutes a Code) and Guide-books⁹²; Notes and Addenda to Board-approved standards (though usually issued pursuant to a direct instruction of the Board and designed to interpret the approved standards, they might actually be, but in practice are not, considered as part of them); and Reports, which are not in normative form and consequently could not serve (at least in their entirety) as standards.⁹³

Once it is established that a given instrument constitutes an Agency standard, it does not matter what the formula is by which the Board approved it. Whether or not the Board explicitly called for its application to Agency operation or to those assisted by the Agency, and whether or not the Board, the General Conference or the Director General explicitly recommend it as a model to Member States or to international organizations, its legal status follows directly from the provisions and the inherent limitations of the Statute. In effect, three types of situations can be distinguished:

- (a) Agency operations, to which all relevant standards must be applied and to which such application thus follows automatically; the Director General is of course free to apply also any rules that he may have promulgated.
- (b) Agency assisted operations (Agency projects), to which all relevant standards must also be applied, but to which application requires an agreement with the Agency; such agreements might, but in practice never do, also refer to rules promulgated by the Director General.
- (c) Unassisted national operations, for which the standards can only serve as examples, and will do so whether or not they are backed by the recommendation of any Agency organ; since such endorsement has no legal force, it is not significant (as a matter of international law, though it may be important psychologically or relevant as a result of national law or some international undertaking) whether a recommendation is issued, nor does it matter whether the instrument in question constitutes a Board-approved standard or was merely promulgated by the Director General.

Though this three-fold division gives a general outline of the legal standing of the Agency's various safety rules, a more detailed analysis is useful to show the actual impact on particular types of operations.

22.2.4.1. Agency activities

The Statute authorizes the Agency to "provide for the application of [its safety] standards to its own operations" and expects it to comply "with the health and safety measures prescribed by it for application to projects".⁹⁴ Up to now, however, the Agency's own technical operations have been quite limited. For all practical purposes, they are restricted to the Agency's Laboratories at Seibersdorf (with the minor branch in the Headquarters building) and Monaco (Marine Radioactivity)⁹⁵ In these the only potentially dangerous activities are the handling of radioisotopes. Therefore the operations manual promulgated by the Director General for the Seibersdorf Laboratory is derived largely from the very first Board-approved standard: the Manual on the Safe Handling of Radioisotopes.

22.2.4.2. Quasi-Agency activities

The Agency's research contracts fall into something of a shadow area as far as the Agency's statutory safety responsibility is concerned.⁹⁶ This is not surprising, since this type of operation was not explicitly foreseen in the Statute. On the one hand, work carried out by a private institute under contract with the Agency is not, strictly speaking, an "operation conducted by the Agency itself" which must automatically be subject to Agency health and safety measures; nor, on the other hand, is this an Agency project carried out by a Member State, which the Agency has the right and responsibility to subject to appropriate health and safety measures. Research contractors, though in a sense working as an arm of the Agency, are completely subject to their national authority and responsible to it; any substitution of the Agency's safety standards for the domestic ones with respect

to a research contract would require, at the minimum, an agreement between the Agency and the Government, and no such agreements are concluded with respect to research contracts.

From the Agency's point of view the solution has been to include in each research contract the following provision:

"The Contractor shall observe any pertinent health and safety standards and regulations that are applicable to the Agency's own operations and are communicated to the Contractor, except as otherwise agreed by exchange of letters."

Customarily the Agency then transmits to each contractor only the Basic Safety Standards and the Manual on the Safe Handling of Radioisotopes (with Addenda) – though occasionally, if other safety standards may be applicable to the operation, these may be sent too. This leaves it to the contractor to determine whether there is any incompatibility between his domestic and his contractual obligations; if there is, he could ask the Agency for relief. In practice this has never occurred, in part because the Agency never controls compliance with this contractual provision and thus contractors are unlikely to force themselves into possible noncompliance with the local law, but mostly because the Agency's standards, whether in a particular case more or less severe than national ones, are probably never really incompatible with them.

22.2.4.3. Agency projects

Because of the relative complexity of applying safety standards to various types of Agency assisted projects, this function is dealt with separately in Section 22.3.

22.2.4.4. Other national and international projects

The Statute also authorizes the Agency "to provide for the application of [its safety] standards . . . to operations under any bilateral or multilateral arrangements, or . . . to any of [a] State's activities in the field of atomic energy". This provision, in Article III.A.6, was deliberately drafted to be analogous to the safeguards provision in Article III.A.5. However, unlike the safeguards provisions, it has never been used – i.e., no State or group of States has ever requested the Agency to apply its safety standards to any arrangement or activity for which it had not become responsible by reason of the grant of assistance.

Just as the Safeguards Document directs with respect to the controls it relates to, so the Health and Safety Document requires that the application of Agency safety standards to a project voluntarily submitted to it must be "made in an agreement between the Agency and the State or States concerned".⁹⁷ Presumably such an agreement would be similar to the analogous Safeguards Transfer and Safeguards Submission Agreements⁹⁸ – it would:

identify the operation(s) to which it relates or establish a procedure for doing so; specify particular health and safety measures or establish a procedure by which they might later be specified; and provide for the exercise of controls by the Agency. It can also be assumed that, just like every effort is made to conform safeguards agreements relating to voluntary submissions or transfers to those relating to projects, so voluntary health and safety agreements would establish a regime similar to that established for projects.

22.2.4.5. National legislation

Neither the Statute nor the Health and Safety Document require or even suggest that the Agency's safety standards should be a model to which Member States should conform their domestic standards. Nevertheless, this is clearly an important, if not actually the principal function of the standards that have so far been promulgated.

The reason for this development lies in part in the practical desirability of uniformity in a field which would seem to be primarily of parochial concern, but which on closer examination exhibits a number of transnational aspects: radioisotopes are frequently sent across international boundaries and it is thus desirable that the methods for handling and packaging them be standardized; equipment manufactured in one country and used in another should conform to the standards of both.⁹⁹ But the principal reason why it seems desirable to use the Agency's standards as models is that they are formulated with the help of the collective expertise of the scientifically most developed States of the world, and few small countries can hope to match the effort and knowledge that is mobilized in this task — most of the less developed States lack the manpower to make even a start on the drafting of truly original standards; left to their own devices, they might adopt standards that are too lenient and thus dangerous, or too severe and thus restrictive of safe and useful activities.

It is in recognition of these facts that the representative organs of the Agency have recommended to its Members that certain standards (e.g., those relating to transportation) "should serve as the basis for relevant national regulations",¹⁰⁰ or more weakly that certain Codes "be taken into account in the formulation of national regulations or recommendations".¹⁰¹ The Director General has made similar recommendations in the publications setting forth the texts of the standards, and even in the Manuals promulgated on his own authority.

Though considerable care is invariably taken not to make such recommendations too positive or in any way peremptory, it is clear that, as a matter of international law, the recommendations generally have no force at all. The Statute does not place on the Member States any obligation to conform to recommendations made in this field by any Agency organ, or even to report to the Agency the degree of such conformity or the fact of or the reason for rejection.¹⁰² However, some international agreements lend more legal force to the Agency's activities in this field than the Statute itself. In particular, the 1958 Convention on the High Seas (which was adopted during the early months of the Agency's existence) requires the parties to it to prevent pollution by the dumping of radioactive wastes into

the seas, taking into account the standards and regulations of and co-operating with "competent international organizations";¹⁰³ a contemporaneous and related resolution passed by the UN Conference on the Law of the Sea makes it abundantly clear that the Agency was the "competent" organization primarily in the mind of the drafters.¹⁰⁴ Thus, if the Agency were to issue any standards in this field, the parties to the Convention would have on obligation to take account of them.¹⁰⁵

Because of convenience some States have incorporated particular Agency safety standards into their domestic legislation or into administrative regulations. Since States are not obliged to inform the Agency of such action, nor in general has such information been specifically requested of them, the Agency has no catalogue of such legislation. However, it appears that such provisions may be of several kinds: in some regulations specific Agency standards are referred to, and are thus presumably incorporated exactly in the form cited (regardless of later modifications by the Agency); in other instruments the Agency's standards are referred to more generally, particularly where legislative authority is given for the promulgation of domestic administrative regulations conforming to or based on the Agency's standards.

22.2.4.6. Decisions by international organizations

To a certain extent, the situation of other international organizations vis-à-vis the Agency's safety standards is similar to that of Governments. Direct application of these standards to the operations of a given organization would be possible at the request of its members (perhaps acting through one of its organs) — but this has never yet been done. Neither the Statute nor the Health and Safety Document foresee that recommendations be addressed by the Agency to other organizations — but for practically the same reasons that apply to States (the desirability of uniformity; the lesser expertise available to other groups) this has occasionally been done, in particular with reference to the Transport Regulations.

While in general the Agency has no more power to bind other international organizations to its standards than it has with respect to its Members, there may be several reasons why its recommendations in this field may have some special weight for organizations. In part some moral obligation arises from the procedural requirement included in the Statute at the insistence of the specialized agencies, that they be consulted in the formulation of the Agency's standards;¹⁰⁶ such obligation would presumably be particularly strong where certain standards are formulated in collaboration with a particular organization. A more directly legal responsibility might be derived from the network of relationship agreements between the United Nations, the Agency and the specialized agencies, by which the leading position of the Agency in the field of the peaceful application of atomic energy is recognized within the UN system;¹⁰⁷ the same may be true with respect to the regional organization with which the Agency has concluded co-operation agreements.¹⁰⁸ Finally, sometimes certain legal force for an Agency recommendation can be derived from a request particularly addressed to it by another organization: thus ECOSOC in 1959 in effect entrusted the Agency with the drafting of recommendations on the transport of radioactive sub-

stances for inclusion in the report of the Committee of Experts for Further Work on the Transport of Dangerous Goods¹⁰⁹ - and as soon as the Regulations for the Safe Transport of Radioactive Materials were approved (and again later when the Revised version was adopted), the Board proposed to the United Nations that these be included in the recommendations of that Committee.

The Agency's Transport Regulations have, as a matter of fact, been adopted or included by various international organizations in several international instruments:

- (a) The Recommendations of the UN Committee of Experts for Further Work on the Transport of Dangerous Goods;¹¹⁰
- (b) Restricted Articles Regulations of the International Air Transport Association (IATA);¹¹¹
- (c) The International Regulations Concerning the Carriage of Dangerous Goods (RID) (which constitutes Annex I to the International Convention Concerning the Carriage of Goods by Rail (CIM));¹¹²
- (d) European Agreement Concerning the International Transport of Dangerous Goods by Road (ADR); Annex B, Class IVb (Radioactive Substances);¹¹³
- (e) Draft European Agreement Concerning the International Transport of Dangerous Goods by Inland Waterways (ADN), Annex A, Class IVb;¹¹⁴
- (f) Transport Regulations recommended by COMECON's Standing Commission on Peaceful Uses of Atomic Energy;
- (g) IMCO Code of Practice to Govern the Safe Transport of Radioactive Materials by Sea;¹¹⁵
- (h) Regulations of Execution of the Universal Postal Convention;¹¹⁶
- (i) The Maximum Limits for the Exclusion of Small Quantities of Nuclear Materials from the Vienna Convention on Civil Liability for Nuclear Damage.¹¹⁷

22.3. APPLICATION OF SAFETY STANDARDS TO AGENCY PROJECTS

The Agency's role in applying health and safety controls to projects assisted by it is one assigned to it by the Statute, in several provisions analogous to but certainly weaker than those relating to safeguards. Article III.A.6 "authorizes" the Agency to provide for the application of its standards to assisted projects; XI.E.3 requires the Board to give due consideration to the "adequacy of proposed health and safety standards" before approving a project for Agency assistance; XI.F.4(b) (if held to apply)¹¹⁸ requires the Project Agreement to subject the project to the "safeguards" provided for in Article XII; and finally XII.A (particularly in sub-paragraphs 1, 2, 5 and 6) sets out the health and safety "rights and responsibility" the Agency is to have with respect to projects, "to the extent relevant".

The substance of these provisions was already contained in the first US Sketch of the Statute, and the evolution of the existing statutory text was not accompanied by much illuminating discussion. Apparently the general feeling of the various *fori* that considered the draft Statute was that health and safety was manifestly beneficial and that the relevant Agency functions

with respect to projects were consequently self-evident and non-controversial. Doubts were raised about these propositions only upon closer examination of the practical implications of the Agency's involvement in relation to actual projects; in particular, it appeared that health and safety controls would not only constitute as serious an intrusion on the sovereign rights of States as safeguards, but that safety measures might be far more costly and could not logically be charged to anyone but the operators of the project.

These doubts having been raised, it becomes desirable to identify the basis of this involvement. Only by resolving this point is it possible to determine the logical (though not necessarily the politically feasible) limits of the Agency's responsibilities. Several alternative interpretations must be examined:

- (a) The Agency is merely bound to offer its assistance in this field — an interpretation difficult to sustain in the light of the peremptory language of some of the relevant statutory provisions;
- (b) The Agency is merely concerned to protect its personnel and property against damage and itself against the engagement of its liability through an accident at a project which it is assisting — but this could have been covered by a combination of exculpation and hold-harmless clauses (as found in most bilateral agreements in this field),¹¹⁹ the complete absence of which from the Statute suggests that this concern could not have been prominent in the minds of the drafters;
- (c) The Agency is responsible merely for protecting the international community from damage (e.g., through pollution) that might result from an unsafe project — but the statutory provisions appear in no way restricted to such a limited purpose; finally
- (d) The Agency may be considered to have a tutelary responsibility with respect to its Members — i.e., an obligation not to assist them in securing potentially hazardous equipment and materials (which might damage largely their own citizens and property) without taking adequate care to minimize any danger.

It would appear that this last, really most radical, interpretation is the one in closest correspondence with the statutory language and design. It was this interpretation which the Preparatory Commission tacitly adopted in its Report,¹²⁰ and the Secretariat certainly reflected this approach in its initial drafts of the Health and Safety Document.

The Board, however, took a less well-defined view of the matter. After subjecting the question of the Agency's proper role in this field to probably its first searching political analysis, it prefaced the substantive part of the Health and Safety Document with the following paragraph, in which a nod is given to at least three of the above-mentioned approaches:

"The safe operation of nuclear facilities is of primary interest to all persons connected therewith, to the State that authorizes such operation and to other persons and States that might be adversely affected by unsafe operation thereof. In establishing safety standards and prescribing safety measures, the Agency's principal aim is to render valuable as-

sistance and useful support to its Members. Safety standards must be effective and safety measures must be adequate to control the potential safety hazard. Great latitude will be left to a State to apply its own system of safety standards and measures if it has been determined by the Agency that the system in question is adequate to achieve this purpose."¹²¹

In a later paragraph the Board indirectly rejected the liability approach, by indicating that far from using health and safety controls to reduce the possibility of claims being raised against it, the Agency must take care that these controls do not themselves result in the imposition of such liability; therefore it stated:

"The responsibility for safety measures shall be assumed by the State and the Agency shall have no liability whatsoever."¹²²

It would, however, be wrong to read the Document as a complete rejection of the tutelage approach. Aside from the admission in the introductory paragraph quoted above that health and safety is largely of national governmental concern (a statement whose effect is more psychological than substantive), the only significant concession is that reflected in the last sentence (and spelled out more fully in several later passages) that States will be given "great latitude. . . to apply [their] own system of safety standards" – but only if these have been "determined by the Agency [to be] . . . adequate to achieve this purpose".¹²³ For the rest, it is firmly provided: that safety standards are to be applied to all operations assisted by the Agency if these may lead to any (even if only local) radiation hazard; that these standards must be either Agency-promulgated or at least Agency-approved; that the obligation to comply with such standard be included in each Project Agreement; and that the Agreement also include provisions for safety measures to implement these standards and, if appropriate, for inspections by the Agency to control such implementation.¹²⁴

22.3.1. Reactor projects

22.3.1.1. Evaluation

The Statute requires the Agency to obtain from the requesting State and to evaluate information about the technical feasibility of the proposed project and about the health and safety standards to be applied to it.¹²⁵ The Health and Safety Document specifies in only slightly more detail the type of information to be sought and the nature and standards of the evaluation.¹²⁶ This information can be divided roughly into two categories:

- (a) A health hazards analysis, including a site analysis. This information is used to:
 - (i) Determine whether safety standards are at all applicable to the operation, since none are required if either the level of assistance or the potential radiation hazard is too low;¹²⁷

- (ii) Determine the nature and intensity of the controls to be applied, which depends on the potential radiation hazard;¹²⁸
- (iii) Help formulate the health and safety provisions of the Project Agreement.¹²⁹

When the information is received (frequently only after extended delays and numerous supplemental inquiries), it is evaluated by the Secretariat, whose conclusions are briefly reported to the Board in connection with its consideration of the project; ordinarily the Board is merely told that the Director General considers the results of the evaluation to be favourable.¹³⁰ Should such an unqualified recommendation not be possible, then the Director General may decline to submit the project to the Board — or rather he may delay submission until any points in question have been resolved. Frequently, however, complete safety information is not available at the time the project is to be evaluated, because the State may desire to obtain the Board's approval at such an early stage of its planning that no full hazards and site analysis is possible; if the Secretariat nevertheless considers that the chances of a later satisfactory report are high, it occasionally recommends to the Board the approval of the project and the related agreements, on the understanding that the latter will include provisions prohibiting the transfer of any dangerous materials or equipment until the required information has been submitted and evaluated positively by the Secretariat; the clearance is then given by the Secretariat and merely reported to the Board.¹³¹

- (b) An identification of the safety standards to be applied. Most frequently this consists merely of a statement that the State accepts the applicable Agency standards.¹³² If the State, instead, proposes to apply some other standards, it is requested to supply their texts for evaluation in accordance with the Health and Safety Document¹³³ (unless the Agency had already evaluated them or if they constitute other known and accepted international standards — such as those of ICRP).

22.3.1.2. Project Agreement

As previously indicated, it is not quite clear to what extent the Statute explicitly requires the inclusion of health and safety provisions in Project Agreements, since Article XI.F.4(b) uses the word "safeguards" in referring to the control provisions in Article XII. However the Health and Safety Document resolves this question in favour of inclusion, and in fact specifies several points to be covered in these Agreements.¹³⁴

- (a) Paragraph 21 requires the inclusion of the State's undertaking to comply with specified safety standards;
- (b) Paragraph 23 requires the inclusion of certain health and safety measures outlined in the Document;
- (c) Paragraph 35 requires the embodiment of the arrangements for any inspections the Agency is authorized to carry out.

In compliance with the Health and Safety Document, appropriate health and safety provisions have therefore been included in all Project Agreements relating to reactor projects. Although in the first such Agreement these provisions were combined with those relating to safeguards,¹³⁵ subsequently the Board required these to be separated and the following general pattern has evolved:

- (i) An Article in the body of the Agreement itself merely refers to a Health and Safety Annex and provides that the measures specified therein are to be applied to the project.¹³⁶
- (ii) The Annex, entitled "Health and Safety Measures", includes:
 - (A) A reference to the Health and Safety Document, since most of the substantive provisions following incorporate by reference applicable portions of the Document;¹³⁷
 - (B) A statement of the State's obligation to apply certain specifically cited standards – usually those of the Agency,¹³⁸ occasionally approved equivalents¹³⁹ – and to "endeavor" to follow the recommendation in the Agency's Codes of Practice (which are usually cited only generically);¹⁴⁰
 - (C) A list of additional data to be submitted to the Agency; if no complete health hazards report had been submitted, it is listed here; in any case the State is required to indicate the specific health and safety measures it proposes to apply to particular operations. The same paragraph establishes the Agency's authority to require additional measures, and also specifies the procedures to be followed if the State desires to change any approved measures or to engage in operations for which no measures had previously been approved;¹⁴¹
 - (D) A specification of the periodic and special reports that the State must submit, relating for the most part to any accidents and to dangerous situations uncovered;¹⁴²
 - (E) A specification of the number and type of inspections (initial, routine, special) that the Agency may carry out;¹⁴³
 - (F) A reservation of the Agency's authority to change, on its own initiative, any health and safety measures it had previously approved, subject to certain procedural requirements stated in the Document.¹⁴⁴
- (iii) The Inspectors Document and the Privileges and Immunities Agreement are incorporated by reference; if the project will also be subject to safeguards inspections, this incorporation is usually specified in the body of the Agreement;¹⁴⁵ if there may only be health and safety inspections, the incorporation is added to the inspection provision in the Annex.¹⁴⁶
- (iv) In the Agreements including a special provision for the contingency that the State might wish to perform particular operations for which no safeguards procedures had previously been agreed to, and giving the Agency a qualified "blank-cheque" authority to establish such procedures, this authority is usually extended to cover also any additional health and safety measures that might be needed;¹⁴⁷

- (v) In the Article relating to the Settlement of Disputes, the Board's authority to make binding interim decisions relating to safeguards is also extended to all health and safety measures.¹⁴⁸
- (vi) No specific authority to impose sanctions for health and safety violations is ever specified; however, whenever safeguards are also provided for, the statutory sanctions are incorporated without limitation and therefore may (in view of the scope of the statutory provisions) be construed as applying also to any non-compliance with health and safety measures.¹⁴⁹

22.3.1.3. Implementation

Over the years, the Board's and the Secretariat's views as to the Agency's health and safety responsibilities with respect to projects have mellowed ever further. In general it is felt, at least with reference to the small reactors that have been the subject of Agency projects up to now, that the Governments' interest in safe operation is a sufficient surety, which need not be reinforced through the application of strict controls by the Agency. Though care is taken to reserve, in each Project Agreement,¹⁵⁰ all the necessary rights for the Agency foreseen in the Statute and the Health and Safety Document, there is only a minimum of enforcement activity and almost never is an issue made of the Agency's rights and responsibilities or of a State's obligations.

Although all Project Agreements require the submission, for the Agency's approval, of the health and safety measures to be applied initially, and of any changes therein or additions thereto, no intensive attempt is made to receive all such proposals or to evaluate them too critically. In part this reflects the change in attitude just referred to, in part the weak leverage the Agency has in enforcing its views (short of threatening sanctions) once its assistance has been provided, and finally a concern that any too intimate involvement with detailed measures might expose the Agency to moral, if not legal liability should an accident occur. It is also realized that, regardless of the perfection of the approved measures, real safety depends on the spirit of their implementation — a factor not susceptible of Agency control.

All reports required by the Health and Safety Document relate to particular types of events (e.g., a radiation over-exposure received by a person). Since it is not clear whether any routine report need be submitted if there is no event of the specified nature to report (though such an obligation is implied by the wording of the relevant provisions), the Agency has up to now made no effort to determine whether its failure to receive health and safety reports is due to this circumstance or whether States have neglected their obligations even with respect to reportable facts.

All Project Agreements authorize the Agency to carry out special inspections, and most also authorize some initial and/or routine ones. In fact, up to now only a few formal health and safety inspections have been carried out (as distinguished from advisory visits by Agency experts at the request of a State), for two early reactor projects.¹⁵¹ The fact that no special inspections have been carried out is of course mainly due to the absence of special reports on any accidents which would justify such a visit. The

neglect of routine inspections, on the other hand, is due generally to the relaxed attitude towards the imposition of any health and safety controls, and more specifically to the consequent failure to establish a corps of inspectors qualified to carry out such inspections.¹⁵²

22.3.2. Non-reactor projects

In principle, the application of health and safety standards and measures is the same for all types of projects assisted by the Agency: neither the Statute nor the Health and Safety Document distinguish between reactor and other types of projects.¹⁵³ In practice, however, application to non-reactor projects is even less significant and intensive, since either the radiation hazard or the degree of the Agency's involvement in the project is usually considerably smaller.

22.3.2.1. Joint projects

(a) NORA Project

The NORA Project, though providing for a joint research programme, is also a regular reactor project to which the Agency had supplied nuclear materials.¹⁵⁴ Consequently the health and safety measures are precisely the same as for any other reactor project.¹⁵⁵

(b) The NPY and IPA Projects

Although the Agency provided no assistance to most of the reactors that are the principal facilities used in the NPY and IPA projects,¹⁵⁶ and therefore could not apply health and safety measures under the objective criteria of the Health and Safety Document, both the Agency and the Governments concerned agreed that in view of the Agency's involvement in the management of these projects it would be appropriate to apply such measures in practically the same way as if the reactors had been directly assisted. Thus the relevant provisions of these two Project Agreements do not differ in any substantial way from those relating to conventional reactor projects.

It is interesting to note that in the original NPY Agreement, which was concluded before most of the significant Agency standards had been promulgated, each of the three Governments undertook to apply, to its own reactors, a different set of national safety standards.¹⁵⁷

(c) Middle Eastern Radioisotope Centre

The Agency's assistance to the Middle Eastern Radioisotope Centre for the Arab Countries¹⁵⁸ is not such as to create directly any radiation danger. The relevant provisions of the Agreement establishing the Centre¹⁵⁹ therefore merely provide:

"Section 29. The Centre shall comply with the Agency's Basic Safety Standards (the Agency's Safety Series No. 9) and other standards of the Agency, and endeavour to ensure safety conditions as recommended

in the relevant parts of the Agency's codes of practice. The detailed health and safety regulations of the Centre shall be established in consultation with the Agency. Changes may be made in these safety standards and measures in accordance with the provisions of paragraphs 38 and 39 of the Agency's Health and Safety Measures (Agency document INFCIRC/18).

"Section 30. The Director shall submit to the Agency the reports specified in paragraph 25 of document INFCIRC/18, the first report to be submitted not later than twelve months after the coming into force of this Agreement. In addition, the reports specified in paragraphs 26 and 27 of document INFCIRC/18 shall be submitted."

(d) Fruit Irradiation Project

The Agency's minimal involvement in the International Programme on Irradiation of Fruit and Fruit Juices¹⁶⁰ justified only the following clause in the Agreement providing for this collaboration:

"The health and safety standards to be applied in carrying out the programme shall be consistent with the Basic Safety Standards for Radiation Protection of the I.A.E.A. and with the Radiation Protection Norms of ENEA." ¹⁶¹

22.3.2.2. Nuclear material supply

The Agency's model Master Agreement "For Assistance by the Agency in Furthering Projects by the Supply of Materials", pursuant to which the Agency may supply relatively insignificant quantities (at least from the military, though not necessarily from the biological point of view) of nuclear materials to Member States,¹⁶² has the following open-ended provision:

"Unless otherwise provided in the Supplementary Agreement, each project shall be subject to the following health and safety provisions: The Government shall apply to operations carried out in implementation of each project the Agency's Basic Safety Standards and its specialized regulations, and shall endeavour to ensure safety conditions as recommended in the relevant parts of the Agency's Codes of Practice. The Government shall arrange for the submission of the reports specified in paragraphs 25 (a), 26 and 27 of Agency document INFCIRC/18 with respect to any supplied material and operations involving it. The Agency may carry out special inspections under the circumstances specified in paragraph 32 of the said document; the Government shall apply the relevant provisions of the Annex to Agency document GC(V)/INF/39 and of the Agreement on the Privileges and Immunities of the Agency to the Agency's inspectors and to any property of the Agency used by them in performing their functions." ¹⁶³

The effect of this clause may be varied by particular Supplementary Agreements, each of which relates to a different supply transaction, if either the

amount of materials involved falls below the "minimum significant" quantity specified in paragraph 18(a) of the Health and Safety Document or, on the other hand, if it is in excess of that specified in paragraph 28.

22.3.2.3. Equipment supply

Equipment supplied by the Agency under Project Agreements¹⁶⁴ frequently is specially designed to produce radiation — for example, a neutron source. While the agreements naturally vary with the type of equipment supplied, some standardized provisions have been developed for certain types of equipment. Thus for radiotherapy equipment, a clause is included which in abbreviated form states most of the requirements of a typical reactor Project Agreement, except for the omission of the Agency's right to receive, approve and amend the applicable health and safety measures.¹⁶⁵

22.3.2.4. Technical assistance

Most technical assistance projects, both under the Agency's regular programme and under UNDP, consist of the supply of the services of an expert, perhaps of some equipment (some of which may produce intensive radiation), occasionally of some radioisotopes and only rarely of minute quantities of nuclear materials. Thus the radiation hazard related to these projects is generally not significant — and the Agency-supplied expert is probably the person most competent to control and minimize it.

Nevertheless, all technical assistance projects are evaluated by the Secretariat to determine the degree of hazard involved. For Regular Programme projects, the results of this evaluation are reported to the Board, together with a general statement of the health and safety standards and measures that will be imposed,¹⁶⁶ at the time each project is submitted for approval.¹⁶⁷

Since no health and safety provisions appear in the EPTA Basic Standard Agreement, which in some form is the basis of every technical assistance agreement of the Agency, some such provisions have had to be included in each supplementary agreement relating to such assistance.¹⁶⁸ Originally this had to be done separately in relation to each project, but later the following provision has been included in each master supplementary agreement:

"Article II

"Health and Safety Measures

"The Government shall, where considered necessary by the Agency, apply to the technical assistance the Agency's safety standards as defined in paragraph 2 of Agency document INFCIRC/18 and as they may be revised from time to time, in accordance with the provisions of that document and with the terms of the letters to be addressed by the Agency to the Government with regard to particular projects of assistance."¹⁶⁹

This provision makes it unnecessary to add any further requirements in respect of most types of assistance. Whenever the Secretariat feels that some special measures should be taken, these can be notified with binding effect in the letter in which the Agency announces the grant of the requested assistance.

22.3.2.5. Peaceful nuclear explosions

It is likely that in the non-too-distant future the Agency will be required or requested to exercise its safety controls with respect to peaceful nuclear explosions. Such a contingency could arise:

- (a) If such explosions were to be assisted as Agency projects;¹⁷⁰
- (b) If a request were to be addressed to it pursuant to the Treaty for the Prohibition of Nuclear Weapons in Latin America;¹⁷¹
- (c) If a new organization charged with the promotion of peaceful nuclear explosions should be established, with the corresponding regulatory functions being left to the Agency.¹⁷²

Preliminary to assuming any such responsibilities, the Agency would presumably develop applicable "operational standards" (probably including both "specialized regulations" and "codes of practice") – which could also be used by States directly, even without the Agency's intervention. Such standards would, of course, more than most others already promulgated by the Agency, need to take into account the potential international implications of such explosions, both as a matter of general international law and with respect to specific instruments, such as the Partial Test Ban Treaty.¹⁷³

22.4. HEALTH AND SAFETY INSPECTIONS

22.4.1. Requirements

The Statute leaves no doubt that compliance with the applicable health and safety measures is to be controlled by the Agency by the use of inspectors. Article XII.B provides for the establishment of a "staff of inspectors", whose first stated duty is to examine the Agency's own operation for compliance with health and safety measures, a responsibility which by Article XII.C is extended to Agency projects and other arrangements subject to "safeguards". Article XII.A.6 states it as one of the rights of safeguards inspectors to "determine whether there is compliance with...health and safety measures".

Part VI of the Health and Safety Document specifies the types of inspections that may be carried out with respect to Agency projects, and the circumstances when this may be done. Two types of inspections are provided for:

- (a) Routine inspections, which may not exceed two a year and which may only be used if the potential radiation hazard is evaluated as exceeding a specified level;

- (b) Special inspections, which may be carried out either if a State reports a major incident (defined in paragraph 9 and requiring, by paragraph 26, a special report within 48 hours) or "on specific instruction of the Board of Governors".

Arrangements for safety inspections must, as to their general conditions, be embodied in the relevant Project Agreement and, as to the details of particular visits, be made by the Director General with the State concerned.¹⁷⁴

The Inspectors Document applies to health and safety inspections in the same way as it applies to safeguards. This is specifically indicated in the Board-approved "Memorandum of the Director General" which constitutes the covering instrument.¹⁷⁵ It is also evident from the text of the Document, which either makes no distinction between the two types of inspections or, when it does, includes directly parallel provisions for both. In particular, paragraph 11 reproduces almost verbatim the specification, from paragraph 34 of the Health and Safety Document, of the types of safety examinations that may be carried out.

In compliance with the requirement of the Health and Safety Document that inspections must be provided for in the relevant Project Agreement, each such Agreement as to which this control measure may become relevant contains an appropriate clause.¹⁷⁶ Each such provision reserves the right to make special inspections. The right to make one or two routine inspections annually is only provided for if the hazard is considered substantial;¹⁷⁷ sometimes the Agency only requires the right to make a single initial inspection when the project first comes into operation (e.g., just after Agency supplied equipment has been installed).¹⁷⁸ Even if there is only a contingent right to perform special inspections, the Inspectors Document and the Privileges and Immunities Agreements are always incorporated by reference; if in the same agreement safeguards inspections are also provided for, the relevant clauses are usually joint.¹⁷⁹

22.4.2. Corps of inspectors

Article XII.B and C of the Statute provides for the establishment of a "staff of inspectors" who are to have safeguards as well as health and safety responsibilities, both with respect to the Agency's own operation and in relation to assisted projects and other safeguarded arrangements.

The Report of the Preparatory Commission concluded, after analyzing the types of controls to be exercised, that: "Where possible, it would be convenient in practice to associate inspection under the safeguards functions with inspection under the health and safety functions of the Agency."¹⁸⁰ It consequently recommended the establishment of only a single Inspection Unit, with responsibilities for planning "for the implementation of safeguards and health and safety standards".¹⁸¹

It would have been logical, on the basis of the statutory pattern and following the recommendations of the Preparatory Commission, to unite in one Department the Safeguards and the Health and Safety Divisions as well as the Inspection Division, with the former two establishing policies and concluding agreements within their respective areas of competence, while the

latter controlled compliance for both. However the Board, in its first move to separate the two control functions, adopted a structure for the Secretariat in which the Inspection Division would only be associated with the Safeguards Division (in the Department of Safeguards and Inspection), though safeguards inspectors might still carry out collateral health and safety functions.¹⁸²

In the event, the Inspection Division was never really set up.¹⁸³ Initially there were no agreements in force under which any types of inspection could be carried out, and therefore no staff at all was assigned to the Division. With the initiation of the first small reactor projects permitting infrequent safeguards and health and safety inspections it still seemed premature to follow the statutory command to establish a corps of inspectors; instead, ad hoc designations were made of officers in the Safeguards or Reactor Divisions to carry out safeguards inspections, and of officers in the Division of Health, Safety and Waste Disposal or again the Reactor Division to control compliance with safety measures. Finally, since (for reasons stated below) the number of safety inspections was not increasing while more and more safeguards inspections were being carried out, the exclusive association of the inspection unit with safeguards was cemented first by the creation of the Division of Safeguards and Inspection and later by its transformation into the Division of Operations.¹⁸⁴

In the final stages of its approval of the Inspectors Document, the Board also decided that the appointment of each officer of the Division of Inspection would require Board approval.¹⁸⁵ It was clear that this was intended to apply primarily to safeguards inspectors, and though nobody was ever appointed to the Division of Inspection, the Board's decision was applied first on an ad hoc basis to officers assigned to carry out particular safeguards inspections and later to all officers (whether from the merged Division of Safeguards and Inspection or from any other Division) whom the Director General wished to utilize or have available for safeguards inspections.¹⁸⁶ However, the applicability of the Board's decision to health and safety inspectors has never been clear: The initial health and safety inspections were carried out, without objection from the Board, using ad hoc inspectors whose names had not been submitted to it; Whether the Board would object to the appointment (probably from the Division of Health, Safety and Waste Management) of officials permanently assigned to carry out health and safety inspections, has never been tested or even explored.

Before an Agency official is sent to a State to perform a health and safety inspection, he must be designated to the State in accordance with the Inspectors Document, in the same way that safeguards inspectors are.¹⁸⁷ Though not specifically required to do so by that Document, the Director General has always indicated, both in the preliminary consultations and in the formal designations, whether an official was to act as a safeguards or as a health and safety inspector. This politically prudent practice constitutes one more step away from the original statutory concept of a unified corps of inspectors responsible for all the Agency's controls functions.

22.4.3. Visits by inspectors

The first responsibility assigned by the Statute to the projected corps of inspectors, is to control the Agency's own operations for compliance with

applicable health and safety measures¹⁸⁸ This requirement has quietly been ignored, because no such corps has ever been established and because the Agency's own operations have up to now involved only minimal health hazards. To the extent that any exist, primarily in the operation of the Laboratory at Seibersdorf, the Laboratory Regulations assign the Division of Health, Safety and Waste Management certain responsibilities, including the nominations of a Radiological Health and Safety Officer and of a Health Physicist.

Though research contractors are required, by their contracts, to conform to Agency safety standards, no attempt has ever been made to enforce or to control compliance with this obligation. This is due to several factors, including considerable uncertainty about the extent of the Agency's responsibility in this area. Most research contracts contain no inspection provision, and when one is included it is meant primarily to permit the Agency to observe the progress of the work.¹⁸⁹ However, even if contracts were to contain such a clause, or should it be concluded that even without such a clause the Agency has this right vis-à-vis its contractors, another obstacle must be overcome: Agency inspectors cannot enter a Member State without the Government's permission, and research contracts cannot themselves provide for such permission since they are not concluded with the Government.

With respect to Agency projects, there usually is no legal obstacle to carrying out health and safety inspections, since in every appropriate case all necessary rights are reserved in the Project Agreement. Of course, for most projects, only special inspections are authorized and since the particular requirement for these (a report of an accident or specific instructions from the Board) has never yet been fulfilled, no such visits have been carried out or even considered. Though most reactor Project Agreements permit one or two routine inspections annually and many equipment supply agreements permit at least an initial inspection, after about four inspections performed in the early 1960s none have been carried out since. This abnegation results from policy considerations. Both the Secretariat and the Board have come to feel that, at least in relation to minimal hazard projects which at their worst could only harm their immediate environment, the Agency should not force its controls on unwilling Member States. If advice or assistance is desired, the Agency can send an official by invitation, and need not do so in the form of an inspection. Thus the present situation is: the right to make safety inspections is reserved whenever appropriate; however, except for the few early inspections no safety inspectors have been designated to States (which almost precludes the making of special inspections on short notice) and no visits denominated as inspections are being carried out.

NOTES

- 1 Note No. 8 of 19 March 1954 (reproduced in UN doc. A/2738, op. cit. Chapter 2, note 7), Parts III. B.(i)(c), III. B.(iii) and III. C.(iv)(b).
- 2 WLM Doc. 2, Article II. B. 2.
- 3 Idem, Article XIII. A. 3 and C. 2.
- 4 IAEA/CS/3, Article III. A. 6.
- 5 Section 12. 3. 1. IAEA/CS/Art. III/Amend. 4; IAEA/CS/OR. 13, p. 51; /OR. 14, para. 31.

- 6 IAEA/CS/Art. III/Amend. 12, para. 2; IAEA/CS/OR, 22, para. 12.
- 7 Sections 16.2.2.2 and 16.3.
- 8 Section 21.5.2.
- 9 Section 22.3.
- 10 INFCIRC/18, para. 13.
- 11 Section 25.2.1(c), (i) and (ii).
- 12 Sections 17.2.2.1, and 21.4.1.1.1.
- 13 INFCIRC/3, Part II, Article III.2 and 3.
- 14 INFCIRC/18.
- 15 INFCIRC/18, Appendix, footnote 1.
- 16 Paras. 13-15 closely resemble paras. 1-3 of the First Safeguards Document (INFCIRC/26 - Section 21.4.1.1.1), reflecting the Secretariat's hope at the time of their formulation to keep the two Documents as similar as possible so as to facilitate the parallel development of and possible later merger of the two control functions.
- 17 Health and safety standards and measures are applied to "operations" (INFCIRC/18, paras. 5, 10 and 17), while safeguards primarily relate to "materials" and "facilities" (Section 21.6.1).
- 18 INFCIRC/18, para. 18(b). The one explicit interpretation of this proviso appears in the letter by which the Board announced the cancellation of health and safety measures with respect to the Japanese JRR-3 reactor (INFCIRC/3/Mod. 2, Part II; Section 17.2.2.1).
- 19 In particular INFCIRC/18, paras. 18(a) and 28.
- 20 Section 21.4.1.3.
- 21 Section 13.1.6.
- 22 Section 17.2.1.2.
- 23 Nevertheless, just that was done in the Project Agreement relating to the Pakistani KANUPP reactor (Section 17.2.2.18), INFCIRC/116, Part II, Section 7.
- 24 Section 22.3.1.1(b).
- 25 Sections 21.5.4.8 and 21.5.7.1.
- 26 For example, INFCIRC/3, Part II; Article III.2, 3 and the Director General's letters (ibid., pp. 12-15, Part E, and INFCIRC/3/Mod. 2, Part II); INFCIRC/34, Part II, Section 8.
- 27 GC(V)/INF/39, Annex.
- 28 Section 21.4.2.3.
- 29 Section 22.3.1.2(iii).
- 30 Section 21.4.3.3. INFCIRC/9/Rev. 2.
- 31 For example, INFCIRC/74, Article IV. 5.
- 32 The "Technical basis of regulatory measures for radiation protection" are explained by Benson N. C. Agu in Legal Series No. 5, IAEA, Vienna (1969), pp. 209-223.
- 33 Section 21.1.1.1 (final paragraph).
- 34 GC(IV)/RES/74 and GC(VIII)/RES/174.
- 35 Section 7.2.2(d).
- 36 INFCIRC/50, para. 112.
- 37 Section 8.3.1.
- 38 INFCIRC/18, paras. 2 and 37.
- 39 For example, GC(XII)/385, paras. 441-444.
- 40 For example, The Radiation Protection Standards for Radioluminous Timepieces, developed jointly by IAEA and ENEA (IAEA Safety Series No. 23, STI/PUB/167), and recommended by the Agency's Board as well as by the OECD Council to the respective members of the two organizations.
- 41 "Ad hoc Advisory Panels" are defined and the regulations relating to them are set out in AM. VII/1, Annex I.
- 42 Idem, para. 7 and Appendix A.
- 43 Idem, para. 12 and Appendix B. Sections 12.2.2.3, 12.3.3.4 and 12.5.3.1.
- 44 See, e. g., the clause quoted in Section 22.2.2.3.
- 45 INFCIRC/18, para. 2(a).
- 46 The use of these recommendations was specifically required by footnote 1 to the Health and Safety Document.
- 47 The membership is listed in STI/PUB/26, under "Acknowledgements".
- 48 Safety Series No. 9, STI/PUB/26.

- 49 Safety Series No. 9, STI/PUB/147.
- 50 "The IAEA Regulations for the Safe Transport of Radioactive Material" are described by Ha Vinh Phuong in Legal Series No. 5, IAEA, Vienna (1969), pp. 225-230.
- 51 The membership of both Panels is listed in STI/PUB/40, under "Introduction".
- 52 GC(V)/RES/74.
- 53 Safety Series No. 6, STI/PUB/40.
- 54 Idem, paras. 8.1.1 and 8.2.2.
- 55 The membership of all these groups is listed in STI/PUB/97, under "List of Participants of Panels and Other Meetings".
- 56 GC(VIII)/RES/174.
- 57 Safety Series No. 6, STI/PUB/97.
- 58 Safety Series No. 6, STI/PUB/148.
- 59 GC(XIII)/404, para. 87.
- 60 Safety Series No. 9, STI/PUB/147.
- 61 Safety Series No. 6, STI/PUB/148.
- 62 Safety Series No. 1, STI/PUB/1. Even though entitled a "Manual", this instrument (unlike other manuals) was approved by the Board and has been incorporated into health and safety agreements in the same way as other standards.
- 63 Safety Series No. 13, STI/PUB/94.
- 64 Safety Series No. 12, STI/PUB/87.
- 65 Safety Series No. 14, STI/PUB/95.
- 66 Safety Series No. 26, STI/PUB/151.
- 67 Safety Series No. 23, STI/PUB/167.
- 68 Safety Series No. 31, STI/PUB/222.
- 69 Safety Series No. 4, STI/PUB/29 (revised version in preparation).
- 70 Except for the "[Manual on the] Safe Handling of Radioisotopes" (supra, para.(1)(c)(1)) the Agency's other manuals have not been submitted to the Board for approval, and therefore cannot be considered as constituting part of the Agency's Safety Standards (Section 22.2.4).
- 71 Safety Series No. 4, STI/PUB/29.
- 72 Safety Series No. 8, STI/PUB/43.
- 73 Safety Series No. 16, STI/PUB/98.
- 74 Safety Series No. 18, STI/PUB/118.
- 75 Safety Series No. 20, STI/PUB/131.
- 76 Safety Series No. 22, STI/PUB/150.
- 77 Safety Series No. 24, STI/PUB/170.
- 77A Safety Series No. 32, STI/PUB/227.
- 77B Safety Series No. 33, STI/PUB/246.
- 78 Safety Series No. 7, STI/PUB/32.
- 79 Safety Series No. 2, STI/PUB/10.
- 80 Safety Series No. 3, STI/PUB/11.
- 81 Safety Series No. 19, STI/PUB/119.
- 82 Safety Series No. 5, STI/PUB/14.
- 83 Safety Series No. 10, STI/PUB/44.
- 84 Safety Series No. 15, STI/PUB/103.
- 85 Safety Series No. 11, STI/PUB/86.
- 86 Safety Series No. 17, STI/PUB/121.
- 87 Technical Reports Series No. 82, STI/DOC/10/82.
- 88 Statute Article III. A. 6.
- 89 INFCIRC/18, para. 2.
- 90 Section 22.2.3(1)(a)-(c).
- 91 INFCIRC/18, para. 2.
- 92 The publication of "guide-books" on health and safety was first announced, with few details, in GC(XII)/404, para. 85 (e).
- 93 Section 22.2.3 (2) (d)-(f).
- 94 Respectively Articles III. A. 6 and XII. B.
- 95 Sections 19.1.1 and 19.1.2.

- 96 Sections 14.3 and 19.2.
- 97 INFCIRC/18, para. 15.
- 98 Sections 21.5.2-4.
- 99 It is probably for these reasons that the Preparatory Commission urged that the Agency seek to exercise a harmonizing influence in this field (GC. 1/1, paras. 35, 90 and 92).
- 100 GC (VIII)/RES/174, para. 2.
- 101 For example, the Board's recommendation in relation to The Basic Requirements for Personnel Monitoring, Safety Series No. 14, STI/PUB/95, Foreword.
- 102 Compare, e.g., the Constitution of WHO (14 U.N. T.S. 185), Article 22, and the Convention on International Civil Aviation (15 U.N. T.S. 295), Article 38.
- 103 Convention Article 25 (450 U.N. T.S. 11).
- 104 Resolution II of the [First] United Nations Conference on the Law of the Sea (UN doc. A/CONF.13/L.56, reproduced in Vol. II of the Official Records of the Conference (A/CONF.13/38), pp. 143-144).
- 105 As a matter of fact, the Agency has not promulgated any standards in this field, though it has published a report prepared for it by a distinguished panel (Section 23.3.1) but not endorsed by the Board.
- 106 Section 22.1.1.1.
- 107 Sections 12.2.1.2 and 12.3.2.4.
- 108 Section 12.5.2.
- 109 ECOSOC/RES/724.C (XXVIII).
- 110 Endorsed by ECOSOC/RES/994 (XXXVI).
- 111 11th edition, Part 2, effective as of 1 October 1967.
- 112 Revised Annex I, Part II, Class IV, b (430 U.N. T.S. 289, at pp. 421 et seq.).
- 113 Annex B to ADR, which had been formulated by the Working Party on the Transport of Dangerous Goods of the Inland Transport Committee of the UN's Economic Commission for Europe (ECE), entered into force on 29 July 1968 (Journal Officiel de la République Française, Conventions internationales, 26 Nov. 1968).
- 114 Formulated in December 1967 by the Working Party referred to in note 113.
- 115 Approved by IMCO/RES/A.81 (IV).
- 116 Article 121(1), 16 U.S.T. 1373, 1392 (TIAS 5881).
- 117 Section 23.1.6. International Convention on Civil Liability for Nuclear Damage, Legal Series No. 4, IAEA, Vienna (1966), pp. 18-20.
- 118 Section 22.1.1.3.
- 119 Section 29.2.1.2.
- 120 GC.1/1, para. 95.
- 121 INFCIRC/18, para. 11.
- 122 *Idem*, para. 24.
- 123 In particular, *idem*, paras. 20-21.
- 124 Respectively, *idem*, paras. 17-18, 20, 21, 23 and 35.
- 125 Article XI.E.1 and 3; Section 17.2.1.1.
- 126 INFCIRC/18, para. 16. To assist requesting States in complying with this requirement, the Secretariat has included a short list of points to be covered in its booklet "Services and Technical Assistance Available from the Agency" (Vienna 1961), GEN/PUB/8, Annex 1, section 5.
- 127 INFCIRC/18, para. 18.
- 128 *Idem*, para. 28.
- 129 *Idem*, paras. 21, 23 and 35.
- 130 Section 17.2.1.1.
- 131 For example INFCIRC/34, Part I, Section 3 (e), and Part II, Annex B, para. 3.
- 132 INFCIRC/18, paras. 16 (b) and 20. Sometimes States have merely stated their "acceptance of the Health and Safety Document". Strictly speaking, this is meaningless and therefore not satisfactory (Section 22.1.2.3), but in most cases it has been possible to interpret such a statement as referring to the safety standards promulgated on the authority of that Document.
- 133 INFCIRC/18, para. 20. Booklet cited *supra* note 126, section 5 (b) (iii).
- 134 The Health and Safety Document does not use the term "Project Agreement" (Section 17.2.1.2), which had not yet gained currency at the time of its formulation. However, it is clear that the "agreement between the Agency and the State" referred to in paragraphs 21, 23 and 35 of the Document is the same agreement as that referred to in paragraph 5, pursuant to which the Agency's assistance is given to the project - i.e., the Project Agreement.

- 135 The JRR-3 Agreement with Japan (Section 17.2.2.1), INFCIRC/3, Part II, Article III.2 and 3. The detailed provisions were actually set out in a letter issued pursuant to that Article and set forth in INFCIRC/3, pp.12-15, Part E. Later, after the promulgation of the Health and Safety Document, the Board cancelled the application of health and safety measures to the project (INFCIRC/3/Mod.2, Part II), under paragraph 18(b) of that instrument.
- 136 For example, INFCIRC/67, Part II, Article V. For some reason, the Project Agreement relating to the Pakistani KANUPP reactor (Section 17.2.2.18) includes no Health and Safety Annex, but contents itself with a complete incorporation of the Health and Safety Document (INFCIRC/116, Part II, Section 7); also see *infra*, note 157.
- 137 *Idem.*, Annex B, para.1.
- 138 Formerly the reference was to the standards as promulgated at the time of the signature of the Agreement (e.g., INFCIRC/62, Part II, Annex, para.2); the words "as...revised from time to time" have been added (e.g., INFCIRC/67, Part II, Annex B, para.2), which introduce a certain open-ended element into the State's obligation.
- 139 For example, INFCIRC/32, Part II, Annex B, para.2.
- 140 For example, INFCIRC/67, Part II, Annex B, para.2.
- 141 *Idem.*, para.3.
- 142 *Idem.*, para.4.
- 143 *Idem.*, para.5.
- 144 *Idem.*, para.6.
- 145 For example INFCIRC/67, Part II, Section 8 and 9.
- 146 For example INFCIRC/82, Part II, Annex, paras.5 and 6.
- 147 For example INFCIRC/34, Part II, Section 8. Recently, because of modification of the safeguards clauses, the health and safety provisions relating to this contingency have been incorporated into the other "change" provisions in the Annex (*supra* para. (ii) (C) of text), see also Sections 21.5.4.8 and 21.5.7.1.
- 148 Sections 21.10 and 27.2.2.2.1. E.g., INFCIRC/67, Part II, Section 15.
- 149 Section 21.7.2.4. E.g., INFCIRC/67, Part II, Section 6 (which incorporates, *inter alia*, Statute Article XII.A.7), and Annex A, para.10 (which incorporates Statute Article XII.C), both of which provisions of the Agreement are, however, part of the safeguards regime.
- 150 As of 30 June 1968, there were about 70 such projects, involving transfers of nuclear materials for reactors or for other purposes (GC (XII)/380, para.79).
- 151 For example the inspection of the NORA reactor (Section 17.2.2.4) reported in GC(VI)/195, para.84.
- 152 Section 22.4.2.
- 153 Sections 17.3-4.
- 154 Section 17.2.2.4.
- 155 INFCIRC/29, Part II, Section 18 and Annex C.
- 156 Sections 19.3.2.2-3. After the IPA Joint Programme had been in force for some years, the Agency also gave regular project assistance (the supply of additional fuel) to the PRR-1 reactor at which the programme is being carried out (Section 17.2.2.13).
- 157 INFCIRC/55, Annex D, para.1(a)-(c). However, in extending the Agreement in 1970, the entire Health and Safety Measures Annex (including the specific references to national health and safety standards) was deleted, to be replaced by a mere reference to the Health and Safety Document.
- 158 Section 19.3.1.
- 159 INFCIRC/38.
- 160 Section 19.3.2.4.
- 161 INFCIRC/64, Article 6.
- 162 Section 17.3.
- 163 For example, INFCIRC/83, Part I, Section 10.
- 164 Section 17.4.
- 165 For example INFCIRC/74, Article IV.
- 166 In 1962 the Board cautioned the Secretariat against the too automatic application of all control measures to each technical assistance project.
- 167 Section 18.2.1.
- 168 Section 18.1.5.2.
- 169 For example, Supplementary Agreement for the Provision of Technical Assistance by the IAEA to India (19 October 1964, Agency Registration No.262), Article II. For the text of the similar model provision, see Legal Series No. 5, IAEA, Vienna (1969), p.245, Article II.

- 170 Section 17.5.
- 171 UN doc. A/6663, Article 18, Section 21.3.2.2.
- 172 Section 17.5. As proposed at the 1968 Conference of Non-Nuclear-Weapon States (e.g., in UN doc. A/CONF.35/DOC.15); Section 15.2.2.
- 173 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, 480 U.N.T.S. 43.
- 174 INFCIRC/18, respectively paras.35 and 33.
- 175 GC(V)/INF/37, para.3.
- 176 Section 22.3.1.2(ii)(E) and (iii).
- 177 For example, INFCIRC/99, Part II, Annex B, para.5.
- 178 For example, INFCIRC/74, Article IV.4.
- 179 For example, INFCIRC/67, Part II, Sections 8 and 9.
- 180 GC.1/1, para.85.
- 181 Ibid., para.124.
- 182 GC(II)/36, para.162.
- 183 Section 21.8.1.1.
- 184 SEC/NOT/152.
- 185 GC(V)/INF/39, para.2.
- 186 Section 21.8.1.1.
- 187 GC(V)/INF/39, Annex, para.1. Section 21.8.1.2.
- 188 Statute Article XII.B.
- 189 Section 19.2.5(g).

CHAPTER 23. MULTILATERAL CONVENTIONS

PRINCIPAL INSTRUMENTS

IAEA Statute, Article II

Vienna Convention on Civil Liability for Nuclear Damage (IAEA Legal Series No.4, p.3)

Optional Protocol Concerning the Compulsory Settlement of Disputes [relating to the Vienna Convention] (Idem, p.16)

Resolution of the Board concerning the Establishment of Maximum Limits for the Exclusion of Small Quantities of Nuclear Material from the Application of the Vienna Convention (Idem, p.18)

Resolution of the Board concerning the Establishment of a Standing Committee on Civil Liability for Nuclear Damage (GC(VII)/INF/68)

Conference Resolution on Civil Liability for Nuclear Damage (GC(VII)/RES/156)

[Brussels] Convention on the Liability of Operators of Nuclear Ships (IAEA Legal Series No.4, p.36)

Resolutions of the Diplomatic Conference on Maritime Law (resumed 11th session) relating to a Standing Committee (Records, pp.738, 739)

Convention on the High Seas (450 U.N.T.S. 82), Article 25

Resolution II of the first UN Conference on the Law of the Sea (Official Records, Vol.II, pp.143-44)

Report of the [Brynnielsson] Panel on Radioactive Waste Disposal into the Sea (IAEA Safety Series No.5)

Report on The Legal Implications of Disposal of Radioactive Wastes into the Sea (DG/WDS/L.19)

Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents (INFCIRC/49)

Report of the Committee of the Whole [of the Board] on Emergency Assistance in the Event of Nuclear Radiation Accidents (GOV/1144)

Resolution of the Board concerning Emergency Assistance in the Event of Nuclear Radiation Accidents (24 February 1967)

Reports of Standing Committees regarding establishment of an International Guarantee or Compensation Fund (CN-6/SC/7, para.18; CN-12/SC/9, para.15)

The Statute does not mention the formulation of multilateral conventions as one of the functions of the Agency nor does it establish any special mechanism by which the Agency might carry out such activities. However, it is apparent that the objective of the Agency "to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world"¹ may in some instances be furthered by the conclusion of multilateral treaties among its Members. Such instruments can facilitate trade in nuclear items; they can also help to reassure policy-makers planning nuclear programmes, by establishing means for dealing with the potential disasters with which nuclear activities have always been associated and whose occurrence, though unlikely, cannot be entirely excluded; finally in this way international regimes can be established in fields where individual State action is not possible, such as in imposing safe limits for radioactive waste disposal in the high seas.

The Preparatory Commission, in its report on the initial programme of the Agency, recommended that "The Agency should afford an opportunity for the consideration of international action with respect to legal liability, insurance and international legal aspects of waste disposal".² Consequent

on this recommendation the Agency has from the beginning explored various areas in which treaty arrangements might be possible and useful. So far its efforts have only been crowned with partial success in one field: that of civil liability, in which two conventions (relating respectively to land-based activities and transport, and to nuclear ships) have been concluded – but have not yet entered into force. In addition, one regional mutual emergency assistance agreement has been concluded. As described below, work has been initiated and in some cases is continuing on instruments relating to a world-wide emergency assistance system, to waste disposal into the sea or into international rivers, to nuclear liability insurance, etc. It is not intended to discuss here the substantive aspects of these various instruments, since about each of these (in particular those relating to civil liability) a considerable literature has developed; instead only the procedural aspects are presented below, to illustrate the mechanism whereby conventional instruments can be developed by or through the Agency.

23.1. CIVIL LIABILITY FOR LAND-BASED ACTIVITIES AND TRANSPORT

One of the first legislative projects undertaken by the Agency concerned civil liability and State responsibility in relation to nuclear activities. It was concluded that one or more world-wide instruments would be desirable in this field for the benefit of:

- (a) States planning to carry out nuclear programmes in which a disaster could potentially lead to extensive damage to persons and property and thus result in private or public liability;
- (b) Other States, not necessarily carrying out any nuclear activities, that might be affected by a nuclear disaster in a neighbouring State or whose citizens might be injured in another State or on the high seas; and
- (c) States interested directly or through their citizens in foreign sales of nuclear items and concerned that should a nuclear incident involving these items occur they might be faced with substantial liability on the basis of both direct claims and recourse actions.

This preliminary study also suggested that any contribution in this field would have to be commenced speedily, because several international organizations were already developing regional instruments and a number of the principal nuclear States were at that time engaged in planning relevant national legislation. Unless a world-wide convention was negotiated rapidly, national and regional regimes would be adopted which it would later be difficult to bring within the purview of a more general system.

23.1.1. Secretariat

During 1958 the Legal Division of the Secretariat, with the assistance of scientific officers from other units, started to study the problems relating to civil liability and to State responsibility for nuclear damage. By the end

of the year this study had been completed, and a draft convention had been prepared and supplied with an article-by-article commentary.³

23.1.2. Panel of Experts

In December 1958 the Director General established a Panel [of Experts] on Civil Liability and State Responsibility for Nuclear Hazards. The Panel consisted of experts from nine Member States, meeting under the chairmanship of Dr. Paul Ruegger of Switzerland.⁴ The experts were appointed in their personal capacity, but after consultation with their Governments.⁵

The Secretariat presented the results of its work to the Panel at the beginning of its first series of meetings (23-28 February 1959). The experts first engaged in a general discussion of the principal questions raised by the subject matter and finally requested the Panel Secretary (a member of the IAEA Secretariat) to prepare for their next series of meetings a draft convention reflecting the results of this discussion. Though as yet no definitive steps were taken to restrict the work of the Panel on the one hand to civil liability and to exclude State responsibility, and on the other to deal only with land-based reactors and to exclude nuclearly propelled ships, the tentative decisions to that effect were confirmed during its later meetings.

After a second and third series of meetings (11-22 May and 20 August-1 September 1959) and some further correspondence, the Panel prepared a report to the Director General to which it attached a Draft Convention on Minimum International Standards Regarding Civil Liability for Nuclear Hazards and an Article-by-Article Commentary thereon.

In April 1960 the Board authorized the Director General to circulate this report to all Member States and to request their comments. In December 1960 the Director General communicated to the Board the text of the Panel's report, the Article-by-Article Commentary and the Draft Convention, together with the general and specific comments submitted by Governments and their procedural suggestions for further action.

23.1.3. Intergovernmental Committee

Without engaging in any substantive discussion on the Panel's report, the Board in June 1961 established an Intergovernmental Committee on Civil Liability for Nuclear Damage consisting of the representatives of 14 States (8 of which had been represented on the Panel); it also invited the Chairman of the Panel and the Chairman of a similar ENEA group to participate in their personal capacities, and authorized the Director General to invite interested Member States and intergovernmental organizations to send observers. At the same time the Board arranged for the circulation to all Member States of the comments previously received and for the solicitation of additional ones.

At its first series of meetings (3-13 May 1961) the Committee considered the Panel's report and Draft Convention, as well as the two successive sets of comments that had been received from Governments. On the basis of this material it prepared a revised Draft Convention, without however including any final clauses and without reaching definite agreement on two

Articles (relating to the nature of the limitation of liability and to the circumstances under which facility operators could resort to recourse actions), for each of which it presented two alternative versions.

The Committee's draft as well as the report on its first series of meetings (prepared by the IAEA Secretariat and approved by the Chairman) were transmitted to the Board, and also to all Member States with a request for comments.

On 5 March 1962 the Board, in the same decision by which it authorized the convening of a Conference (see below), asked the Director General to reconvene the Committee to reconsider its draft in the light of any comments received from Member States.

At its second series of meetings (22-27 October 1962) the Committee reviewed its earlier draft in the light of the new governmental comments and prepared a revised version in which no alternative texts appeared (though minority views were reflected in its report), but which still did not contain any final clauses. This draft was then revised by a drafting sub-committee, the results of whose work were not again reviewed by the full body.

23.1.4. Vienna Conference

On 5 March 1962 the Board, after considering the report on the first series of meetings of the Intergovernmental Committee, authorized the Director General to convene an International Conference in Buenos Aires early in 1963 in order to conclude a convention on civil liability for nuclear damage together with any necessary ancillary instruments.⁶ It rejected a motion that "all States" be invited to participate in the Conference, and instead restricted the invitations to Member States; observers were invited to attend from the United Nations, the specialized agencies, and other intergovernmental organizations in relation to the Agency.⁷ In June 1962 the Board decided that the Conference should instead take place in Vienna.

The Conference was convened by the Director General on 29 April 1963 and met until 19 May.⁸ The Secretariat of the Agency acted as Secretariat of the Conference, as it had previously done for the Expert Panel and the Intergovernmental Committee. In advance of the meeting the Secretariat had prepared a number of procedural proposals, including drafts of the Agenda and the Rules of Procedure.⁹ The latter were based on those of the UN's Diplomatic Conference on Consular Relations, which met in Vienna immediately preceding the Civil Liability Conference; the principal difference between the two sets of Rules was that the Agency's Conference was not to appoint a General Committee and that only two Vice-Presidents were elected. All these procedural proposals were approved by the Conference at its initial plenary meeting; however, in adopting the Rules of Procedure,¹⁰ it postponed deciding whether all substantive decisions should be taken by a simple or by a two-thirds majority – only in its final week (but before the Plenary had had to take any substantive decision on the Convention) was the two-thirds rule adopted.¹¹

The question of participation in the Conference was raised several times: at the opening Plenary (representation of China; participation of North Korea, North Viet-Nam and East Germany),¹² in the Credentials Committee (repre-

sentation of China and Hungary)¹³ and in the Plenary's consideration of the credentials report (representation of China).¹⁴ Each challenge was rejected with the argument that the Board (in convening the Conference) had deliberately decided to restrict it to Members of the Agency and that the Conference itself was not authorized to make any change. The question of participation in the Convention itself was raised principally in connection with the final clauses, which as adopted provided for signature and ratification only by States represented at the Conference and accession only by other State members of the United Nations, of a specialized agency or of the Agency;¹⁵ proposals for opening the Convention to "all States of the world without distinction" were defeated.¹⁶

The structure of the Conference consisted of:

- (a) Plenary, with a President and two Vice-Presidents.
- (b) Committee of the Whole, with a Chairman elected by the Plenary and a Vice-Chairman and a Rapporteur elected by the Committee. The latter established three sub-committees, each with a Chairman:
 - (i) Subcommittee on Exclusion of Materials, consisting of 9 members;
 - (ii) Subcommittee on Relations with Other International Agreements,¹⁷ consisting of 15 members;
 - (iii) Subcommittee on Execution of Judgments, consisting of 11 members.
- (c) Committee on Final Clauses, consisting of 13 members.
- (d) Drafting Committee, consisting of the named representatives of 9 delegations (thus serving quasi-ad personam).
- (e) Credentials Committee, consisting of 8 members.

The basic draft considered by the Conference was that prepared at the second session of the Intergovernmental Committee. This draft was immediately referred to the Committee of the Whole which, eschewing any general debate, started a paragraph-by-paragraph consideration together with amendments submitted either before or during the Conference. Its decisions were taken by a majority vote. The draft of each Article approved by the Committee of the Whole was referred directly to the Drafting Committee, whose report was submitted directly to the Plenary.¹⁸ The title, the preamble and the final clauses (as to which the Intergovernmental Committee had not prepared a draft – but on which various Secretariat and governmental proposals had been submitted) were considered first by the Committee on Final Clauses,¹⁹ then by the Committee of the Whole, then by the Drafting Committee and finally by the Plenary.

The Conference adopted (by the indicated votes) the following instruments:

- (i) The Vienna Convention on Civil Liability for Nuclear Damage (43:0:6);
- (ii) An Optional Protocol Concerning the Compulsory Settlement of Disputes (40:3:7) – the proposal for which had first been adopted by the Committee on Final Clauses (7:4:1 and 8:0:4); the Committee of the Whole had substituted a disputes Article in the Convention as to which reser-

vations were explicitly permitted (26:16:5); the Plenary then reverted to the Protocol approach (23:22:4).²⁰

- (iii) A Final Act followed by three resolutions, of which the only substantive one recommended the establishment of a Standing Committee.²¹

The Final Act, the Convention and the Protocol were opened for signature on 21 May 1963 and the representatives of 47 States signed the Final Act on that date. The Convention and the Protocol remain open for signature indefinitely. Up to 31 December 1969, 9 States had signed the Convention and of these 4 had ratified (5 being necessary for entry into force); in addition 3 States had acceded. 4 States had signed the Protocol of which 1 had ratified – and no State had acceded (two ratifications or accessions being necessary for entry into force, which may, however, not precede the entry into force of the Convention).

The Vienna Convention, like other similar instruments and like most national legislation in this field, embodies the following main principles:²²

- (A) The absolute (no fault) liability of the facility operator (Articles II. 1 and IV. 1);
- (B) The limitation of the operator's liability (Article V. 1);
- (C) The requirement that, up to this limit, insurance or other coverage be obtained by or secured for the operator (Article VII. 1);
- (D) The drastic restriction of the operator's right of recourse (Article X);
- (E) A special statute of limitations (Article VI);
- (F) The "channeling" of all liability to the operator – i. e., the complete exculpation of virtually all other persons (e. g., suppliers) (Article II. 5).

The Convention assigned to organs of the Agency the following tasks:

- (1) The Board is authorized to establish maximum limits for the exclusion of small quantities of nuclear materials from the application of the Convention (Article I. 2);
- (2) The Director General is designated as the depositary of the Convention and is required to register it with the United Nations (Articles XXII, XXIV. 2, XXV, XXVI. 2, XXVII, XXVIII);
- (3) The Director General is also designated as the channel for disseminating information relating to State action concerning the Convention (Article XIX);
- (4) The Director General may be required to convene a revision conference (Article XXVI. 1).

In addition, the Conference recommended that the Agency establish a Standing Committee.²³ Though the Agency took no formal action to accept any of these several responsibilities,²⁴ nevertheless the Board and the Director General have proceeded to carry them out.

23.1.5. Standing Committee

The only substantive resolution adopted by the Vienna Conference recommended that the Agency establish a Standing Committee, with certain tasks

specified in the resolution. This device was adopted instead of the initially suggested one of having the Conference itself establish such an organ; the principal advantage of having the Agency do so is that it can from time to time review the membership of the Committee. Nevertheless it appears to be clear that the Committee is not an organ of the Agency, but is rather an extension of the Vienna Conference and should eventually become a tool of the States parties to the Convention.

At the Conference the question had also been raised whether the Standing Committee should be established by the Board of Governors or by the General Conference – or by both acting together. Since this issue related to the internal law of the Agency, it was considered inappropriate to decide it at the Conference and consequently compromise language was adopted calling for the Agency to establish a Committee "according to [the Agency's] Statute".²⁵ The Director General, in proposing to the Board the establishment of the Committee, suggested that it would be sufficient if the Board merely informed the General Conference of any Board action taken consequent to the recommendation.

Acting on the recommendation of the Director General, the Board on 18 September 1963 appointed a Standing Committee on Civil Liability for Nuclear Damage, consisting of the representatives of 15 named States (the same 14 that had participated in the Intergovernmental Committee plus an additional Afro-Asian country – the Philippines).²⁶ The Board also agreed that observers could be appointed by any Member State having ratified or acceded to the Convention, by any interested international organization in relation with the Agency, and by any other Member State if the Committee's concurrence is secured; no provision was made for the representation of any Non-member States that might become parties to the Convention by accession. Though the Board's resolution asked the Director General to submit proposals for the revision of the Committee's composition within three years, this had not been done by the end of 1969.

At its first series of meetings (13-17 April 1964) the Standing Committee considered a number of specific problems that were either directly referred to in the resolution of the Vienna Conference relating to the Committee, or were proposed by the Secretariat or by certain Member States.²⁷ At its second series of meetings (23-27 October 1967), which still preceded the entry into force of the Convention, it again considered certain of these points as well as additional ones.²⁸

23.1.6. Board of Governors

Though the Board of Governors had taken no substantive decisions at all in connection with the formulation of the Convention, Article I.2 authorized the Board to establish maximum limits for the exclusion by States of small quantities of nuclear materials from the coverage of the Convention. Unless such limits are set and States provide for such exclusion within these limits, the possession of even minute quantities of nuclear materials might make a person liable to the requirements of the Convention (e. g., the obligation to maintain financial security).

Since States would hesitate to become parties to the Convention until satisfactory limits had been established by the Board so that they might exercise their authority to exclude, the Director General consulted the Standing Committee about the legal aspects of this question²⁹ and in July 1964 convened a panel of scientific experts to advise him as to the technical implications. Acting on their advice he proposed to the Board a resolution by which the Board would exercise its authority under Article I.2 of the Convention. On 11 September 1964 the Board adopted the proposed resolution.³⁰ Thereby, instead of merely establishing straight quantitative limits, it allowed such exemption solely to materials transported or used outside of a nuclear installation, provided that the Agency's Regulations for the Safe Transport of Radioactive Materials³¹ are observed.

Following a proposal by Germany and discussions in ENEA, the Secretariat of the Agency consulted the Standing Committee concerning the possible extension of the exclusionary provisions to materials within installations.³² Though the Committee, after receiving the report of a Drafting Committee,³³ made a recommendation in favour of such an extension,³⁴ the Board has not yet acted thereon.

23.1.7. General Conference

The General Conference had not been consulted, nor had it intervened at any stage, with regard to either the substance of the Convention or the procedure of its formulation. However, at its regular session following the Vienna Conference it recommended that the Governments of all Members give urgent consideration to the desirability of becoming parties to the Convention.³⁵

23.2. CIVIL LIABILITY OF OPERATORS OF NUCLEAR SHIPS

The procedures relating to the formulation of the [Brussels] Convention on the Liability of Operators of Nuclear Ships differed from those leading to the Vienna Convention in that the former was developed principally by use of the previously existing machinery for the formulation of maritime conventions, while the latter consisted of a series of ad hoc innovations by the Agency. In particular, the first draft of the Brussels Convention was prepared by the International Maritime Committee (IMC) and the principal conference itself was convened by the Government of Belgium; the Agency's functions, while important from a technical point of view, were only ancillary to those of IMC and the Belgian Government. Because of the minor part played by the Agency itself, the role of the Board was also correspondingly reduced; in fact the Board passed only a single resolution relating to this subject.

Since the procedure by which the Brussels Convention was developed is thus largely that characteristic of other maritime conventions and was not greatly affected by the participation of the Agency, only those proceedings are described in detail in which the Agency played a significant role.³⁶

23.2.1. International Maritime Committee

In September 1959 the 19th Conference of the International Maritime Committee met in Rijeka (Yugoslavia) and elaborated a Draft Convention on the Liability of Operators of Nuclear Ships.³⁷

23.2.2. IAEA Legal Panel

Subsequent to the IMC meeting the Director General convened a Panel of Legal Experts on Liability for Nuclear Propelled Ships, in which lawyers from 23 countries participated under the chairmanship of Mr. Albert Lilar, who had also presided over the IMC meeting and was scheduled to preside over the next Diplomatic Conference on Maritime Law.³⁸ The Panel was charged with a review of the IMC draft convention, in particular in the light of the then current drafts of the instrument that was to become the Vienna Convention.

The Panel concluded its first series of meetings (7-12 March 1960) by recommending that, before additional legal work was done, certain technical questions be answered.³⁹

23.2.3. IAEA Group of Scientific Advisers

Pursuant to the recommendation of the Legal Panel, the Director General convened a Group of Scientific Advisers (20-24 June 1960)⁴⁰ who submitted a report to him responding to the questions that had been posed by the Legal Panel.⁴¹

23.2.4. IAEA Legal Panel

At its second series of meetings (1-7 August 1960) the Panel of Legal Experts considered the report of the Group of Scientific Advisers and prepared a report to the Director General, consisting principally of a number of recommendations relating to the principles to be included in a convention on this subject.⁴²

23.2.5. IAEA Secretariat

Pursuant to the request of the Legal Panel and in accordance with the substantive recommendations it had transmitted to the Director General, the Agency's Secretariat prepared a Draft Convention. It communicated this text to all members of the Legal Panel and, after correspondence with them,⁴³ prepared a revised draft.⁴⁴

23.2.6. ENEA study

After the Agency's Legal Panel had issued its report, ENEA convened a group of governmental experts representing all of its members to consider some of the problems left open. No formal report was issued by this group.

23. 2. 7. Central Bureau of IMC

Early in 1961 the Central Bureau of IMC met to discuss the IMC's Rijeka draft in the light of the report of the Agency's Panel and decided to endorse most of the latter's recommendations. No formal report was issued by the Bureau.

23. 2. 8. Diplomatic Conference on Maritime Law (11th session)

In the fall of 1960 the Belgian Government invited the Agency to participate in the organization and work of a Diplomatic Conference one of whose tasks would be the formulation of a convention regulating the liability of the operators of nuclear ships. In effect the invitation proposed that the Agency co-sponsor the part of the Conference which would deal with this subject.

The Board agreed to this proposal on 3 October 1960. As a result of the Belgian invitation and of the Board's decision, the Agency participated in the 11th session of the Diplomatic Conference on Maritime Law by:

- (a) Providing one of the Co-Secretaries General and part of the Secretariat.
- (b) Submitting one of the two drafts on the basis of which the Conference commenced its work (the other one being IMC's Rijeka draft).
- (c) Arranging that all of its Members be invited to the Conference (though attendance was not limited to these States since the Belgian Government also invited certain others that had participated in previous Maritime Conferences).

The Belgian Government provided the facilities for the meetings and made most of the procedural arrangements. According to the established custom of the Maritime Conferences, no formal rules of procedure were adopted.

The Conference met in Brussels (17-29 April 1961) and agreed on a number of draft articles constituting the major part of a Convention on the Liability of the Operators of Nuclear Ships.⁴⁵ However, no full agreement as to the entire text could be reached and consequently the Conference recommended that the Belgian Government and the Agency convene an ad hoc Conference in order to complete this work at a later date; the Conference also established a Standing Committee.⁴⁶

23. 2. 9. Standing Committee of the Conference

The Maritime Law Conference, in deciding to complete its work relating to nuclear ships at a resumed session, established a Standing Committee of the Conference to prepare documentation useful for that purpose. On the proposal of its Chairman the Conference appointed the representatives of 14 Governments and of the Agency to the Committee, and decided that the two Co-Secretaries General of the Conference (one of whom had been appointed by the Agency) should serve as Committee Secretaries. The Chairman of the Conference also served as Chairman of the Committee.

The Committee met in Vienna (9-13 October 1961) and, working in plenary sessions and through several sub-committees, reached agreement on the Articles that had been left incomplete by the Conference. These were included in its report, which also contained the record of its paragraph-by-paragraph discussion of most of the controversial Articles as well as texts of various amendments submitted by Governments or developed by sub-committees.⁴⁷

23.2.10. Diplomatic Conference (resumed 11th session)

The 11th session of the Diplomatic Conference on Maritime Law met in Brussels for a resumed session (14-25 May 1962) for the sole purpose of completing its work on the nuclear ships convention.⁴⁸ The list of invitees was the same as for the first session, and the Agency also performed the same functions as it had at the earlier meeting.

The Conference established a Credentials Committee, a Committee on Final Clauses and a Drafting Committee, and Working Groups on Nuclear Warships, on Mutual Guarantee Funds, on Jurisdiction and on Execution of Judgments.

The Conference adopted (28:10:4) the text of the Convention on the Liability of Operators of Nuclear Ships and opened it for signature on 25 May 1962.⁴⁹ Participation in the Convention, through signature followed by ratification or through accession, is open on the same basis as was later included in the Vienna Convention. However, the Brussels Convention is to enter into force as soon as ratified by two States, of which at least one must be a State licensing a nuclear ship. Fourteen States signed the Convention on the first day it was open for signature, and up to 31 December 1969 one further State has done so; one of the signatories has ratified and two other States have acceded.

The Belgian Government is the depositary of the Convention. The only role assigned to the Agency is that it is jointly charged with the Belgian Government to convene a conference for the purpose of revising the Convention under certain circumstances set forth therein.⁵⁰

The substantive legal rules embodied in the Brussels Convention are similar to those on which the Vienna Convention is based (Section 23.1.4 (A)-(F)).⁵¹

23.2.11. Standing Committee

By two resolutions adopted by the Diplomatic Conference at its resumed session and incorporated into its Final Act, a new Standing Committee was established, whose membership was to be selected by the Chairman of the Conference.⁵² In exercising this authority, the Chairman appointed the same Governments that had served on the Committee established by the first session of the Conference, but did not again appoint the Agency.

In the resolutions by which the Committee was established it was directed to examine in particular the following three subjects:

- (a) The setting up of an international guarantee fund or a system of mutual guarantees to cover claims on States arising under the Convention;

- (b) The establishment of an international juridical procedure to deal with actions for compensation under the Convention;
- (c) The conditions which should be fulfilled by intergovernmental organizations in order to permit them to accede to the Convention so that they too might license nuclear ships.

Before its first series of meetings three questionnaires⁵³ relating to the above subjects were transmitted to the Governments that had been invited to participate in the Diplomatic Conference. Thereafter the Committee held two series of meetings in Monaco (24-31 October 1963 and 24 June-1 July 1964). In its final report it concluded:⁵⁴

- (i) That participation in a mutual guarantee system should be voluntary and not a requirement for participation in the Convention;⁵⁵
- (ii) That the Convention should be amended by revising the Article relating to the choice of forums before which claims under the Convention might be brought, in order to provide for the establishment of an international tribunal under stated conditions;⁵⁶
- (iii) That a number of provisions of the Convention should be amended in order to permit intergovernmental organizations to become parties to it as potential licensing authorities.⁵⁷

These proposals were submitted by the Committee to the Belgian Government and to the Agency, but no action has yet been taken to revise the Convention.

23.3. WASTE DISPOSAL INTO THE SEA

Already the Preparatory Commission had recommended that the Agency should study the international legal aspects of the disposal of radioactive wastes, and in particular should consider the formulation of regulations governing waste disposal at sea and elsewhere.⁵⁸

During the first year of the Agency's operation the UN Conference on the Law of the Sea met in Geneva. In the Convention on the High Seas it included the following Article:

"1. Every State shall take measures to prevent pollution of the seas from the dumping of radio-active waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

"2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radio-active materials or other harmful agents."⁵⁹

In connection with this Article the Conference also adopted a Resolution, the substantive part of which recommended:

"...that the International Atomic Energy Agency, in consultation with existing groups and established organs having acknowledged competence in the field of radiological protection, should pursue whatever studies and take whatever action is necessary to assist States in controlling the discharge or release of radio-active materials to the sea, in promulgating standards, and in drawing up internationally acceptable regulations to prevent pollution of the sea by radio-active materials in amounts which would adversely affect man and his marine resources."⁶⁰

These decisions were brought to the attention of the Board of Governors, which however took no specific action thereon. Though certain of its members declared that the discharge of any nuclear wastes into the seas should be prohibited and that therefore any action the Agency might take toward the regulation of such discharge could be considered as an authorization and would therefore be improper, the Board did not object when the Director General decided to take steps to enable the Agency to comply with the recommendations of the UN Conference.

23.3.1. Scientific Panel

The Director General first convened an Ad hoc Panel on Radioactive Waste Disposal into the Sea, consisting of scientists from 10 States and 4 international organizations (UN, FAO, WHO, UNESCO), meeting under the Chairmanship of Mr. H. Brynnielsson of Sweden.⁶¹ After two series of meetings in 1958-1959 the Panel issued a report which was submitted for information to SAC and to the Members of the Agency.⁶²

In its report the Panel concluded that "waste of low and intermediate activity may safely be disposed of into the sea under controlled and specified conditions". It also indicated that its recommendations "could serve as a basis of international agreement to ensure that any disposal of radioactive waste into the sea involves no unacceptable degree of hazard to man".

23.3.2. Legal Panel

In order to implement the recommendations of the Scientific Panel the Director General in 1960 convened a Panel on the Legal Implications of Disposal of Radioactive Waste into the Sea, which was charged "to consider the administrative, organizational and legal measures which might be taken on an international level on the basis of the Brynnielsson Report". The Panel, which was presided over by Professor C. Rousseau of France, consisted of the representatives of 10 other Member States. It held four series of meetings (16-21 January 1961, 19-30 March and 1-6 October 1962, and 9-18 January 1963).

In the final report submitted to the Director General,⁶³ the Panel recorded the sharp divergence of the views of its members:

- (a) The majority considered that, on the basis of the Brynnielsson Report (whose scientific conclusions they did not consider themselves qualified or authorized to challenge), the controlled disposal of nuclear waste

into the sea should be authorized under conditions to be specified in an international convention. For this purpose they formulated draft articles which would provide for:

- (i) The absolute prohibition of the disposal of certain types of wastes into the sea or into internal waters;
 - (ii) An obligation on States to report all nuclear waste disposed of before the entry into force of the Convention;
 - (iii) An obligation on States to give the Agency advance information about any future disposals, and the procedure by which the Agency would distribute information about such proposals and by which other States parties to the Convention could raise objections to be resolved by conciliation;
 - (iv) States to monitor areas into which they had discharged waste and to report thereon to the Agency.
- (b) The minority considered that any disposal of radioactive material into the sea should be absolutely prohibited. They consequently proposed the conclusion of a draft convention to that effect, applying to the high sea, to territorial seas and even to "internal sea waters".

23.3.3. Scientific/Legal Panel

At the conclusion of the first series of meetings of the Legal Panel it requested the Agency to obtain answers to certain scientific and technical questions, relevant to the drafting of legal instruments in this field, which members of the Panel felt had not been completely answered in the Brynnielsson Report. To comply with that request the Director General convened (11-15 September 1961) a Scientific/Legal Panel on Disposal of Radioactive Waste into the Sea, which consisted of six scientific and four legal experts.

This Panel submitted a report of its findings to the Director General, which he in turn transmitted to the Legal Panel for use at its second series of meetings.⁶⁴

23.3.4. Further steps

Before submitting the report of the Legal Panel to the Board, the Director General first communicated it to all Member States and to interested inter-governmental organizations, with a request for comments. In view of the known divergence of views on this matter in the Board, which was reflected in the conclusions recorded in the report of the Legal Panel, the Director General did not recommend to the Board any further steps that the Agency might take to implement the 1958 recommendations of the Conference on the Law of the Sea.

23.4. EMERGENCY ASSISTANCE

Unlike the Agency's other ventures into convention drafting, its efforts to formulate some type of general legal instrument to facilitate the furnishing

of emergency assistance to Member States in the event of radiation accidents did not start as a deliberate effort towards that goal. Rather, the Agency's original concern was principally technical and administrative and its interest in the legal aspects arose as a by-product of those earlier efforts. Possibly for that reason the Board's involvement in the formulation of emergency assistance agreements has been much deeper than in relation to the other conventions, and extended both to substance and to legal form and not only to the procedure by which an instrument should be formulated.

The Agency's initial technical activities in this field were already signalled in the Programme and Budget for 1959.⁶⁵ This interest was further stimulated by the Director General's Panel of Experts on Civil Liability which, in its report, emphasized the need for such work.⁶⁶ The first step taken was to collect information from Member States on the assistance that they might make available to others in an emergency; this information was collated and communicated to all Members, and administrative procedures were established whereby the Agency could on the basis of a notification of an emergency and a request for assistance approach its other Members to provide the assistance that they had indicated might be available.⁶⁷ While the Agency's work in collecting and distributing information could be financed from its Regular Budget, in actually furnishing assistance or in co-ordinating emergency measures it might incur certain extraordinary expenditures which could not legally or practically be covered in that way; therefore in its Programme and Budget for 1961 the Board suggested that instead of making annual appropriations for this remote contingency, it would be preferable to authorize the Director General to draw on the Working Capital Fund for this purpose under specified conditions and up to specified limits⁶⁸— and the General Conference has given the required authority for every year since.⁶⁹

The Agency has also taken steps to co-ordinate its activities in this field with other intergovernmental organizations. In 1961 it held discussions, first with WHO, FAO and the International Committee of the Red Cross, and later with UN, ILO, FAO, WHO, the International Committee of the Red Cross and the League of Red Cross Societies. In April 1962 the Agency convened an Inter-Secretariat Working Group, consisting of representatives of IAEA, FAO, WHO, ENEA, IANEC and the League of Red Cross Societies, to discuss the information that had been received by the Agency from its Members regarding the assistance that they could make available.⁷⁰

23.4.1. Proposals by Secretariat and consideration by Board

In studying the measures the Agency could take, or arrange for its Members to take, in giving assistance in a nuclear emergency, the Secretariat decided that a major obstacle to prompt compliance with a State's requests would be the legal difficulties involved in transferring personnel and equipment from the Agency or an assisting State to the receiving State, and in regulating their legal position while in the latter. Consequently, in submitting to SAC "a Plan for Mutual Emergency Assistance" the Director General included a section on the "terms and conditions of assistance". In this he suggested that to avoid delay in emergencies the Agency should circulate in advance to all its Members standard terms and conditions, which could be referred

to in requests and offers of assistance. That standard text, together with the offers and acceptances that referred to it in relation to a particular emergency, would then constitute a legal instrument. In his memorandum to SAC the Director General included an outline of the items that might be covered in such a standard text, and also gave an example of a telegraphic exchange by which these terms might be incorporated into an ad hoc agreement.

As SAC did not comment on these legalistic problems, the Director General submitted his proposals to the Board without any substantial change in approach. These were discussed by the Board in January 1961, but as no action was recommended it did not take any.

Early in 1963 the Secretariat negotiated, with the Governments of four Scandinavian States (Denmark, Finland, Norway, Sweden), a regional agreement for the provision of mutual emergency assistance in radiation accidents. Though following the outline of the terms that had been submitted to SAC and later to the Board, this agreement was based on a different approach. Instead of consisting of standard terms to be referred to on an ad hoc basis, by the Agency or by any Requesting or Assisting State after an emergency had occurred, the Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents⁷¹ constitutes a regional stand-by arrangement concluded in advance of any specific emergency but whose terms automatically become operative whenever an emergency occurs and assistance is offered and accepted. Under that Agreement the Agency may play several different roles: as a full party to the Agreement it may provide assistance on the same basis as any of the States parties to it (it is, however, not foreseen that the Agency might receive assistance); in addition it may advise on steps to be taken in an emergency, arrange to secure aid from non-party States, and be called on to co-ordinate all assistance measures.

Simultaneously with his submission of the Nordic Agreement for approval in May 1963, the Director General asked the Board to endorse a draft bilateral agreement whose substantive terms were based on the regional instrument, but which was designed to be concluded on an ad hoc basis (after an emergency had arisen) through messages incorporating it by reference; though no special role was assigned to the Agency in this model bilateral, it was so formulated that the Agency itself could become a party to one if it were to provide assistance itself to a Member State. While the Board gave the requested authorization with respect to the Nordic Agreement (which entered into force on 19 June 1964), it desired the Director General to revise the bilateral draft. Thereupon, on 22 July 1963, he sent a circular letter to all members of the Board, requesting comments on that draft.

The Eighth General Conference passed a resolution in which it requested the Board:

"to take the necessary steps to stimulate the conclusion of emergency assistance agreements between two or more Member States and the Agency as a means of ensuring more effective international mutual emergency assistance."⁷²

In January 1965 the Director General reported to the Board on the Secretariat's work in revising the bilateral agreement. The latter had concluded

that the approach it had earlier recommended had several disadvantages; in particular, in an emergency, assistance might have to be secured from several sources and it would be difficult to co-ordinate a series of bilateral agreements concluded between the receiving State and each assisting party (State or Agency). While a prospective regional agreement along the lines of the Nordic one would avoid certain difficulties, it would require in each case a decision on what States might become parties to a "regional" instrument; in addition, several of these regions might consist entirely of under-developed States, none of which would be in a position to afford effective assistance to another. The Director General therefore proposed the conclusion of an "open agreement to which all Member States could become parties", a solution which would at the same time assure uniformity and present no geographic problems; and if a State should fail to become a party in advance of an emergency, it could still use the instrument on an ad hoc basis once a disaster had occurred. The Director General attached the draft of such a global agreement, which was substantially based on the Nordic Agreement but took account of the comments that had been received from members of the Board in response to the earlier request.

After the Board had discussed the Director General's conclusions and draft in February 1965 it directed him to circulate to all Member Governments a revised version of the Secretariat's draft global agreement and to request their comments on:

- (a) The substantive provisions;
- (b) The type of instrument; and
- (c) The role of the Agency.

Pursuant to this instruction the Director General on 25 March 1965 sent a circular letter to all Members to which he attached a revised version of the earlier global draft, together with memoranda relating to some of the questions raised by the Board. In May he communicated this revised draft to the Board, together with the first instalment of governmental comments thereon.

23.4.2. Working Group

Consequent on consultations held after the Board's first discussion of the global instrument, the Director General in June 1965 convened an informal Working Group in which all members of the Board were invited to be represented and 19 actually were. This Group reviewed the revised global draft as well as the comments received to that date. It issued no formal report.

23.4.3. Committee of Experts

After hearing the Director General's oral report on the Working Group and discussing his revised draft and the comments thereon, the Board decided in June 1965 to convene an Expert Committee on Emergency Assistance in the Event of Radiation Accidents to prepare a draft multilateral agreement on emergency assistance and an additional paper indicating how the provisions

in the draft could be used for other types of instruments. It consisted of representatives from 16 States, meeting under the Chairman of the Board.⁷³

Pursuant to another instruction contained in the same Board decision, the Director General issued a progress report to Member States in the form of an information document for the Ninth General Conference.⁷⁴ In this he indicated that the principal remaining issues were:

- (a) As to substance: liability, insurance, and privileges and immunities.
- (b) As to form: whether the instrument should be a global agreement (and in that case whether it should be open only to Member States or also to members of the United Nations and the specialized agencies or perhaps to all States; and whether or not the Agency itself might become a party), a model regional or a bilateral agreement, or merely a set of agreed rules, regulations or a code of practice.

The Expert Committee held a single series of meetings (13-18 December 1965) at which it based its work on the Secretariat's revised draft and on the governmental comments thereon. It issued a formal report to the Board, in which it included a revised set of draft articles for the formulation of a global agreement.

23.4.4. Committee of the Whole of the Board

After considering the report of the Expert Committee in February 1966, the Board established a Committee of the Whole which was charged with the preparation of both a draft multilateral agreement and a draft model bilateral agreement, taking account of the possibility that the Agency might not become a party to these agreements.

In preparation for the meetings of the new Committee, the Secretariat prepared a memorandum on liability for death, injury or damage and on the settlement of disputes (two of the substantive issues on which no agreement had been reached in the Expert Committee) as well as three draft texts based on and designed to supplement the draft that had been prepared by the Expert Committee.

The Committee of the Whole was convened for a single series of meetings (23-27 May 1966). Though it never had a proper quorum,⁷⁵ it issued a report to the Board⁷⁶ to which it attached the drafts of four types of agreements it had prepared with the assistance of a drafting sub-committee:

- (a) Draft multilateral agreement to which the Agency would be a party;
- (b) Draft multilateral agreement to which the Agency would not be a party;
- (c) A model bilateral agreement between States;
- (d) A model bilateral agreement between the Agency and a State.

None of these drafts included any provision regarding liability, since the Committee had concluded that no generally acceptable agreement could be reached on that subject.⁷⁷

23.4.5. Board of Governors

The matter thus reverted to the Board. After discussing the report of its Committee in June 1966 it decided that the Director General should prepare and circulate to all Member States a progress report on this subject, indicating the issues on which agreement had not yet been reached and requesting their comments thereon. It also decided that if the Board should revert to this subject after its reconstitution consequent on the adjournment of the Tenth General Conference, any member of the Board that had served on the Committee of the Whole but was no longer serving on the Board would be invited to participate in the Board's deliberations. Later it also decided that the Tenth Conference should not be asked to take any action on this subject,⁷⁸ and the Conference thereupon deleted this item from its provisional agenda.⁷⁹

The Board considered this subject once more in February 1967 (with the participation of four ex-members). It concluded that no agreement was currently feasible on a multilateral agreement and therefore for the time being no further work need be done on it. It also invited the attention of Member States to the report of the Committee of the Whole and in particular to the model bilateral agreement between States, "for their use as they deem appropriate" (i. e., to be concluded either in anticipation of or subsequent to an emergency).

23.5. NUCLEAR INSURANCE

One problem faced by any country, excepting only the largest, embarking on a nuclear programme is that the resources of its domestic insurance carriers are likely to be inadequate to cover the possible liabilities the State or the facility operator might incur, even under limitations of liability such as provided for by the Vienna and Brussels Conventions.⁸⁰ Though private pools of insurance carriers have been formed, these operate mostly in the highly developed countries and are generally not prepared to cover any risks in the under-developed ones. The Preparatory Commission was probably moved by these considerations when it recommended that the Agency should consider international action with respect to insurance.⁸¹

In fact the Agency did not take any action on this matter for some time, even though at the Fourth General Conference the Norwegian representative suggested that the Agency investigate systems of mutual financial guarantees for small nations.⁸²

23.5.1. International insurance scheme for scientists

On the proposal of Greece,⁸³ the Fifth General Conference passed a resolution by which it requested "the Director General to examine social insurance of scientists engaged in the peaceful uses of atomic energy" and to submit a report to the Board relating inter alia to the feasibility and desirability of arranging for such scientists to be covered by some international scheme.⁸⁴

In compliance with this charge the Director General held consultations with ILO and UNESCO. The former recommended that a thorough study be undertaken and defined the various categories of nuclear scientists who might be covered by an international social insurance scheme.

In July 1962 the Director General reported to the Board on these consultations and suggested that, in view of ILO's concern with social insurance in general and its experience in this field, that organization should assume primary responsibility for taking any further steps. The Board, by taking no action on this report, implicitly accepted this recommendation and the Agency has not concerned itself further with this matter.

23.5.2. Guarantee Fund for the Nuclear Ship Convention⁸⁵

In the resolution by which the resumed 11th session of the Diplomatic Conference on Maritime Law established a Standing Committee, it charged the latter, *inter alia*, with the examination of:

"The setting up of an international guarantee fund or a system of mutual guarantees that would ensure and facilitate the prompt settlement of claims on States arising from the application of Article III. 2 [of the Brussels Convention on the Liability of Operators of Nuclear Ships]."⁸⁶

Before the first meeting of the Committee, the Secretariat of the Agency, in consultation with the Chairman of the Conference (who was also Chairman of the Standing Committee), sent out a questionnaire to all States that had been invited to participate in the Conference requesting their views on this subject. After studying the replies⁸⁷ and considering whether an international guarantee fund or a system of mutual financial guarantees would be better, a majority of the Committee expressed a preference for the latter system. However, the Committee also decided that any such system should only be envisaged on a voluntary basis - i. e., that it should not be established as a requirement for participation in the Brussels Convention. It consequently concluded that it would be up to any interested States to establish the necessary guiding principles, and thus the Committee could not appropriately make any recommendations as to these.⁸⁸

A substantially similar assignment was given to the Standing Committee established with respect to the Vienna Convention.⁸⁹ After considering the conclusion reached with respect to the Brussels Convention, the majority of the Committee reached substantially the same substantive answer: in favour of a voluntary system. However, instead of declaring themselves incompetent to deal with the matter further, the Committee merely postponed consideration until after the Vienna Convention had entered into force.⁹⁰

Since these two Committees issued their reports, the Agency has not taken any further action to establish or even to study such a fund.

23.5.3. Panel on Nuclear Insurance

From 24-28 November 1969, the Agency convened at its Headquarters a Panel on Nuclear Insurance, consisting of 8 experts appointed by the Director

General from countries with small or medium-sized nuclear establishments, as well as of 1 other "participant", 4 observers and 8 advisers from several nuclearly developed States. It considered the problems of insuring the construction and operation of nuclear power plants in countries "in the early stages of nuclear development". After wide-ranging discussions it recommended that the Agency's Secretariat prepare a summary report on the problems and solutions discussed, to be circulated to Member States together with the papers submitted to the Panel, and that the Secretariat continue to observe developments in this field and perhaps convene another panel in two-three years.

23.6. TRANSPORT OF NUCLEAR MATERIALS

From time to time, and especially in connection with the Regulations for the Safe Transport of Nuclear Materials,⁹¹ consideration has been given to the formulation of a general international agreement in this field. However, most key Member States have discouraged this enterprise, in part because they held it premature to attempt to impose any part of the Agency's safety standards on States. They were also cognizant of the likely opposition of most of the international transport organizations, each of which considers the regulation of its particular vehicles as its peculiar domain and would object to any proposal to fragment the uniform regulatory patterns applicable to each medium by superimposing thereon a set of special rules justified only by the nature of the hazard to which they relate.

23.7. CONCLUSIONS

The Agency's several attempts to stimulate the formulation of international conventions relating to the peaceful uses of atomic energy have not as yet been crowned with any great success. Several reasons can be advanced for this:

- (a) As the formulation of general international agreements was not explicitly foreseen in the Statute, no regular procedure for doing so was included therein. As none has been developed since, the Agency's essays have had a certain improvised character: the selection of subjects to be covered is at best haphazard, depending largely on the outcome of informal consultations and the special drive and interest of certain Secretariat officials; then drafts prepared by the Secretariat or by special ad hoc panels are transmitted either to Member States or to the Board for comments, and these in turn are referred to other ad hoc groups whose reports are again returned to the States and the Board - a procedure which is repeated until either a consensus has developed or the Board or the Director General concludes that further proceedings would be futile.
- (b) In view of the relatively slow development of major nuclear activities in most Member States, few of them have felt any urgency with regard to the subject matter of these instruments.

(c) Several of the proposed conventions have become subject to special and peculiar controversies:

- (i) The Brussels Convention may founder on the disagreement on whether or not military vessels should be included under its coverage⁹² – the decision of the majority (and thus the text of the Convention)⁹³ being that there should be such coverage, while the minority includes precisely those States (the Soviet Union and the United States) that at present are the only ones operating any nuclear ships.⁹⁴
- (ii) Any convention on the disposal of nuclear wastes into the sea has been blocked by the fundamental disagreement among the Members of the Agency as to whether such disposal should be absolutely prohibited or merely regulated.
- (iii) The global agreement on mutual emergency assistance has been sidetracked principally because of several somewhat peripheral arguments about the propriety of the Agency becoming party to such an agreement, and about the assignment of liability if any injury or damage should occur in the course of the assistance rendered by one State to another.

One question which has, in some form or another, been raised in connection with almost each of these instruments has been the possibility and the form of the Agency's participation:

- (i) In connection with the Vienna Convention, extensive consideration was given to the possibility of permitting international organizations to assume the functions of either a licensing ("Installation") State or of a licensed facility operator within the meaning of that instrument; it was finally decided not to include any provisions on this point in the Convention – which means that an international organization cannot become a party to it and thereby act as a licensing authority, though it is not precluded from being licensed as an operator by a State party to the Convention if the nuclear facility in question is located within its territory.⁹⁵
- (ii) With respect to the Brussels Convention a similar question was raised concerning the possibility of an international organization becoming a party to the Convention so as to permit the coverage of any nuclear ship operated under the organization's flag. The Standing Committee has made recommendations as to how the Convention might be amended to permit this to be done, but no action has been taken on this report.⁹⁶
- (iii) The Agency is a full party to the Nordic Regional Emergency Assistance Agreement, though it is only foreseen that it act as an Assisting and not as a Requesting Party.⁹⁷ However, the possibility that it might similarly become a party to a global agreement on the same subject has been hotly disputed, a controversy that undoubtedly contributed to the continuing postponement of any immediate consideration of that instrument.

TABLE 23A. DRAFTS OF THE VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

Number ^a	Draft (Date)	Document Numbers		
		Report	Secretariat commentary	Governmental comments and amendments
<u>IAEA Secretariat</u>				
1	ALS/LA/2/Rev.1 (December 1958)	ALS/LA/4	ALS/LA/3	-
2	DG/PL/13 (April 1959)	-	DG/PL/13	-
<u>Panel of Experts</u>				
3A	DG/PL/18 (September 1959)	-	DG/PL/17	-
3B	GOV/INF/47, part B (December 1960)	GOV/INF/47/Add.1 part A	GOV/INF/47/Add.1, part B	GOV/INF/47, parts A-C *
3C	CCL/3 (1961)	CCL/2	CCL/2	CCL/3, 4, 6, 7
<u>Intergovernmental Committee (1st session)</u>				
4A	GOV/724, Annex A (June 1961)	GOV/724, Annex B	-	-
4B	L/451-1(2), Annex A (1961)	L/451-1(2), Annex B	L/451-1(2), Annex C	-
4C	CN-12/1, part I, left page (June 1962)	CN-12/1, part I, left page	CCL/9	CN-12/1, parts I-III and /Add.1
<u>Intergovernmental Committee (2nd session)</u>				
5A	CN-12/2, part II (January 1963)	CN-12/2, parts I-III	CN-12/3	CN-12/CW/1, Nos.1-126 CN-12/CW/2 et seq.
<u>Vienna Conference (Drafting Committee)</u>				
5B	IAEA Legal Series No.2, pp.40-55 (1964)	idem, pp.39-63	idem, pp.65-86	idem, pp.389-446
6A	CN-12/17/Add.1-4 (May 1963)	-	-	CN-12/18-37, 39, 40
6B	IAEA Legal Series No.2, p.447 (1964)	-	-	idem, pp.461-469
7A	CN-12/42, 41 (May 1963)	-	-	-
7B	IAEA Legal Series No.2, pp.469-481 (1964)	-	-	-
<u>Vienna Conference</u>				
8A	CN-12/46 (May 1963)	-	-	-
8B	IAEA Legal Series No.2, pp.501-512 (1964)	-	-	-
8C	IAEA Legal Series No.4, pp.3-15 (1966)	-	-	-

^a The numbers below do not appear on the drafts, but are merely added here to indicate their sequence. Those with the same number have essentially the same text, but were presented to different organs or ad hoc groups; number 8 is the final text.

TABLE 23B. COMPOSITION OF AD HOC BODIES CONVENED TO FORMULATE IAEA SPONSORED CONVENTIONS*

1. VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE			
<u>Panel of Experts</u>	<u>Intergovernmental Committee</u>	<u>Standing Committee</u>	
[Switzerland] (Ruegger)	Argentina	Argentina	
Argentina	Brazil	Brazil	
Czechoslovakia	Canada	Canada	
India	Czechoslovakia	Czechoslovakia	
Italy	Finland	Finland	
Japan	France	France	
USSR	Germany	Germany	
UAR	India	India	
UK	Japan	Japan	
USA	Poland	Philippines	
	USSR	Poland	
	UAR	USSR	
	UK	UAR	
	USA	UK	
		USA	
2. BRUSSELS CONVENTION ON THE LIABILITY OF OPERATORS OF NUCLEAR SHIPS			
<u>IAEA Legal Panel</u>	<u>Group of Scientific Advisers</u>	<u>Standing Committee of the Conference</u>	<u>Standing Committee</u>
[Belgium] (Lilar)	UK	[Belgium] (Lilar)	[Belgium] (Lilar)
[Poland] (Matysik)	USA	Argentina	Argentina
[Netherlands] (Van den Bosch)	IMCO	Czechoslovakia	Czechoslovakia
Albania		France	France
Argentina		India	India
Bulgaria		Italy	Italy
Canada		Japan	Japan
Czechoslovakia		Morocco	Morocco
Denmark		Netherlands	Netherlands
France		Norway	Norway
Germany		Sweden	Sweden
Greece		USSR	USSR
India		UAR	UAR
Italy		UK	UK
Japan		USA	USA
Netherlands		IAEA	
Norway			
Romania			
Sweden			
Turkey			
USSR			
USSR			
UK			
USA			
Yugoslavia			

3. WASTE DISPOSAL INTO THE SEA

<u>Scientific Panel</u>	<u>Legal Panel</u>	<u>Scientific/Legal Panel</u> <u>(scientists)</u>	<u>(lawyers)</u>
[Sweden] (Brynnielsson)	[France] (Rousseau)	[Yugoslavia] (Vouk)	Finland
Canada	Brazil	France	USSR
Czechoslovakia	Finland	Japan	UK
France	India	USSR	USA
India	Japan	UK	
Japan	Netherlands	USA	
Netherlands	Poland		
Sweden	USSR		
UK	UK		
USA	USA		
UN	Yugoslavia		
FAO			
WHO			
UNESCO			

4. EMERGENCY ASSISTANCE IN CONNECTION WITH RADIATION ACCIDENTS

Committee of Experts

[Japan] (Hogen)	Japan
Argentina	South Africa
Australia	Thailand
Austria	USSR
Brazil	UAR
Czechoslovakia	UK
France	USA
Ghana	Yugoslavia
India	

^a The nationality of a Chairman appointed ad personam is indicated in brackets.

NOTES

- 1 Statute Article II.
- 2 GC.1/1, para.100.
- 3 The citations of this draft and commentary, as well as of all the subsequent drafts, reports, commentaries and governmental comments are tabulated in Table 23A.
- 4 The national composition of the Panel of Experts as well as of the other ad hoc groups established in relation to the Vienna Convention are set forth in Part 1 of Table 23B.
- 5 The procedure followed in establishing this group, which was one of the first ad hoc advisory panels convened by the Agency, was approximately the same as that codified a decade later in AM.VII/1, Annex I. When the Panel asked whether it could invite observers, it was tactfully informed by the Agency's Legal Adviser (the Director of the Legal Division) that this could only be done by the Director General, who had convened the group (DG/PL/10).
- 6 GOV/DEC/26(V), decision 24, reproduced in Official Records of the International Conference on Civil Liability for Nuclear Damage held by the International Atomic Energy Agency in Vienna, 29 April-19 May 1963, Legal Series No.2, IAEA, Vienna (1964), STI/PUB/54 (hereinafter "Vienna Conference Records"), p.1.
- 7 Apparently no consideration was given to the question of whether the Board is the proper organ to convene, on behalf of the Agency, an international conference. Though the Board evidently acted pursuant to its

plenary powers under Statute Article VI.F, it might be argued that the General Conference is the proper organ to convene such a conference since only the General Conference has explicit power to address recommendations to the membership (Article V.D).

- 8 For a discussion of the substantive work of the Conference, see Wolff, *op.cit.* Annex 5, No.77.
- 9 Documents CN-12/4 and /Add.1, CN-12/5, CN-12/6; this documentation is explained in Section 34.3.1.
- 10 Vienna Conference Records, *supra* note 6, pp.27-36.
- 11 CN-12/8, Summary Records of First Plenary Meeting, paras.26-38, Third Plenary Meeting, paras.1-69 (Vienna Conference Records, pp.36-37, 103-104, 106-116). It should be noted that all participating States were permitted to vote, even though some of them had, pursuant to Article XIX.A of the Statute, lost their "vote in the Agency" (Section 25.3.5); this suggests that the Conference was not an organ of the Agency.
- 12 Summary Records of First Plenary Meeting, paras.16-24 (Vienna Conference Records, pp.101-102).
- 13 CN-12/16 (Vienna Conference Records, pp.377-379).
- 14 Summary Records of Fourth Plenary Meeting, paras.1-8 (Vienna Conference Records, p.117).
- 15 Convention Articles XXI and XXIV.1.
- 16 Report of Committee on Final Clauses (CN-12/CW/106), Part IV, Articles A and D.1 (Vienna Conference Records, pp.374-375). Summary Records of 22nd Meeting of Committee of the Whole, paras.58-77, 79-86 and of Seventh Plenary Meeting, paras.74-77, 80-89 (Vienna Conference Records, pp.151-153, 348-351).
- 17 This Committee was charged with considering the difficult problems that might arise on the one hand in relation to regional agreements covering essentially the same subject matter and on the other in relation to the liability provisions of transport conventions (see Wolff, *op.cit.* Annex 5, No.77, at pp.18-20). With respect to the first point, the conclusions of the Committee (CN-12/CW/104; Vienna Conference Records, pp.381-385) are in part reflected in Article XVII of the Convention. These problems were somewhat eased by the adoption on 28 January 1964 of Protocols to the Paris Convention on Third Party Liability in the Field of Nuclear Energy and to the Brussels Convention Supplementary thereto (reproduced in "International Convention on Civil Liability for Nuclear Damage" (Legal Series No.4, IAEA, Vienna (1966), STI/PUB/102, pp.21-34, 47-58), designed to align these earlier instruments with the Vienna Convention. Nevertheless the Standing Committee of the Vienna Conference was in April 1964 and October 1967 still unable to deal conclusively with all the remaining troublesome questions (CN-12/SC/9, paras.10-12, 25; CN-12/SC/14, para.2).
- 18 CN-12/17/Add.1-4 and CN-12/41 (Vienna Conference Records, pp.447-461, 469-474).
- 19 CN-12/CW-106 (Vienna Conference Records, pp.373-377).
- 20 Vienna Conference Records, pp.60-62, 150-151, 352-357, 376, 417-418, 432-434, 442, 458-459, 462-463; the political reasons for choosing an optional protocol rather than inserting a procedure for settling disputes are described, in relation to several UN-sponsored Conventions, by Herbert W. Briggs, "Procedure for Establishing the Invalidity or Termination of Treaties under the International Law Commission's 1968 Draft Articles on the Law of Treaties", in *Am.J.Int.Law*, Vol.61, p.976 at pp.983-988 (October 1967). Since the decision to restore the Protocol was taken at the final meeting of the Plenary there was no opportunity to consider carefully its final clauses; these are therefore defective in several ways: no distinction is made between the States that are to become parties by signature and ratification and those that may do so by accession (cf. Vienna Convention, Articles XXI-XXIV); the States parties to the Protocol need apparently not be parties to the Convention; though the Director General is named as depositary, he is not explicitly authorized to register the Protocol with the United Nations (cf. Vienna Convention, Article XXVIII).
- 21 Vienna Conference Records, pp.497-500, 515-516.
- 22 J.P.H. Trevor, "Principles of civil liability for nuclear damage", Legal Series No.5, IAEA, Vienna (1969), STI/PUB/215, pp.109-115; A. de los Santos Lasúrtegui, "Nuclear liability: a study of national legislation in the light of international conventions", *ibid.*, pp.117-142.
- 23 Resolution adopted on 19 May 1963 (CN-12/48, reproduced in Vienna Conference Records, p.515).
- 24 Cf. the signature by the International Bank for Reconstruction and Development of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (575 U.N. T. S.159, signature clause).
- 25 CN-12/15/Rev.1 and CN-12/44; Summary Records of the Seventh Plenary Meeting, paras.135-176 (Vienna Conference Records, pp.157-161, 446-447, 481).
- 26 The text of the Board's resolution is reproduced in GC(VII)/INF/68, para.2.
- 27 CN-12/SC/9.
- 28 CN-12/SC/14.

- 29 CN-12/SC/4, /5, /9, paras.20-23.
- 30 The text of which is reproduced in IAEA Legal Series No.4, pp.18-20.
- 31 Section 22.2.3(1)(b)(i); IAEA Safety Series No.6, STI/PUB/148.
- 32 CN-12/SC/12.
- 33 CN-12/SC/13.
- 34 CN-12/SC/14, paras.9-13.
- 35 GC(VII)/RES/156.
- 36 A more complete account of the early stages is given by Kőnz, *op.cit.* Annex 5, No.40.
- 37 DG/SL/10 (left-hand column), which also constitutes Document 3-A of the 1961 Conference on Maritime Law; the "Rijeka Draft" was also reproduced in Document 2 of the Conference. This documentation is explained in Section 34.3.2.
- 38 DG/SL/1; PR 60/21 and 60/24. The States represented on this Panel as well as on the other ad hoc groups established in relation to the Brussels Convention are set forth in Part 2 of Table 23B.
- 39 DG/SL/3; DG/SL/5, para.17(a).
- 40 DG/SL/4.
- 41 DG/SL/6.
- 42 DG/SL/7, reproduced as Document 3 of the 1961 Conference on Maritime Law.
- 43 DG/SL/9.
- 44 DG/SL/10 (right-hand column), which also constitutes Document 3-A of the 1961 Conference on Maritime Law.
- 45 The records of the Conference appear in *Conférence Diplomatique de Droit Maritime, Onzième Session, Bruxelles 1961 (Ad. Goemaere, Brussels 1962)*. The tentative text of the Convention appears in CN-6/1.
- 46 The text of the Conference resolution appears in CN-6/1, p.2.
- 47 CN-6/3.
- 48 The records of the Conference appear in *Conférence Diplomatique de Droit Maritime, Onzième Session, (2e phase), Bruxelles 1962 (Ad. Goemaere, Brussels 1963)*.
- 49 IAEA Legal Series No.4, pp.36-46.
- 50 Convention Article XXVI.
- 51 See Kőnz, *op.cit.* Annex 5, No.41; also brief outline by Werner Boulanger in "International conventions and agreements on nuclear ships", Legal Series No.5, IAEA, Vienna (1969), p.175, at pp.176-177.
- 52 The texts of the resolutions appear in the records cited supra note 48, pp.738-740.
- 53 CN-6/SC/1.
- 54 CN-6/SC/13.
- 55 Section 23.5.2.
- 56 CN-6/SC/13, paras.28-60.
- 57 Section 23.7(ii).
- 58 GC.1/1, paras.92,99,100.
- 59 450 U.N.T.S. 82, Article 25.
- 60 Resolution II of the [First] UN Conference on the Law of the Sea (Official Records, Vol.II.(A)/CONF.13/38), pp.143-144).
- 61 PR 58/37, /38, /39. The national composition of this Panel and of the subsequent ones appointed in this field are set forth in Part 3 of Table 23B.
- 62 The report on "Radioactive Waste Disposal into the Sea" was later published in IAEA Safety Series No.5, STI/PUB/14.
- 63 DG/WDS/L.19. This documentation is explained in Section 34.3.3.
- 64 PL-25/1/Rev.1.
- 65 GC(II)/36, para.133.
- 66 CCL/2, para.11.
- 67 The Agency still keeps in force special instructions addressed to certain of its officers who might be contacted in case of a request for emergency assistance; the 1968 version appeared in SEC/NOT/162, as well as in the booklet of Secretariat Home Addresses and Telephone Numbers.
- 68 GC(IV)/116, paras.44-45, 173-177 and Annex III, Part B, para.3.
- 69 For example, GC(IV)/RES/73, para.3.
- 70 GC(VI)/195, para.83.
- 71 INFIRC/49 and /Add.1.
- 72 GC(VIII)/RES/177.

- 73 The composition of the Committee of Experts is set forth in Part 4 of Table 23B.
- 74 GC(IX)/INF/83, reproduced in UN Juridical Yearbook 1965 (ST/LEG/SER.C/3), pp.156-158.
- 75 Two-thirds of the Governors, according to Procedural Rules 22 and 58 (GOV/INF/60). The Committee's report to the Board called attention to this procedural deficiency. Sections 8.4.3 and 8.4.5.2.
- 76 GOV/1144.
- 77 GC(X)/335, paras.4 and 5.
- 78 GC(X)/335/Add.1.
- 79 GC(X)/342 and /343.
- 80 A.C. Miles "Nuclear installations: insurance problems", Legal Series No.5, IAEA, Vienna (1969), pp.149-158; F. Lacroix, "Insurance against nuclear risks in Europe", *ibid.* pp.159-166; R.J. Fisher, "Nuclear energy liability insurance in the United States of America", *ibid.* pp.167-174.
- 81 GC.1/1, para.100.
- 82 GC(IV)/OR.40, para.6.
- 83 GC(V)/152/Add.1 and GC(V)/162.
- 84 GC(V)/RES/97.
- 85 The proposed "guarantee fund" under the Brussels Convention on the Liability of Operators of Nuclear Ships should not be confused with the intergovernmental security fund established by Article 3(b) (ii) of the Brussels Convention Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy (*supra* note 17).
- 86 *Supra* note 52.
- 87 CN-6/SC/13, Annex II, Part I.
- 88 CN-6/SC/13, Chapter II.
- 89 CN-12/48 (reproduced in Vienna Conference Records, *supra* note 6), para.1(b).
- 90 CN-12/SC/9, paras.13 and 14.
- 91 *Supra* note 31.
- 92 Section 15.1.2.1(d).
- 93 Article I.11 and X.3.
- 94 And the participation of at least one of which is therefore necessary for the Convention to enter into force, in accordance with Article XXIV.1.
- 95 This conclusion was reached, at its first series of meetings, by the Standing Committee established in relation to the Vienna Convention (CN-12/SC/9, para.17) after studying an extensive note submitted by the Agency's Secretariat (CN-12/SC/3, reproduced in UN Juridical Yearbook 1964 (ST/LEG/SER.C/2)).
- 96 CN-6/SC/13, paras.2 (3), 11, 61-91, Annex II, Part III, and Annex III, Part II.
- 97 INFCIRC/49, Article XI.

PART E.
ADMINISTRATION

CHAPTER 24. STAFF ADMINISTRATION

PRINCIPAL INSTRUMENTS

IAEA Statute, principally Article VII, but also Articles IX, I, 5, XI, D, XII, B, XIV, B, 1(a), XV, B and Annex 1, para. C, 5(d).

General Principles to be Observed in the Provisional Staff Regulations of the Agency (GC, 1(S)/RES/13)

Provisional Staff Regulations (INFCIRC/6/Rev. 2)

Staff Rules (AM, II/1)

Special Staff Rules for Short-term Staff (AM, II/10)

Staff Rules Governing the Conditions of Service of Technical Co-operation Experts (unnumbered special publication)

Administrative Manual, Part II

Personnel Administration and Staff Welfare at Trieste Centre (AM, I/4, Appendix E, paras. 3-24)

Provisional Travel Rules (AM, III/1)

Guiding Principles for the Appointment and Promotion of General Service and M & O Staff (unnumbered mimeo document)

Administration of the Staff Regulations and Rules (AM, II/2)

Relationship Agreement with the United Nations (INFCIRC/11, Part I, A), Article XVIII

Board Regulation adopted pursuant to Statute Article VII, B regarding appointments of Heads of Division and above (30 October 1957)

Board Decision on the appointment of safeguards inspectors (29 June 1961, GC(V)/INF/39, para. 2)

The Engagement and Conditions of Service of Consultants (AM, II/11)

Headquarters Agreement (INFCIRC/15, Part I), in particular Article XV, and Supplemental Agreements relating to Social and Pension Insurance of Officials (ibid., Parts VI and VII, and /Add. 3) and to the Commissary (ibid., Part V and /Add. 1)

Agreement Establishing the Monaco Laboratory (INFCIRC/129), Article 11(b)

Agreement on the Privileges and Immunities of the IAEA (INFCIRC/9/Rev. 2), in particular Articles VI and VII

Agreement for the Admission of IAEA to UNJSPF (INFCIRC/11, Part III) and Special Agreement extending Jurisdiction of UNAT to IAEA with respect to UNJSPF Regulations (INFCIRC/11/Add. 1)

UNJSPF Regulations (JSPB/G, 4/Rev. 5) and Administrative Rules (JSPB/G, 5/Rev. 6)

Composition of the Agency's Staff Pension Committee (GC(VII)/DEC/9)

Joint Committees and Advisory Panels (AM, II/12)

Statutes of the Staff Association of the IAEA (special booklet)

Rules of Procedure of the Staff Assembly (ibid.,)

Rules of Procedure of the Staff Council (ibid.,)

Financial Rules of the Staff Council (ibid.,)

Regulations Concerning the Agency's Commissary and Restaurant (AM, VIII/11)

Rules for the Administration of the Staff Welfare Fund (unnumbered mimeo document dated 30 June 1962)

Rules of the Staff Assistance Fund (unnumbered mimeo document dated July 1964)

24. 1. LEGAL INSTRUMENTS

24. 1. 1. Statute

The basic legal principles relating to the Agency's staff are set out in Article VII of the Statute. Article VII, B establishes the Director General's responsi-

bility for the appointment, organization and functioning of the staff. Article VII. C and D deals with the composition and the source of recruitment of the staff. Article VII. E lays the foundation for the Staff Regulations. Finally, Article VII. F contains a number of specific rules applicable to the Director General and to the staff; it also states the principle, taken from Article 100(2) of the UN Charter, that Member States are to respect the international character of the Secretariat.

Several other statutory provisions are of peripheral interest:

- (a) Article IX. I. 5 charges the Agency to "establish or acquire... Housing and administrative facilities for any staff required" to carry out the Agency's functions in connection with the receipt, storage and distribution of nuclear material;
- (b) Article XI. D foresees that the Agency might carry out certain functions by the use of persons not on its staff;
- (c) Article XII. B requires the Agency to establish a staff of inspectors, and indicates what some of their duties are to be;
- (d) Article XIV. B. 1(a) sets out the basic budgetary provisions relevant to staff costs;
- (e) Article XV. B establishes the basic privileges and immunities of the staff; and
- (f) Annex I, paragraph C. 5(d), charges the Preparatory Commission with making studies and recommendations relating to the establishment of the Agency's staff.

24. 1. 2. General Principles to be observed in the Staff Regulations

Article VIII. D of the Negotiating Group draft of the Statute provided that the "terms and conditions on which the staff shall be appointed, remunerated, and dismissed shall be laid down by the Board". In the Working Level Meeting it was first proposed that this clause be changed so as to provide for staff regulations to be "adopted by the General Conference on the recommendation of the Board".¹ When this proposal did not prove to be generally acceptable, the Meeting compromised on a provision whereby the General Conference would merely approve general rules governing the regulations to be adopted by the Board; the final formulation was left to the Drafting Committee.² As agreed by that Committee and approved without change by the Meeting and later by the Conference on the Statute, Article VII. E provides that:

"The terms and conditions on which the staff shall be appointed, remunerated, and dismissed shall be in accordance with regulations made by the Board of Governors, subject to the provisions of this Statute and to general rules approved by the General Conference on the recommendation of the Board".

Paragraph C. 5(d) of Annex I to the Statute charged the Preparatory Commission with making studies, reports and recommendations relating to the "establishment of a permanent Agency staff". However, the Commission formulated no recommendations with respect to the "general rules"

referred to in Article VII, E of the Statute; instead it drafted a full set of Staff Regulations which it submitted simultaneously to the Board and the General Conference.³ When the Board came to consider this draft at its 6th meeting it instructed the Secretariat to extract from the proposed Regulations those that were of a general nature so that the Board might recommend these to the General Conference as constituting the "general rules" called for by the Statute. It is clear from the discussion preceding that decision, as well as from the circumstances under which it was taken, that these rules were formulated entirely as an afterthought to meet the formal requirements of the Statute; the alternative of requesting the General Conference to act on the Regulations as a whole would not have been satisfactory since then all subsequent revisions would have required the approval of that body. Working under considerable time pressure the Secretariat prepared the extract requested by the Board, which considered and slightly amended it at its 7th meeting and adopted it unanimously for submission to the General Conference.⁴ The latter adopted the "General Principles to be Observed in the Provisional Staff Regulations of the Agency" exactly in the form recommended by the Board,⁵ after the Chairman of the Administrative and Legal Committee had ruled that if the Conference were to make any change in the draft recommended by the Board then it would have to be re-submitted to that body to enable it to revise its recommendation.⁶

As adopted by the General Conference, the General Principles consist of nine paragraphs, of which over half merely set forth almost verbatim certain provisions of Statute Article VII. The derivation of the several paragraphs can be identified as follows:

- (1) Statute Article VII, D.
- (2) "Staff members shall be selected without distinction as to race, sex or religion"
This provision, which is not contained in the Statute, is taken from UN Staff Regulation 4. 3, which itself is partially based on Article 8 of the UN Charter.
- (3) Statute Article VII, C, second sentence.
- (4) The first two sentences:
"The Staff of the Agency shall be international civil servants whose responsibilities are not national but exclusively international. They shall at all times conduct themselves as international civil servants, and shall perform their duties and regulate their conduct with the interests of the Agency only in view."
are based generally on the second sentence of Article VII, F. The final sentence reproduces the last sentence of the Article.
- (5) Statute Article VII, F, first sentence.
- (6) "The staff may exercise the right to vote but shall not engage in any other political activity."
This provision is based on UN Staff Regulation 1. 7.
- (7) Statute Article VII, F, second clause of second sentence.
- (8) "The conditions of service of the staff shall conform to the provisions of Article VII of the Statute and, in so far as is consistent with the needs of the Agency, conform to accepted international

standards. Administrative machinery with staff participation shall be established to advise the Director General regarding personnel policies, general questions of staff welfare and appeals from administrative decisions".

This paragraph, which is practically the only one setting out any substantive "general principles", in effect states some of the principal bases on which the UN Regulations are constructed.

(9) Statute Article VII. A and B, final sentences.

These General Principles have not been amended or even reconsidered since their original adoption.

24. 1. 3. Staff Regulations ^{6A}

24. 1. 3. 1. Authority to promulgate

In accordance with Statute Article VII. E, the Staff Regulations are to be "made by the Board of Governors", subject both to the Statute and to Conference-approved "general rules".

Though the Statute does not assign the General Conference any further functions or rights in this connection, the Board by Staff Regulation 13. 02 undertook to report annually to the Conference all new amendments to the Regulations.⁷

Neither the Statute nor the Staff Regulations assign the Director General any function in connection with the formulation of the Regulations. Nevertheless, in practice all amendments so far adopted had originally been proposed to the Board by the Director General, and that body, if it accepted them (which is not always the case), has usually done so without change. Regulation 10. 02 requires the Director General to establish administrative machinery with staff participation "to make such proposals as it may desire for amendment of the Staff Regulations and Rules"; the Director General has consequently established the Joint Advisory Committee⁸ on which the Staff Council⁹ is represented, and through these bodies the views of the staff with respect to the Regulations are filtered to the Director General and, if he so decides, to the Board.

24. 1. 3. 2. Development

24. 1. 3. 2. 1. Preparatory Commission

As already mentioned, the Preparatory Commission responded to the mandate assigned to it by paragraph C. 5(d) of Annex I to the Statute by preparing a complete set of Staff Regulations. One consideration in doing so was that in complying with the separate requirement to make recommendations with respect to the budget for the first year of the Agency¹⁰ it had to make certain assumptions as to the rates at which staff members would be remunerated.

The first draft of the Regulations was prepared by the Executive Secretary of the Commission.¹¹ It was evidently based in part on the Regulations that the Commission had earlier adopted for its own staff and in part on those of the United Nations.¹²

The debates in the Commission were largely concentrated on two inter-related issues: the procedures for the recruitment and for the dismissal of senior staff members. With respect to both it was proposed that the Director General be required to consult with the Board; with respect to dismissal the Commission also gave extensive consideration to the establishment of a special appeals machinery.¹³

Other issues to which the Commission gave its particular attention and in connection with which it made some changes in the Executive Secretary's draft (which thereby came to differ from the UN Regulations) were the authority to waive the immunity of staff members (where it introduced a conditional requirement for the Director General to consult the Board)¹⁴ and the patent and copyright provisions (in which it strengthened the Agency's claims).¹⁵

The Commission submitted the draft Regulations simultaneously to the Board and to the General Conference.¹⁶

24. 1. 3. 2. 2. Board of Governors

The Board gave detailed consideration to the Preparatory Commission's draft Regulations only after the General Conference had approved the hastily prepared General Principles. However, in practice that instrument was never again referred to, since it merely set forth provisions already enshrined in the Statute and a few non-controversial points derived from the UN Staff Regulations.

The Board's discussion of the draft Regulations touched on only a few points, of which the principal one again was the procedure for the dismissal of staff members. After considering a number of proposals, including the establishment of a special board such as called for by the UN Regulations,¹⁷ it was agreed that before the Director General dismissed a member of the staff of the rank of head of division or above, he would be required to consult the Board and before dismissing other staff members he would consult both the Deputy Director General and the head of the unit concerned. In addition, a special advisory body would have to consider dismissals based on an alleged failure to meet the statutory standards of integrity or on the concealment of unfavourable facts anteceding the appointment.¹⁸

It was also suggested that the Board record its understanding that the assignment of staff members by the Director General pursuant to Regulation 1. 02 should be "with due regard to their qualification and experience". Though a number of Governors concurred with this principle, no action was taken on this proposal.

24. 1. 3. 2. 3. Amendments

The Staff Regulations have, since their adoption, been amended on different occasions by the Board.¹⁹ All those changes related solely to matters of detail and do not alter the substance or structure of the Regulations as originally adopted. The initiative almost invariably comes from the Director General.

Some of the earlier amendments corrected minor mistakes or obscurities in the original text, or substituted permanent arrangements for the initial provisional ones (e. g., those relating to pensions and insurance). A few of the later changes related to the establishment of Agency operations away from Vienna at which groups of staff members are employed. However, most of the amendments adopted by the Board from time to time reflected corresponding changes made by the General Assembly in the UN Staff Regulations.²⁰

24.1.3.2.4. "Provisional" status

The Staff Regulations were originally entitled "Provisional" – evidently because some members of the Board were not fully satisfied with them but did not wish to delay their early promulgation and thus hinder the prompt establishment of the Agency's Secretariat. Although since that time no major changes to the original text have been either made or even proposed (aside from those commented on in the Section above), no steps have yet been taken to remove the "Provisional" label.²¹

If the Board would desire to re-designate the present Regulations to omit the "Provisional", it would have to consider whether it would first have to obtain from the General Conference approval for a similar change in the "General Principles",²² since these relate explicitly to the "Provisional Staff Regulations".

24.1.3.3. Content

24.1.3.3.1. Substance

In general the conditions of service of the Agency's staff, as specified in the Provisional Staff Regulations, conform to those of the staff of the United Nations. The only significant differences relate to the policies as to the length and tenure of appointments (see Section 24.6.1).

24.1.3.3.2. Procedure

Though the Staff Regulations confirm the Director General's statutory role as the chief administrative officer of the Agency, responsible for the appointment, organization and functioning of the staff,²³ they also emphasize that he is to be under the authority of and subject to the control of the Board. Thus the Regulations place a number of restrictions on the authority of the Director General over the staff that do not correspond to any similar limitations on the authority of the UN Secretary-General.

As pointed out in Section 24.1.5.1, the Director General is given general authority to "promulgate such rules consistent with [the Staff] Regulations as he may consider necessary".²⁴ However, in order to issue or amend certain of the Staff Rules the Director General must obtain the prior approval of the Board, which practically means that these Rules have the status of a Regulation.²⁵

Although the Director General's authority to make individual decisions under the Staff Regulations is subject to fewer restrictions than his authority to promulgate general Rules, certain actions require consultation with other persons or organs. In particular:

- (a) In deciding on the involuntary termination of a staff member, he may have to consult the Board, or the Deputy Director General and the head of the unit of the staff member concerned, as well as in some cases a special advisory board;²⁶
- (b) In waiving the immunity of staff members he may have to consult the Board;²⁷
- (c) Individual administrative decisions are subject to appeal both within the administration and to an independent tribunal.²⁸

In general the Director General has no authority to make any individual exceptions to the Staff Regulations (just as he may not, without authorization from the Board, suspend a Regulation) except where a provision specifically foresees the making of such exceptions (e. g. , the waiver of the required period of notice for a resignation²⁹).

24. 1. 4. Other Board decisions

24. 1. 4. 1. Regulations under Statute Article VII. B

The final sentence of Article VII. B of the Statute requires the Director General to "perform his duties in accordance with regulations adopted by the Board". In Section 9. 3. 3 an account is given of the consideration that the Board initially gave to the implementation of that provision. Ultimately only a single "regulation" was ever agreed to specifically pursuant to this authority:

"Appointment of Staff

"Appointments to posts of the rank of Head of Division or above shall be made by the Director General after consultation with all Members of the Board of Governors, it being understood that the consultation referred to shall be informal".³⁰

24. 1. 4. 2. Ad hoc decisions

The Board has from time to time taken ad hoc decisions directly affecting the staff administration, which practically constitute part of the Staff Regulations. Some of these decisions are in fact foreseen in the Staff Regulations themselves, such as the periodic determination by the Board (pursuant to Regulation 5. 01(b)) of the Post Adjustments applicable to the salaries of professional staff serving at headquarters. Other decisions relate to matters not directly covered in the Regulations; for example:

- (a) The discretionary authority given to the Director General to grant a Post Allowance not exceeding \$1, 800 per year for up to two years, to attract particularly valuable persons to the staff.³¹

- (b) The power that the Board has reserved to itself to approve the appointment of persons to the Division of Inspection, i. e., the assignment of any staff member to perform the duties of a safeguards inspector.³²

24.1.5. Staff Rules

24.1.5.1. Authority to promulgate

The Preamble to the Provisional Staff Regulations establishes the duty and authority of the Director General to promulgate Staff Rules consistent with the Regulations. In addition, a number of Regulations specifically require that they be implemented in accordance with "rules" promulgated by the Director General, and others,³³ while not referring to such rules, still foresee that the Director General will establish means for their uniform implementation. With respect to certain of the Rules that the Director General is specifically or by implication required to promulgate, the Regulations require him to obtain the advance approval of the Board³⁴ - which in practice means that these Rules do not procedurally differ from Regulations, though generally the Board is content to approve only the principle concerned and not the exact text of the Rule (as it always does in respect of the Regulations).³⁵

Regulation 10.02 requires the Director General to establish administrative machinery with staff participation to advise him regarding personnel policies, including the Staff Rules. By Staff Rule 10.02.1 the Director General has consequently established the Joint Advisory Committee which is charged, inter alia, with reporting to the Director General within two weeks of the referral to it of a proposed amendment to the Staff Rules.³⁶ After an initial period of inactivity, the Committee has in recent years indeed taken an active role in the formulation of the Rules. The Staff Council itself generally endeavors to exert its influence by instructing its representatives on the Committee, rather than by transmitting its comments directly to the Director General.

There is no requirement that the Director General communicate the Staff Rules or their amendment to the Board of Governors or to the General Conference. Pursuant to his general obligation to make periodic reports to the Board,³⁷ the Director General informs it of the substance but not of the text of significant changes in those Rules that he is authorized to promulgate without prior Board approval.

Though not explicitly stated in either the Staff Regulations or the Rules, it has always been understood that the Director General has authority to make individual exceptions to the Rules, in so far as these are not to the detriment of the acquired rights of any staff member and do not contravene any Regulation. It is, however, not entirely clear to what extent the Director General may make exceptions to those Rules which he may only promulgate or change with the approval of the Board.

24.1.5.2. Types of Staff Rules

The Director General has promulgated three different sets of Staff Rules, in addition to miscellaneous instructions relating to persons, such as short-

term consultants, who are not subject to the Staff Regulations and are thus not considered as members of the staff.³⁸

24.1.5.2.1. General

Most of the members of the staff, excepting those employed only for very short periods or as technical assistance experts, are covered by the general "Staff Rules" of the Agency.³⁹ These have been revised and amended a number of times.

The first Interim Staff Rules were promulgated by the Acting Director General on 13 November 1957.⁴⁰ Following consultations with the Staff Council a permanent set of Rules was promulgated on 1 April 1959.⁴¹ After these had been changed and amended a number of times, a new set of Rules was promulgated on 4 July 1962 – first as part of the "Provisional Manual"⁴² and on 31 August 1967 in the "Administrative Manual".⁴³

Those Staff Rules that relate to travel may only be promulgated with the approval of the Board.⁴⁴ At its first series of meetings the Board agreed to the temporary application of the UN Travel Rules.⁴⁵ In December 1959 the Director General promulgated Provisional Travel Rules which replaced the application of those of the United Nations,⁴⁶ and on 10 May 1963 a new set of Provisional Travel Rules was issued as part of the Provisional Manual;⁴⁷ these were later transferred to the Administrative Manual.⁴⁸ The "provisional" label in both cases presumably indicated that the required Board approval had not been obtained.

Staff Regulation 8.04 requires the Director General to draw up, with the approval of the Board, a scheme for compensating members of the Secretariat in the event of service-incurred injuries. Pursuant to that provision the Board approved the application, except to those members of the staff covered by the Austrian Social Security system, of Appendix D to the UN Staff Rules⁴⁹ – and these thus constituted part of the Agency's Rules until 31 August 1967 when a special set of Rules, based closely on those of the United Nations, was promulgated.⁵⁰

24.1.5.2.2. For short-term staff

On 25 July 1960 the Director General promulgated, with effect from 1 May 1960, "Special Staff Rules for Short-Term Staff", i. e., for persons "specifically engaged on short-term appointments for conference and other short-term service... with the Agency... for a period not exceeding 12 months".⁵¹ These have now been incorporated into the Administrative Manual.⁵²

24.1.5.2.3. For technical assistance experts

On 7 January 1959 the Director General issued an administrative instruction whereby the UN "Staff Rules Governing Technical Assistance Project Personnel" were applied to the Agency's technical assistance experts "in so far as they are consistent with the Agency's Provisional Staff Regulations".⁵³

On 3 May 1965 the Director General promulgated "Staff Rules Governing the Conditions of Service of Technical Co-operation Experts",⁵⁴ which replaced the previous application of the UN Rules. The new Rules were of

course formulated to be fully consistent with the Agency's Regulations, but were at the same time designed to introduce as few differences as possible among Agency and UN experts serving in the field together.

24.1.6. Administrative instructions

Aside from the several sets of formal Staff Rules, the Director General has from time to time issued a number of other administrative instructions on various subjects. Although most of these relate primarily to the way in which certain Agency activities are to be carried out by the Secretariat, some of them directly or indirectly affect the status of staff members. The authority to issue these instructions derives in part from particular grants made by the Board or in some instances by the General Conference, but for the most part is based only on his position as chief administrative officer of the Agency. Except when the Board so specifies, neither the text nor the substance of such instructions need be reported to it; however, in so far as such instructions directly relate to questions of staff welfare and administration they are referred to the Staff Council for consideration and comment.

Initially all administrative instructions of general applicability were issued as documents in the SEC/INS/. . . series, which constituted circular communications to all members of the staff.⁵⁵ This series contained on the one hand instructions affecting the staff as a whole, such as the Staff Rules themselves and rules relating to various Secretariat activities, and on the other items of only temporary interest or merely informative in content. From January 1960 communications to the staff at large were divided into two series:

- (a) "Administrative Instructions", which continued to be issued within the SEC/INS/. . . series, were henceforth reserved for items of a permanent nature relating to the normal operations of the Secretariat as a whole.
- (b) "Notices to the Staff", issued in a new SEC/NOT/. . . series, served to convey additional instructions or notices, generally of an ephemeral nature.⁵⁶

In May 1963 the SEC/INS/. . . series was replaced by the Agency's Provisional Manual,⁵⁷ which in August 1967 was in turn replaced by the definitive Administrative Manual.⁵⁸ The instructions previously issued in the SEC/INS/. . . series were either re-arranged to constitute parts of the Manual, or were formally cancelled. Thereafter instructions have only been issued as new parts of, or as revisions of old parts of the Manual, while the SEC/NOT/. . . series continues to be used for temporary instructions or merely informative items.

Some instructions are still issued outside of both the Manual and the SEC/NOT/. . . series, but these are usually not of general impact (i. e. , they are addressed solely to a particular Department or Unit, or to persons interested in a particular activity).

24. 1. 7. Established policies and practices

The Director of the Division of Personnel is expected to establish, with the approval of the Director General or of the DDG for Administration, "personnel policies and practices of major importance, within the scope of the Staff Rules".⁵⁹ Since these policies and practices are rarely announced (except sometimes as Notices to the Staff in the SEC/NOT/. . . series) and even more rarely published, it is not clear to what extent this power has been used and in what form these "policies and practices" are recorded. One that has seen the light of day is the Guiding Principles for the Appointment and Promotion of General Service and M & O Staff,⁶⁰ but similar criteria for the Professional staff have only been prepared unofficially and as of 1968 had not yet been promulgated or published though apparently they are already used by the Division of Personnel to guide the annual review.⁶¹

24. 1. 8. Arrangements with specialized agencies

Section 7 of the Agreement between the Agency and UNESCO Concerning the Joint Operation of the Trieste Centre^{61A} provides that the Director and the professional staff of the Centre will be staff members of the Agency, and that all decisions regarding their appointment, the duration and nature of their contracts, their promotion and termination will be taken by agreement between the two organizations, which will be guided by any rules that may be enacted within the UN system regarding inter-organization posts. Pursuant to that Section, the Directors General of the organizations have entered into "Procedural Arrangements" concerning the "Selection, appointment, promotion and termination of staff", which spell out in considerable detail the procedures to be followed in these respects.

With regard to the FAO/IAEA Joint Division of Atomic Energy in Food and Agriculture,^{61B} no such elaborate arrangements were required, for the professional staff of that unit consists of persons assigned to it by either the Agency or FAO. Consultation is specified only with respect to the Director (to be supplied by FAO) and the Deputy Director (from the Agency).^{61C}

24. 2. CONFORMITY TO THE UN "COMMON SYSTEM"

24. 2. 1. Legal basis

Though on matters of substance (e. g. , the scale of professional salaries) the Agency always conforms exactly to the practice established by the United Nations, there is in fact no strict legal requirement for it to do so — as indeed the "common system" of staff administration does not consist of a precisely defined set of rules within the UN family.⁶²

The Preparatory Commission had, in effect, recommended that the Agency conform to the UN system, especially with regard to classification and salaries.⁶³

Paragraph 8 of the General Principles approved by the General Conference in relation to the Provisional Staff Regulations specifies that the "con-

ditions of service of the staff shall. . . in so far as is consistent with the needs of the Agency, conform to accepted international standards".

Article XVIII. 1 of the Relationship Agreement with the United Nations⁶⁴ provides for the two organizations "to develop, in the interest of uniform standards of international employment and to the extent feasible, common personnel standards, methods and arrangements designed to avoid unjustified differences in terms and conditions of employment. . .". It is generally this latter provision that is relied on to support the proposition that the Agency has at least a moral if not a binding legal obligation to conform to the UN "common system".⁶⁵

Finally, one other reason for conforming the Agency's system to that of the United Nations is the Agency's participation in the UN Joint Staff Pension Fund.⁶⁶ Though not explicitly required by the Regulations of the Fund, or by the agreement by which the Agency became a participating organization, the absence of such conformity would introduce considerable difficulties in the computation of payments and benefits relating to Agency staff members.

24. 2. 2. Method of securing

No automatic mechanism exists for guaranteeing that the Agency's Staff Regulations and Rules will conform to those of the United Nations, as these may be amended from time to time. In fact the desirability of assuring and maintaining conformity with the common system is only one consideration, though usually the most important one, taken into account by the Board when it originally considered the draft Staff Regulations and later when faced with proposals to amend the Regulations either in order to maintain such conformity or, in some instances, in a way which would create a discrepancy between the Agency's system and that of the United Nations. The Director General is similarly motivated when considering the formulation or amendment of Staff Rules.

The UN General Assembly, when amending the UN Regulations, sometimes by the same resolution invites the organizations related to it to make corresponding changes in their own systems.⁶⁷ Such resolutions must be considered by the Agency pursuant to Statute Article XVI. B. 2 and to Article V of the UN Relationship Agreement.⁶⁸ This consideration must be given by the Board if the matter concerns a Regulation; if only the Staff Rules are affected then it may be sufficient for the Director General to consider whether similar changes should be introduced by the Agency.

Even where the formulations of an Agency and a UN Regulation or Rule are identical, it could happen that its interpretation diverges between the two organizations. Several devices are employed to prevent such divergencies from arising or persisting. These include:

- (a) Correspondence between the Secretariats;
- (b) The advice of ACABQ and of the Panel of External Auditors in relation to financial provisions as to which similar questions have arisen in several organizations of the UN family;⁶⁹

- (c) The Panel of Medical Advisers with respect to questions involving fitness for recruitment, of continued ability to perform official duties and of entitlement to compensation for disability.

24.2.3. Results

The principal impact of the "common system" is on the Staff Regulations and Rules themselves. In particular the Agency has always conformed exactly to the salary scales established by the UN General Assembly for the professional and higher categories of staff, as well as to the schedule of Post Adjustments, the Education Grant and the rate of Staff Assessment (from the time that this levy was introduced by the Agency).⁷⁰ Similarly the Agency conforms exactly to the UN's formula establishing the level of pensionable remuneration with respect to UNJSPF.⁷¹ The travel standards conform closely to those of the United Nations and tend to diverge from it only temporarily on points as to which no uniform rules have been established within the UN family. One indication of the close conformity of the Agency's Regulations to those of the United Nations is that each time the General Assembly has made any substantive change in staff benefits the Board or the Director General has taken corresponding action with respect to the Agency with effect from the same date as the UN action, even if the modification in the Agency had to be applied retroactively and even if it required a supplementary budget.⁷²

In addition to using the same schedule of Post Adjustments as the United Nations, the Agency has adopted the UN-approved method of calculating the applicability of a particular post adjustment to Vienna; this is achieved on the one hand by conforming to the standards set by the Expert Committee on Post Adjustments (ECPA) and on the other by delegating the performance of cost-of-living surveys to ILO, which carries out this task uniformly for several organizations; for posts outside Vienna the UN rating is used automatically.⁷³ As discussed in Section 24.4.1.2.1, the Agency has also tried to conform as closely as possible to the method of determining the salary scales of General Service and of Maintenance and Operative staff "on the basis of the best prevailing conditions of employment in the locality concerned", by following the standards established by CCAQ on the advice of ICSAB.

An important method of, as well as reason for the Agency conforming to the common system lies in the Agency's participation in certain administrative devices established by other organizations in the UN family:

- (a) The UN Joint Staff Pension Fund;⁷⁴
- (b) The UN Administrative Tribunal with respect to disputes relating to UNJSPF;⁷⁵
- (c) The ILO Administrative Tribunal.⁷⁶

Article XVIII. 1 and 2(b) of the UN Relationship Agreement expresses one of the principal purposes of the common system: to simplify the transfer of staff within the UN family of organizations on a temporary or permanent basis. The Agency has therefore also become a party to the informal agree-

ment among these organizations, governing the method by which entitlement to leave, repatriation and various grants are to be charged when a staff member is transferred. Staff Regulations 3.02 and 14.01 directly foresee the use by the Agency of staff appointed on a secondment basis, though it is not specified that such secondment need be from an organization in the UN family;⁷⁷ initially a number of staff members were seconded by the United Nations and the specialized agencies, in particular to assist the Agency in establishing its administrative services; within about five years all such staff members had either been returned to their parent organizations or had been permanently absorbed by the Agency and by now the Agency itself has become a lender of staff to several organizations.⁷⁸

Staff Regulation 3.06, which provides that in filling vacancies "the fullest regard shall be had. . . to the qualifications and experience of persons already in the service of the Agency", does not explicitly provide for similar consideration to be given to persons in the service of other UN family organizations; in this the provision differs from the corresponding one of the United Nations,⁷⁹ a difference probably attributable to the assumption that most of the Agency's posts would require different qualifications. Nevertheless, the organizations in the UN family regularly receive the Agency's "vacancy notices", and those of the United Nations and specialized agencies are called to the attention of the Agency's staff.

24.2.4. Participation in developing the system

If Article XVIII of the UN Relationship Agreement is taken as the principal basis for the Agency's conformity to the common system, it should be noted that as important as such conformity is the requirement in paragraph 2(a) for consultations to take place between the two organizations "relating to the terms and conditions of employment of the officers and staff". Instead of engaging in bilateral consultations, the Agency participates actively in the multilateral mechanisms established to formulate the provisions, standards and procedures which constitute the "common system":

- (a) The principal organ in which the rules of the common system are formulated or changed is ACC and its subsidiary, CCAQ. The Agency participates in both these inter-secretariat bodies, whose recommendations are addressed directly to the participating organizations insofar as no substantive changes in any staff regulations are required. If such are necessary, then the recommendations are addressed to the UN General Assembly through the Secretary-General (the Chairman of ACC); in the General Assembly they are considered by ACABQ and by the Fifth Committee; if the Assembly then takes a decision directly applicable to the UN staff it usually invites all related organizations to follow suit.
- (b) One active initiator of changes in the common system is FICSA, in which the Agency's Staff Council participates actively.⁸⁰ Thus the views of the Agency's staff may affect the common system either through FICSA or through persuasion exercised on the Director General (usually through the Joint Advisory Committee) who may then intervene directly in ACC and CCAQ.

- (c) An important aspect of the common system is participation in UNJSPF. As explained in Section 24.5.2.4, the Agency is represented by 2 members on the 21-member UNJSPF Board, and generally by 1 on the 9-member Standing Committee. By its membership in these organs the Agency (reinforced by any persuasion the administration can exercise in CCAQ and the staff in FICSA) can influence the recommendations that the Board makes to the General Assembly.
- (d) The Agency's Medical Adviser participates in the informal Panel of his peers in the UN family, which helps to establish common medical standards for recruitment and disability, as well as for eligibility for UNJSPF coverage.

24.3 CLASSIFICATION AND GRADING OF EMPLOYEES

Persons employed by the Agency can be classified into various interrelated and partially overlapping categories, depending on whether or not they are subject to the Staff Regulations, on which set of Staff Rules apply to them, on their grade, on the length and type of their appointment and even to some extent on whether or not they have the nationality of their duty station. While no fully comprehensive description of these classifications is feasible without some duplication, the following scheme covers most of the types of arrangements by which persons are employed by the Agency and indicates the principal characteristics of each of the specified classes.

24.3.1. Persons subject to the Staff Regulations

According to Staff Regulations 14.02 and 14.03, all persons employed on a full-time basis with the Agency through contracts specifying that they are subject to the Staff Regulations are considered to be "staff members"; all these persons, as well as the Director General, are considered to be "members of the Secretariat". All members of the Secretariat⁸¹ are required by Regulation 1.11 to make an oath or declaration whose text is set forth in that provision.

The contracts of staff members are embodied in "Letters of Appointment", while non-staff members receive "Special Service Agreements".⁸²

24.3.1.1. The Director General

The Director General is himself subject to the Staff Regulations, except in so far as his contract of employment⁸³ provides otherwise. However, he is not subject to the Staff Rules, which are promulgated by him and which he may suspend.

The Director General enjoys the status of a diplomatic envoy under the Privileges and Immunities Agreement⁸⁴ and, in Austria under the Headquarters Agreement, that of an Ambassador who heads a mission.⁸⁵

24.3.1.2. Regular Staff Members

Most members of the staff are subject to the general Staff Rules. This includes staff members employed at out-stations such as Trieste and Monaco (though for these stations the Rules have been modified through the establishment of special salary and allowance scales for General Service and Maintenance and Operative staff).⁸⁶ Also included are persons employed for the Agency's Commissary, Restaurant and Kindergarten, even though the budget for these operations is covered by payments by staff members and others having access to these facilities.⁸⁷ Finally a few long-term consultants are by their contracts assimilated to staff members - i. e., they are staff members for all purposes except that they do not occupy a regularly budgeted post.

Not included in the category of regular staff members are those persons, described in Sections 24.3.1.3 and 24.3.1.4, who are covered by the Special Staff Rules for short-term staff or for Technical Co-operation Experts.

Regular staff members can most conveniently be classified according to their grade.

24.3.1.2.1. Professional and above

Staff members in the professional and higher categories are paid on an international scale established by the UN General Assembly. Except for those occupying posts requiring special linguistic qualifications they are recruited subject to geographical distribution.⁸⁸

24.3.1.2.1.1. Deputy Directors General (DDGs)

The special functional position occupied by the Deputy Directors General⁸⁹ is described in Section 9.4.3. In view of the importance of these officers it is not surprising that the Director General is required to engage in special, informal consultations with the Board for their recruitment.⁹⁰ According to Staff Regulation 3.03(b) these officers can only be granted fixed-term contracts, for periods not exceeding five years. They enjoy diplomatic status under both the Privileges and Immunities and the Headquarters Agreements.⁹¹

24.3.1.2.1.2. Directors (D-1 and 2)

For Directors⁹² too the Director General must engage in special consultations with the Board for recruitment⁹³ and for the involuntary termination of those holding permanent appointments.⁹⁴ They enjoy diplomatic status under the Headquarters but not under the Privileges and Immunities Agreement.

24.3.1.2.1.3. Professional (P-1 to 5)

Under the Headquarters Agreement, but not under the Privileges and Immunities Agreement, professional staff members with the grade of P-5 enjoy

the diplomatic status of Counsellor to an embassy. Officials of grades P-1 to P-4 enjoy only normal privileges and immunities under both Agreements, and these are by the former somewhat restricted for Austrian staff members.⁹⁵

24.3.1.2.2. General Service and other mainly locally recruited categories

General Service staff, as well as other sub-professional categories, are paid on scales determined on the basis of the "best prevailing conditions of employment in the locality concerned",⁹⁶

They are not subject to geographical distribution – indeed, they are to be recruited locally as far as possible.

24.3.1.2.2.1. General Service (GS-3 to 8)

In Vienna the Agency employs General Service staff on levels GS-3 to 8, in Trieste 0 to 8 and in Monaco 4 to 8.⁹⁷

Locally recruited but non-Austrian General Service staff are covered by UNJSPF to the same extent as non-locally recruited personnel. Locally recruited Austrians may, depending on the length and type of the contract under which they are serving, be wholly or partially subject to the Austrian Social Security system – though long-term employees are instead covered by UNJSPF.⁹⁸

Non-local General Service staff recruited from the "general geographic region of the duty station" are entitled, in addition to the emoluments and benefits available to locally recruited staff, to:

- (a) Payment of travel expenses on initial appointment and separation for themselves and their dependents;
- (b) Removal of household effects;
- (c) Non-Resident's Allowance;
- (d) Payment of part of salary in a non-local currency;
- (e) Home Leave;
- (f) Education Benefits;
- (g) Repatriation Grant.⁹⁹

In order to discourage the recruitment of General Service staff from areas further away from their usual duty station than required to secure persons with the necessary qualifications (usually linguistic), those coming from outside such region are generally not entitled to the special benefits enjoyed by other non-locally recruited staff, except such as are based on their nationality:

- (A) Non-Resident's Allowance;
- (B) Payment of part of salary in a non-local currency.¹⁰⁰

24.3.1.2.2.2. Maintenance and Operative Category (MO-2 to 7)

All persons in the Maintenance and Operative Category are considered to be locally recruited.¹⁰¹

Austrians in this category are entirely subject to the Austrian Social Security system, while the few non-Austrians are included in UNJSPF.¹⁰²

24. 3. 1. 3. Short-term staff

"Special Staff Rules for short-term staff" have been designed to cover staff members "specifically engaged on short-term appointment for conference and other short-term service" for periods not exceeding 12 months.¹⁰³ These Rules do not contain provisions which assume permanent or long-term membership in the international civil service, such as staff assessment, reimbursement of income taxes or participation in UNJSPF.

Provision is made in the Special Rules for all grades from P-5 to MO-2. Most of the differences between regular staff members at these grades are also applicable to short-term staff members; others (such as participation in UNJSPF for certain Austrian staff members) are not.

Short-term staff are sub-classified into two categories depending on the length of their appointment:

- (a) Daily short-term staff – those serving for less than 13 weeks.
- (b) Monthly short-term staff – those serving for more than 3 months.

24. 3. 1. 4. Technical co-operation experts

"Staff Rules Governing the Conditions of Service of Technical Co-operation Experts" have been promulgated to govern the conditions of service applicable to "technical co-operation experts employed on technical assistance or special fund projects".¹⁰⁴

Though the possibility is foreseen of General Service or Maintenance and Operative staff being temporarily "detailed" or "assigned" to technical assistance or special fund projects,¹⁰⁵ the Rules as formulated apply only to professional staff. These are graded in seven "levels" corresponding to the regular staff grades D-2 to P-1.

Technical assistance experts are also classified according to the duration of their appointment:

- (a) Short-term status – two to twelve months;
- (b) Intermediate term status – one to five years;
- (c) Long-term status – five years or more, or holding permanent ("programme") appointments.¹⁰⁶

24. 3. 2. Special categories of staff

Statute Article VII refers to the staff of the Agency as a unit. Thus no provision is made for either of the political organs to have a staff of its own, and in the practice of the Agency the Office of the Secretary of the General Conference and of the Board of Governors is merely a unit of the Secretariat within the Department of Administration.

However, the Statute appears to refer to several special categories of staff and consideration has been given to whether these should necessarily be fully integrated into the regular staff structure.

24. 3. 2. 1. Guards

Article VII. G specifies that the term "staff" in Article VII "includes 'guards'". However, no further reference is made to this category in the Statute. The provision originated in the Working Level Meeting, in which it was proposed (in connection with the text that became Article IX) that the persons charged with the custody of any nuclear material in the Agency's possession should be recruited on a geographically distributed basis; this point was resolved by the formulation indicated above, which makes "guards" explicitly subject to all the recruitment factors recited in Article VII. D.¹⁰⁷

At the Conference on the Statute the Israeli representative asked why guards were thus singled out, rather than experts or project examiners.¹⁰⁸ No answer was given.

Since up to now no significant nuclear material has been placed in the custody of the Agency, the question of recruiting and organizing guards has not yet arisen, nor has the extent to which they might be treated differently from other staff members been considered.¹⁰⁹

24. 3. 2. 2. Inspectors

Article XII. B requires the Agency to establish, as necessary, a "staff of inspectors", whose responsibilities are further defined in that Article and in Article XII. A. 6 and XII. C. In particular, inspectors have the special power to submit reports on non-compliance to the Director General which he may be required to pass on to the Board.¹¹⁰

No other statutory provision indicates whether and to what extent the "staff of inspectors" is to be incorporated into or be separated from the rest of the Agency's staff. A priori, there does not seem to be any reason to provide for any distinction over the functionally appropriate minimum. Thus the Agreement on Privileges and Immunities provides special rights for inspectors while they are exercising their functions.¹¹¹

Up to now the Agency has, strictly speaking, not established a staff of inspectors. Instead certain staff members, normally those in the Department of Safeguards and Inspection, have been assigned to act as safeguards inspectors and others have been assigned on an ad hoc basis as health and safety inspectors. With respect to safeguards inspectors, the Board has, however, reserved to itself the right to approve which staff members may be used in that capacity, and it is only in this sense that inspectors are at present distinguished from other staff members.¹¹²

24. 3. 2. 3. Project examiners

Statute Article XI. D authorizes the Agency to send into the territory of a State requesting assistance persons qualified to examine the proposed Agency project, who may but need not be members of its staff.

Though it has been suggested that project examiners somehow constitute a special category of staff, it appears plain that these persons, even if re-

peatedly given assignments of this type, need not be distinguished from other staff members; though over the years a number of persons (usually staff members) have made visits and investigations as foreseen in Article XI. D, none has been especially identified as a project examiner. Nevertheless, the Privileges and Immunities Agreement grants to staff members performing this function the same special rights as to inspectors.¹¹³

24. 3. 3. Persons not subject to the Staff Regulations

The Agency sometimes engages persons to work for it as "independent contractors" and not as staff members. Usually these are called "consultants", except when engaged to perform a particular task, such as editing or translating a manuscript or as a technical assistance expert engaged for less than two months.

The employment and status of consultants was the subject of a Secretariat Instruction on "The Engagement and Conditions of Service of Consultants",¹¹⁴ which was later incorporated into the Administrative Manual;¹¹⁵ paragraph 14 provides:

"A consultant shall not be considered as having the status of a staff member of the Agency and the Staff Regulations and Staff Rules of the Agency shall not apply to him unless his contract specifically so provides. He shall not be entitled to reimbursement of taxes he may be required to pay nor to any benefits, payments or subsidies except as expressly provided in his contract. His legal status shall be that of an independent contractor"

The status of a person employed by the Agency thus depends on the instrument by which his relationship to the Agency is established. If he is not to be a staff member he receives a Special Service Agreement, which briefly states his rights and obligations without reference to any other document.¹¹⁶ However, some consultants have received Special Service Agreements that in effect assimilate them to staff members, by incorporating into their terms of employment most of the Staff Regulations and Rules. This device is used either when a person is to occupy a post for which there is no budgetary provision (but for which funds from the budget section for consultants are available) or because he is too old or for some other reason precluded from employment as a regular staff member.

Except for consultants assimilated to staff members, persons in this category are usually not graded formally. Nevertheless, the rate of compensation of most consultants is determined by reference to a virtual grade (from DDG to P-4) that the person might receive if employed as a staff member - except for consultants made available on a cost- or salary-free basis by a Government. Persons employed for more menial tasks are not assigned even a virtual grade, but are compensated on a lump-sum or piecework basis.

24. 4. REMUNERATION OF STAFF MEMBERS

The remuneration of staff members consists of a number of separate elements. Though each of these is based on the Staff Regulations, the actual amounts and conditions of payment may be, depending on the type of emolument, on the category of the recipient staff member, and on the place of his service (i. e. , at headquarters or elsewhere), specified directly in the Regulations, determined by the Board on an ad hoc basis, determined by the Director General with the approval of the Board or promulgated by him on his own authority and set forth in the Staff Rules.

24. 4. 1. Salary

24. 4. 1. 1. Professional and above

24. 4. 1. 1. 1. Base salary

The base salary for each grade of official from P-1 to DDG (and for every step in these grades) is set out in an Annex to the Staff Regulations, and therefore must be determined by the Board.¹¹⁸ Though no standard for this determination is indicated in the Regulations, the Board has always set this scale to be identical to that of the United Nations - i. e. , the uniform world-wide scale which is periodically adjusted by the General Assembly to conform to the lower end of the civil service scales of the States enjoying the highest living standards (in practice largely the United States federal scale).

Initially the Board, on the recommendation of the Preparatory Commission, in 1957 adopted the UN scale prevailing at that time and then followed suit when the General Assembly changed this scale as of 1 January 1962, 1 January 1966 and 1 January 1969. The Board made each of these changes as of the same date as the United Nations, even though its decisions had to be given retroactive effect (since the first meeting of the Board following the General Assembly's decision in December always takes place in February, some weeks after the effective date of the new scale), and even though the budget for the current year did not provide for the increase and the approval of the General Conference for the necessary supplementary budget could not be obtained until many months later.¹¹⁹ Though several times it was proposed that the Board should await the decision of the Conference before making the changed scales effective, this was not done since unbroken conformity to the UN standards was considered of prime importance.

Because of the use of the UN scales, these salaries (as well as the Post Adjustments mentioned below) are stated in US dollars. The part of the salary paid locally is converted into the local currency at the applicable UN "accounting rates of exchange".¹²⁰

24. 4. 1. 1. 2. Post Adjustment

According to the scheme established by the United Nations, the uniform worldwide base salaries are adjusted to the conditions of each post by means

of a Post Adjustment which is designed to reflect the difference between the current local cost of living and that of the base city (always Geneva) for the year in which the calculations were made on which the base salary scale is based.¹²¹ The actual Adjustment depends on two factors:

(a) The schedule of Post Adjustments

The schedule of Post Adjustments (for each grade and step) is determined by the Board and set forth in an Annex to the Staff Regulations. As is true of the base salaries, the Board has always adopted the schedule established by the United Nations.

(b) The determination of the applicable Post Adjustment class

Since the schedule of Post Adjustments merely indicates by how much the base salary at each grade and step is to be adjusted for each 5% that the cost of living at the post and time in question differs from that at the "base", a determination must still be made as to the "class" of adjustment applicable at any given time (i. e., the number of 5% units to be added or subtracted¹²² from the base salary).

Staff Regulation 5.01(b) requires that the determination of the Post Adjustment class applicable from time to time at headquarters be determined by the Board. For this purpose it has been arranged that ILO periodically (usually in the fall of each calendar year) survey the cost of living in Vienna, in part by evaluating the answers to questionnaires completed by staff members.¹²³ Whenever it appears that the index has changed by 5% from the level according to which the current "class" was determined and that this level has been maintained for nine months (with steadily increasing prices this requirement is considered fulfilled once the trigger level has been reached, and maintained for four subsequent months), the Director General reports this fact to the Board — which each time had decided to approve the new class retroactively as of the end of the nine-month period. Up to 1968 the ILO findings were reported directly to the Agency; however since then, principally to assure co-ordination with UNIDO, whose comparably sized staff is also stationed in Vienna, the findings are submitted to and evaluated by the Expert Committee on Post Adjustment (ECPA) of ACC, which then reports to the two organizations (and to FAO, with respect to its staff in the FAO/IAEA Joint Division).

With respect to staff members serving at posts other than Vienna, the Director General is empowered to determine the applicable class.¹²⁴ In practice he can usually conform to the class established for the area in question by some UN family organization having a large post within it — just as other common system organizations with only a few staff members in Vienna conform to the Agency's determination.

24.4.1.2. General Service and Maintenance and Operative

24.4.1.2.1. Base salary

The Staff Regulations provide that the salary scales for the General Service and any other locally recruited categories are to be "determined on the

basis of the best prevailing conditions of employment in the locality concerned",¹²⁵ which is the formula also used by the United Nations and the related organizations and thus constitutes part of the "common system". The determination is in principle made by the Director General, but he must obtain the approval of the Board for the scales applicable to Vienna;¹²⁶ in practice the determination is therefore that of the Board, and indeed it has several times reduced the scales recommended by the Secretariat or delayed the introduction of increases proposed by the Director General. For other posts the Director General need only report any changes to the Board, and he has promulgated separate scales for Monaco and for Trieste, while in Geneva and New York the applicable UN scales are used automatically.¹²⁷

The first time that the Agency established a definitive scale of General Service salaries on this basis, the Staff Council indicated strong reservations to the appropriateness of the "best prevailing" principle in Vienna. The burden of this opposition was that since in Vienna a considerably lower level of income prevailed than at the headquarters of other UN organizations (a difference not fully balanced out by the lower cost of living), the application of that principle necessarily resulted in too large a gap between the salary of the highest General Service grade (then GS-7) and the lowest Professional grade (P-1) leading to friction between staff members in these respective grades who might be assigned to similar work and also requiring too large a Non-Resident's Allowance to attract non-local staff to Vienna in competition with other international organizations (which caused friction between local and non-local staff employed at the same grade but receiving considerably different incomes). These arguments were addressed by the Council to the Director General,¹²⁸ who passed them on to the Board— which, however, was unwilling to depart from the "common system" by abandoning the "best prevailing" principle.

The salary schedules are established or periodically adjusted on the basis of either of two types of surveys, carried out in accordance with principles established by CCAQ on the advice of ICSAB:¹²⁹

- (a) Comprehensive surveys, undertaken in order to establish salary rates for new agencies or for an overall revision of an already established salary structure. Encompassed in these surveys, which are carried out by the Secretariat (usually with the aid of outside consultants), are certain selected employers in Vienna who are considered to be paying the best wages (several large local manufacturing and commercial firms, some foreign companies and a large embassy). The first time such a survey was carried out the Staff Council also complained that the study was based on an improper selection of employers and that insufficient account had been taken of the large fringe benefits available in Austria, of the tax factor and of the requirement that most staff members be able to work in at least one language other than German (the mother tongue of most); some adjustments which partially satisfied these criticisms were thereupon made by the Director General in a revised presentation to the Board.¹³⁰ In connection with later surveys no such objections were raised, in part because the Staff Council played a larger role in their preparation and in part because the CCAQ principles had mean-

while been revised (at the instance of Agency proposals advanced directly to that body or indirectly by the staff through FICSA) to take account of the peculiarities of the wage structure in low cash income cities such as Vienna.

- (b) Intermediate surveys, undertaken between comprehensive surveys in order to adjust established salary scales in accordance with the salary movements on the local labour market. For some years these required a determination of the extent to which the rates paid by the previously used sample employers had changed since the last comprehensive survey. However, in February 1967 the Board approved a new system, whereby at the end of each year in which no comprehensive survey was made the percentage movements in two indices ("Gross monthly earnings per employee" (base:1953) and "Consumer Price Index I" (1958), a cost-of-living index) of the Austrian Central Statistical Office would be averaged, and if these showed a positive or negative deviation of 3% or more since the last adjustment, the Board would be asked to approve new scales. In February 1968 the above two indices were replaced by the Consumers' Price Index (1966) and the "Tarif-Lohn Index" (1966) (an industrial salary rate index), both maintained by the above-mentioned Office.

In 1957 salary scales were provisionally established by increasing by a flat percentage the rates that had been determined a year earlier for the Vienna office of the UN High Commissioner for Refugees. The first comprehensive survey was carried out in 1959/60, and later ones were made in 1963, 1965 and 1968 — the latter in collaboration with UNIDO. Intermediate surveys were carried out in 1961 and annually since 1967. Though the results of each survey only show the conditions that prevail at the time they were made, sometimes almost half a year before their consideration by the Board, the latter has only been willing to give any adjustment at most a short retroactive effect.

24.4.1.2.2. Non-Resident's Allowance

The Staff Regulations authorize the Director General to "establish rules and salary limits for payment of a non-resident's allowance to General Service staff members recruited outside the locality".¹³¹ The Non-Resident's Allowance and the rules applicable thereto are set out in the Staff Rules.¹³²

The ostensible purpose of this Allowance is to compensate foreign staff members for the higher expenses that they are subject to in comparison with persons locally established — since the base salaries are calculated with reference to the income (and thus reflect the expenses) of locally employed persons. However, another important purpose of the allowance is to bring the total income of non-locally recruited staff in line with what they could earn from other international organizations with which the Agency is competing for persons who have the linguistic skills, experience or other qualifications sought by the Agency in hiring non-local staff.

Because of the relatively low "best prevailing rates" of income in Vienna, and also because of the considerable difference between the housing costs of

persons established in Vienna and those newly arriving, the Non-Resident's Allowance paid by the Agency in Vienna is the highest applicable to the headquarters of any UN family organization (the Schilling equivalent of \$1200 per year up to 1960, and thereafter \$1000); thus there is a considerable difference in the remuneration of local and non-local staff at the same grade, which makes the latter status most valuable and the relevant Staff Rules defining that status most controversial.¹³³ Lower Allowances have been established for Trieste and Monaco.

24. 4. 1. 2. 3. Language Allowance

A single or a double Language Allowance is paid to General Service and to Maintenance and Operative staff members who demonstrate proficiency in the use of several official languages and/or that of the duty station (the latter not being counted if it is the mother tongue).¹³⁴

24. 4. 2. Staff Assessment

Though the Provisional Staff Regulations always foresaw the establishment of a Staff Assessment system,¹³⁵ in fact the Board only authorized the Director General to do so as of 1 January 1964,¹³⁶ consequent on a commitment to that effect undertaken by the executive heads of the organizations represented in CCAQ.

As applied by the Agency, Staff Assessment is merely a nominal concept. All base salaries, as well as the Non-Resident's and the Language Allowances for General Service and Maintenance and Operative Staff members, were re-stated on a gross basis, to which a progressive "tax" in the form of the staff assessment is applied, whose rates are maintained at the same level as that of the United Nations. The new gross rates were naturally calculated so as to leave the net ones unchanged. Both are set forth in the Staff Regulations and Rules, and both are used in recruiting correspondence with prospective staff members and in the Letters of Appointment. However, only the net rates are used in payroll accounting, and (unlike in the United Nations) no account is taken of the Assessment in the budget — all expenses are expressed at net salary levels and no Staff Assessment "income" is recorded.¹³⁷

The only practical effect of the assessment for either staff members or for the Agency is that the gross rates are used to establish pensionable remuneration for UNJSPF purposes — i. e., both the payments to the Fund and the benefits paid by it are based on those higher nominal rates.¹³⁸ Aside from increasing both types of payments, the effect of using gross rates is to augment this increase at the higher salary levels (because of the graduated nature of the staff assessment), which in turn is designed to mitigate the impact of income taxes imposed on UNJSPF benefits. In addition, the system is intended to have a dual psychological effect in permitting staff members on the one hand to mention their gross salaries in making comparisons with taxed salaries paid by conventional employers, and on the other hand to counter the common prejudice against "untaxed international civil servants".¹³⁹

24. 4. 3. Dependency Allowances

Staff members in the Professional and higher categories receive Dependency Allowances at rates established by the Board and set forth in the Staff Regulations;¹⁴⁰ the amounts and conditions are always set to be identical to those of the United Nations. Staff members in the General Service and Maintenance and Operative categories receive Dependency Allowances at rates established by the Director General and set forth in the Staff Rules;¹⁴¹ these are different at headquarters and at Trieste and Monaco, since they are designed to assist in conforming the base salaries to the "best prevailing" local rates.

Different amounts are payable in respect of a dependent spouse, of dependent children (both being classified as primary dependents) and, if there is no dependent spouse, of a single secondary dependent such as a parent or sibling.

24. 4. 4. Education Grant

Staff members in the Professional and higher categories as well as non-locally recruited General Service personnel (except those from outside the geographic area of the duty station) also may be entitled to an Education Grant for their children, at a maximum rate set forth in the Staff Regulations — an amount equal to the maximum set by the United Nations.¹⁴² In addition, travel costs may be paid for a child studying away from the staff member's duty station.

24. 4. 5. Payments relating to commencement or termination of service

24. 4. 5. 1. Installation Grant

The Travel Rules provide for the payment of a temporary Installation Grant to persons internationally or otherwise non-locally recruited.¹⁴³ This payment is designed to meet the initial higher expenses encountered by a staff member in the course of settling at a new post.

24. 4. 5. 2. Removal of household effects or alternative payments

Persons recruited by the Agency for a post away from their current residence or transferred from one post to another while serving the Agency are, if their stay at such post is expected to be extended (usually two or more years), entitled to have their household effects shipped (both back and forth) at the expense of the Agency; however, the Agency may also offer the staff member a proportionate lump-sum cash payment in lieu of such shipment.¹⁴⁴ Alternatively the Director General may decide (if the distance and time periods involved make this seem more rational) to authorize Subsistence Payments (for periods of up to a year) or an Assignment Allowance (two to five years) which are designed to compensate staff members for the increased expenses of not having their household effects available.¹⁴⁵

24. 4. 5. 3. Repatriation Grant

Staff members whom the Agency is liable to repatriate (i. e. , internationally recruited staff members in the professional and higher categories and non-local General Service staff not recruited from outside the geographic area of the post) are entitled to a Repatriation Grant on a scale set forth in the Staff Regulations and identical to that of the United Nations.¹⁴⁶ These payments reflect the length of service, the final salary rate and whether or not the staff member has a primary dependent at the time of repatriation.

The Staff Regulations originally provided for the payment of a Service Benefit at a somewhat higher rate to staff members who had served for less than five years (nominally to assist them in maintaining or re-establishing life and social insurance coverage).¹⁴⁷ However, at the time the United Nations abolished this payment the Agency followed suit.¹⁴⁸

24. 4. 5. 4. Termination Indemnities

A staff member whose contract is, without his request or fault, terminated by the Director General, may be entitled to a Termination Indemnity according to a schedule set forth in the Staff Regulations. The amount of payment depends on the rate of final salary and the length of previous service.¹⁴⁹

24. 4. 6. Reimbursement of income taxes

Both the Headquarters¹⁵⁰ and the Privileges and Immunities¹⁵¹ Agreements provide for the exemption of staff members from the payment of any income taxes on their emoluments from the Agency — whether these be based on nationality, permanent or current residence or place of employment. In addition the Agency has taken the position that Article XV. B of the Statute, a provision these Agreements are designed to define, should be interpreted as providing such exemption even with respect to Member States not parties to either instrument.¹⁵² However, this latter interpretation has not always been accepted, and even some States parties to the Privileges and Immunities Agreement have made express reservations with respect to the tax exemption provision as it relates to their own citizens, especially if employed within their jurisdiction.¹⁵³

In order to prevent any discrimination between staff members subject to such an impost and those who are not, Staff Regulation 5. 02(a) provides that if national (interpreted as including local) income taxes¹⁵⁴ are levied on staff salaries or allowances (interpreted as including practically all types of payments or benefits received from the Agency) the Agency will reimburse the staff member unless otherwise specified in his Letter of Appointment. Such exclusion is generally provided for only in the contracts of daily or monthly short-term personnel (the payments to whom are correspondingly somewhat higher than to regular staff).

The detailed provisions according to which reimbursements are calculated are set forth in Staff Rule 5. 02. 1. These provisions are necessarily somewhat complicated since a fair division of the tax burden must be devised to cover staff members having outside income, or filing joint returns with a spouse, or serving only part of a tax period with the Agency.

In substance, the Agency's tax reimbursement rules follow those of the United Nations. However, unlike in that organization, not even a nominal pretence is made of limiting the amount of reimbursement to the amount of Staff Assessment and of considering such reimbursement as a type of double taxation relief.¹⁵⁵ Moreover the Agency has failed to establish a Tax Equalisation Fund through which it could cause those of its Members that tax Agency salaries to compensate the Agency for the tax reimbursements it must pay to its staff members. The reason for this omission is that in practice almost all staff members are exempt from national income taxes; even American citizens, who in principle are subject to tax on payments made by international organizations and to whom the United Nations annually reimburses over \$2 million in federal and state levies, usually avoid these taxes if employed in Vienna, under a limited exemption (sufficient, however, to cover entirely the emoluments of all except the highest officials) applicable to US citizens whose stay outside their country is sufficiently long or established.¹⁵⁶ Thus the total reimbursement payments made by the Agency do not seem to justify the introduction of the rather complex tax equalisation scheme — though proposals for its adoption have occasionally been advanced (by States that consider even the small payments made by the Agency as an unfair drain on the Regular Budget).

24. 5. SOCIAL SECURITY

The Agency provides "social" protection for its staff primarily by reliance on UNJSPF, on the Austrian Social Security system and on certain types of commercial insurance coverage. The terms under which such protection is provided are specified in several formal agreements with the United Nations and the Austrian Government, while the particular types of coverage applicable to various categories of staff depend on the Staff Regulations and Rules and to some extent on the terms of individual Letters of Appointment.¹⁵⁷

24. 5. 1. Provident Funds

Most members of the staff of the Preparatory Commission were seconded from the United Nations, and arrangements were made to continue their prior coverage through UNJSPF. Those persons who could not be covered in this way were insured against death or disability by an ad hoc Provident Fund into which payments were made under the same conditions as were required by UNJSPF.¹⁵⁸

The Provisional Staff Regulations of the Agency originally also established a staff Provident Fund, which was used pending the admission of the Agency into UNJSPF. It was designed to enable the Agency and its staff to set aside sufficient funds against the time of such admission, so that at most negligible extra payments would be required to validate for UNJSPF purposes any periods of service with the Agency before such admission.¹⁵⁹ The Provident Fund was thus not meant to be an instrument of self-insurance, and indeed the Board decided that if any staff member, who would be a UNJSPF participant except for the Agency's non-membership, should die or be disabled,

the Agency would from its own resources pay benefits corresponding to those that would have been paid by UNJSPF.

On the entry of the Agency into UNJSPF on 1 October 1958, the Provident Funds of the Preparatory Commission and of the Agency were terminated, the bulk of the accumulated monies (those pertaining to staff members transferring to the UN Fund) being paid over to that Fund. Although some plans had initially been made for a partial continuation of the Provident Fund to provide pension coverage for those staff members who could merely become Associate Participants in UNJSPF, this was not done.

24. 5. 2. UN Joint Staff Pension Fund

24. 5. 2. 1. History of IAEA participation

The first moves to make possible the participation of the staff of the future Agency in the UN Joint Staff Pension Fund were made by the Preparatory Commission, which through its Executive Secretary requested the UN Secretary-General to initiate the necessary steps.¹⁶⁰ The first of these was the amendment of the Regulations of the Fund, which only provided for the admission of specialized agencies "referred to in Article 57, paragraph 2 of the [UN] Charter"; on the recommendation of the UNJSPF Board, the UN General Assembly at its 12th session added a Supplementary Article to the UNJSPF Regulations providing:

"For the purposes of these regulations, the International Atomic Energy Agency shall be treated as if it were a specialized agency".¹⁶¹

The Preparatory Commission also adopted a resolution in which it recommended to the Board that "the Agency seek admission with full voting rights to the United Nations Joint Staff Pension Fund"¹⁶² and it placed the "Participation of the Agency in the [UNJSPF]" on the provisional agenda of the first series of meetings of the Board.

The Board accepted the recommendation of the Commission and authorized the Director General to inform the United Nations that the Agency was prepared to accept the UNJSPF Regulations. The Director General thereupon negotiated with the UN Secretary-General an agreement for the admission of the Agency into the Fund. This agreement was submitted for comment to the UNJSPF Board, was thereupon signed on 22 and 29 September 1958 and entered into force on 1 October 1958.¹⁶³

In September 1963 the Board decided, pursuant to Article XLI of the UNJSPF Regulations, to accept the jurisdiction of UNAT for UNJSPF cases. Consequently in October 1963 the Director General and the UN Secretary-General concluded an agreement in the usual form for this purpose.¹⁶⁴

24. 5. 2. 2. Coverage

According to Staff Rules 8.01.1, 108.011 and 208.1, all full time members of the staff (including technical co-operation experts) must become UNJSPF Participants, except:

- (a) Staff members covered by the Austrian Social Security system (see Section 24.5.3) — this includes all Austrians in the Maintenance and Operative Services category, or who are General Service or Professional staff with short-term contracts.
- (b) Short-term staff (persons employed on a daily or monthly basis).
- (c) Persons with Letters of Appointment specifically excluding participation — however, there is no Rule or published policy describing the situations in which such an exclusionary provision may be used, except that Staff Regulation 8.02 requires the exclusion of persons seconded from an employer who continues to provide social security coverage for the cost of which the Agency reimburses the staff member.

Whether a staff member became merely an Associate Participant in the Fund (during the years when this alternative existed) depended entirely on the Regulations of the Fund¹⁶⁵ as applied to the type of contract of the staff member in question.

24.5.2.3. Pensionable remuneration

Both the amount of contributions required to be made by staff members and by the Agency to UNJSPF, and ultimately the level of benefits paid by the Fund, depend on the definition of "pensionable remuneration". Though under Article I.3 of the UNJSPF Regulations each participating organization has certain freedom in determining what part of the compensation it pays to its staff should be considered pensionable, in practice the Agency has always conformed exactly to the rules applied in the United Nations and recommended to all UNJSPF participating organizations by the General Assembly or by ACC.

The several successive adjustments in the Agency's definition of pensionable remuneration, such as the shift from a net level to "half gross" (i. e., half-way between a staff member's gross salary and the net determined by deducting Staff Assessment) and later to "full gross", were made by the Director General without consulting the Board (though the financial implications are substantial) and as of the same date as such adjustment was made by the United Nations.¹⁶⁶ Since the Post Adjustment paid to professional staff is non-pensionable (and thus pension credits tend to lag behind the cost of living), the Director General has incorporated into the Staff Rules the ACC recommendation that base pensionable remuneration should be "adjusted in multiples of 5 per cent whenever the weighted average of the post adjustment classifications of the headquarters and regional offices of the member organizations of [UNJSPF] varies by 5 per cent measured" from the base date.¹⁶⁷

24.5.2.4. Participation in organs of UNJSPF

Pursuant to Article XX of the UNJSPF Regulations, the Agency has established a Staff Pension Committee. The General Conference in 1958 decided that that body should consist of six members and three alternates,

of whom one third are to be elected by the Conference ("the body [of the Agency] corresponding to the General Assembly of the United Nations"), one third appointed by the Director General ("the chief executive officer") and one third elected by the participants.¹⁶⁸ In 1963 the Conference decided that each group should elect an additional alternate.¹⁶⁹

Pursuant to Article XXII. 1(b) and 2 of the UNJSPF Regulations and to UNJSPF Administrative Rules E. 1(a) and E. 10, the Agency is represented by two members (selected by the Staff Pension Committee from among its members) on the 21-member Board and, together with IMCO, ITU and WMO, by one member and one alternate (elected by the UNJSPF Board) on the 9-member Standing Committee.¹⁷⁰

24. 5. 3. Austrian Social Security system

Sections 25 and 26 of the Headquarters Agreement provide for:

- (a) All Agency officials to be exempt from compulsory participation in the Austrian Social Security system;
- (b) The Austrian Government to enable officials to whom the Agency does not afford social security coverage to participate in the Austrian system if the Agency so requests;¹⁷¹
- (c) The Agency to arrange for its locally recruited officials to participate in the Austrian system if the protection granted by the Agency is not at least equivalent to that offered under Austrian law.¹⁷²

In order to implement these provisions, the Agency and the Government entered into a supplemental "Agreement Concerning the Social Insurance of Officials of the IAEA".¹⁷³ That Agreement specifies, with respect to Austrian staff members, the individual sections of the Austrian Social Security system which apply to them — depending on whether they are participating in UNJSPF as Full Participants, as Associate Participants or not at all. It also secures an option for Austrian staff to be covered either by the Austrian health insurance system or by the Agency's. This Agreement was amended as of 1 January 1968 to relate also to those staff members not stationed in Vienna.¹⁷⁴

In addition to this instrument, another supplemental "Agreement Concerning the Regulation of Pension Insurance for Officials of the IAEA" was concluded.¹⁷⁵ This Agreement makes it possible for Austrians who had acquired periods of contributory service in Austria to receive a lump-sum payment from the domestic system which they can use to "validate", with respect to the UNJSPF, all periods of service with the Agency during which they were covered by the Austrian system and not by the Fund. Similarly, on leaving the service of the Agency, Austrian staff members can use their withdrawal settlement from the Fund to establish periods of contributory service in the Austrian system. It is also provided that periods of service with the Agency shall be considered as "neutral" periods for the purpose of calculations under the Austrian system.

The Director General's decisions implementing the various rights and obligations under the Headquarters Agreement and its supplements are set

forth principally in Staff Rules 8.01.3 and 108.011(b). Full coverage through the Austrian system is provided for all Austrian staff members in the Maintenance and Operative Services category, in the General Service category for those employed for a fixed term of less than one year or on a short-term basis, and in the Professional category for those employed on a short-term basis. Partial coverage is provided for Austrian General Service staff on probationary appointments and formerly for those who were merely Associate Participants in UNJSPF.

24.5.4. Other coverage

Staff Regulation 8.02 provides that:

"The Director General may reimburse the cost of continuation of such social security measures as health insurance and pension fund participation to the employer from whom a member of the Secretariat has been seconded pursuant to Regulation 3.02. Members of the Secretariat who choose this alternative will be ineligible to participate in the United Nations Joint Staff Pension Fund."

In the practice of the Agency the reimbursement that is paid under this heading is limited to the 4½% of Pensionable Remuneration that would be payable with respect to the staff member if he were an Associate Participant in UNJSPF.¹⁷⁶

However, also following the UN practice, Staff Rule 5.02.1(C)(1) precludes the reimbursement to staff members, under the heading of tax reimbursement,¹⁷⁷ of payments made to a national social security scheme. Thus such reimbursement can only be made under Regulation 8.02.

24.5.5. Service incurred injuries

All Maintenance and Operative Services staff and all short-term Austrian General Service staff are in the case of death, injury or other disability attributable to the performance of official duties, entitled to compensation in accordance with the provisions of the Austrian Social Security system.¹⁷⁸ Most of these persons (excepting the few non-Austrian M & Os) are as a matter of fact automatically covered by that system through payments made by them and the Agency pursuant to the Agreements mentioned in Section 24.5.3.

All other staff members, including technical co-operation experts, are entitled to compensation in accordance with a scheme based on Appendix D to the UN Staff Rules (which was until August 1967 incorporated fully into the Agency's Staff Rules by reference).¹⁷⁹ The compensation thus payable is designed to supplement any payments due for normal sick leave or under UNJSPF, and thus there is no duplication of payments from the several schemes. The Agency has taken commercial insurance to cover its potential liability.

24. 5. 6. Health insurance

The Agency requires staff members to participate in an approved health insurance scheme.¹⁸⁰

All Austrian Maintenance and Operative and General Service staff employed for less than one year are required to participate in the health insurance part of the Austrian Social Security system, and may supplement this through a commercial plan contracted for by the Agency. Other staff members, except in so far as they are permitted instead to continue coverage through some other plan individually approved by the Agency, are required to be covered by a combination of two commercial schemes.¹⁸¹ With respect to all these alternatives the Agency pays a fraction of the premiums, either at a flat rate (50%) or at a rate scaled inversely to the level of remuneration of the staff member.

Technical co-operation experts with long-term contracts can participate in the schemes available at Headquarters. With respect to all experts the Agency has undertaken either to make available medical care (e. g., through the facilities of the recipient Government) or to compensate them (with certain stated exceptions) for medical expenses incurred.¹⁸²

24. 6. LENGTH AND TENURE OF STAFF APPOINTMENTS

24. 6. 1. Permanent appointments

The most significant difference between the staff administration of the Agency on the one hand and that of the United Nations and the specialized agencies on the other, is that in the Agency, by reason of an express policy anchored in the Statute, the permanent international civil servants represent only a relatively modest fraction of the staff. This constitutes a deliberate departure from the principle recommended in 1945 by the Preparatory Commission of the United Nations, that the major part of the staff of that organization should consist of persons making their careers in it.

The ostensible reason for the Agency's special policy is the technical character of the organization, which requires the employment of many scientists; these, it is claimed, lose touch with developments in their fields if immured for too long in the Agency — where their work is indeed primarily administrative. However, it is likely that the difference in policy between the Agency and the United Nations (as well as between the former and the specialized agencies, some of which are as "technical" and almost as "scientific" as the Agency) derives more from the difference in attitude prevailing at the respective times of the foundation of these organizations than from any differences in functions. The internationalist ardor of the immediate post-war years having cooled by the time the Agency's Statute was being formulated in 1954/56, a number of States were having second thoughts about the desirability of a Secretariat composed mostly of career staff with tenure. These doubts resulted in part from the unexpectedly firm protection given to such employees by UNAT¹⁸³ and ILOAT,¹⁸⁴ with the backing of the International Court of Justice,¹⁸⁵ by reason of which their status was even less

vulnerable than it would be in most national civil services. Responsibility for the change in attitude must also be assigned to the difficulty faced by the United Nations in improving the geographical distribution of its staff to correspond to its increasing and more varied membership at a time when most Secretariat posts were permanently occupied and budgetary considerations precluded the creation of a significant number of new posts; the new States, often with no experience with an independent civil service of their own, therefore tended to support the opposition to the career system that had from the beginning been expressed by the Eastern European States.¹⁸⁶

24. 6. 1. 1. Statutory provision

Article VII. B of the Negotiating Group draft of the Statute provided:

"The staff shall include such qualified scientific and technical and other personnel as may be required to fulfil the objectives of the Agency: The Agency shall be guided by the principle that its permanent staff shall be kept to a minimum and that wherever possible, the temporary services of persons possessing the requisite qualifications who are already employed in the atomic energy field shall be utilized."

At the Working Level Meeting the United States proposed the deletion of the entire second sentence.¹⁸⁷ At the suggestion of South Africa the Meeting unanimously compromised on the deletion of merely the words following "minimum".¹⁸⁸

At the Conference on the Statute no amendment relevant to this provision (then and now Article VII. C) was introduced nor was there any significant debate on it.

24. 6. 1. 2. Staff Regulations

Provisional Staff Regulation 3. 03(a) reproduces the statutory provision, but adds the qualification that this principle be observed as far as "compatible with the efficient operation of the Agency".

Staff Regulation 3. 03(b) limits the appointment of Deputy Directors General to periods not in excess of five years (just as the United Nations limits the tenure of Under and Assistant Secretaries-General). Though these appointments may be renewed or extended, this provision precludes attainment of tenure at this level.¹⁸⁹

Staff Regulation 3. 03(d) provides:

"The Director General shall decide which staff members may be granted permanent appointments. No such appointment shall be granted or confirmed unless the staff member has served a probationary period of two years; provided, however, that in individual cases the Director General may extend the probationary period for not more than one additional year, or, if a staff member's previous record so warrants, may reduce it to one year, and that, in the case of staff members transferred to the Agency from the United Nations or a specialized agency,

the Director General may grant a permanent appointment with retention of seniority, pension and other staff rights without any probationary period."

Staff Regulation 4.01(a) permits the Director General to terminate permanent appointments "if the necessities of the service require abolition of the post or reduction of the staff or, if the staff member is... incapacitated". In addition, Regulation 4.02(b) permits termination for unsatisfactory service, for failure to meet the required standards of integrity, or on the basis of anterior facts concealed by the staff member at the time of his appointment; however, in all these cases the special procedures provided for in Regulation 4.01(c) must be observed and the Termination Indemnities provided for in Regulation 4.03 and in Annex I be paid. Regulation 4.05, providing for the normally automatic retirement of staff at the age of 60 (which is also the normal retirement age foreseen in the UNJSPF Regulations), also applies to staff members with permanent appointments. Similarly Regulation 11.01, which permits the Director General to dismiss staff summarily (and without entitlement to a Termination Indemnity) for serious misconduct, also applies to the permanent staff.

24.6.1.3. Staff Rules

In the Staff Rules promulgated by the Director General it is provided that, except for persons transferred from another UN agency, no permanent appointments shall be granted to persons over the age of 50.¹⁹⁰ However, in the Rules relating to technical assistance experts that limit is set at 55.¹⁹¹ Regular Staff Rule 3.03.2(B) (3) also provide that:

"Permanent appointments shall be subject to review five years after such appointments have been granted or confirmed."

This provision has been interpreted as neither granting the Agency an additional ground for terminating permanent appointments (indeed no ground not contained in the Regulations could be created by the Rules) nor to limit consideration of termination to that date. In effect, the Rule merely establishes a mechanical administrative procedure for periodically reviewing whether any of the grounds for termination set forth in the Regulations should be applied.¹⁹²

24.6.1.4. Stated policy

In March 1960 the Director General informed the staff of the "Appointments Policy for Staff in the Professional Category".¹⁹³ On the basis of Staff Regulation 3.03(a) and (d), which was interpreted as applicable primarily to the Professional staff, the following principles in relation to permanent appointments were laid down:

- (a) Except for persons transferred from another international organization, or junior staff members (P-1 or 2) internationally recruited for career appointments "on the basis of a special selection process" (one which

has not yet been instituted), staff members would generally not be offered probationary appointments until they had completed two years service under fixed-term appointments. A subsequent period of probation might take into account the length of prior service, but would in no case be shorter than one year.

(b) Selections of staff members for the career service would, inter alia, be based on:

- (i) Suitability as an international civil servant;
- (ii) Adaptability to a variety of tasks;
- (iii) Likelihood that the work performed by the candidate will be of a continuing nature.

(c) The following targets, which were intended to be reached over a two-year period, were established for the proportion of permanent staff in that part of the Secretariat subject to geographical distribution (i. e., professional and higher categories not requiring linguistic qualifications):

- (i) 25% of the scientific staff;
- (ii) 50% of the non-scientific staff.

(d) An attempt would be made (obviously subject to these targets) to achieve a balanced distribution of permanent staff throughout the Secretariat.

Except during the temporary interlude referred to below, no indications have been given by the Director General that this policy has been changed.

During 1961 some members of the Board severely criticized the, in their opinion, excessive number of permanent appointments (at that time 24% of the staff subject to geographical distribution). The Director General's policy statement was not referred to, since that had been communicated only to the staff and not to the Board. In particular, in the course of considering the Programme and Budget for 1962, proposals were made that either the Director General be prohibited from making any further permanent appointments or that at least a one-year moratorium be established (i. e., one which would extend until a date approximately six months after the new Director General had taken charge). Though neither of these proposals was voted on, the Chairman of the Board in his summary of the discussion suggested that they reflected the views of a majority of the Board.

As a consequence, Mr. Cole during his last 6 months in office and Dr. Eklund for a period of approximately 18 months offered almost no permanent appointments in the Professional category, except in so far as probationary contracts had previously been granted. Some time in 1963 the grant of permanent appointments was cautiously resumed, and from time to time criticisms of these grants have been voiced in the Board and the General Conference.¹⁹⁴ In the 1967 Review of the Agency's Activities¹⁹⁵ the Board again formally recommended restraint in the granting of permanent contracts, in order to increase opportunities for the appointment of staff from the developing countries.¹⁹⁶

24. 6. 1. 5. Procedures

The Staff Regulations make the Director General responsible for the grant of permanent appointments. Though he has delegated a number of his other powers under these Regulations and Rules, this responsibility has been explicitly reserved by him. However, he is advised by the "Joint Committee to Consider Promotions and Permanent Appointments of Professional Staff", whose composition is set out in Section 24. 10. 2. 2. 1.

In each of his periodic reports to the Board¹⁹⁷ the Director General includes statistics showing separately the total number of Professional and General Service staff members and the number of those holding permanent or probationary appointments. In addition, the annual Staff List indicates which staff members hold permanent or probationary contracts and recently these Lists include statistics showing the number of permanent contract holders in each grade and from each Member State.¹⁹⁸

24. 6. 1. 6. Results of the policy

On 30 June 1968 the Agency had 314 Professional staff members of whom 257 held posts subject to geographical distribution (i. e. , not requiring special linguistic qualifications); of these 59 (or 23%) held permanent contracts. On the other hand approximately 50% of the General Service staff but only 18% of the Maintenance and Operative Services held permanent appointments at that time.

The Agency's low ratio of permanent appointees resulted in one of the highest proportion of Associate Participants in the UNJSPF of any of the participating organizations. This fact was frequently commented on unfavourably in the organs of the Fund, where it was sometimes suggested that the Agency was one of the organizations unfairly evading its full share of the burdens of the joint pension system, and ultimately was one of the significant reasons for the recommendation to abolish the Associate status (over the strong objection of the representatives of the Agency).¹⁹⁹

24. 6. 2. Regular appointments

Though the Staff Regulations do not list the "regular appointment" as one of the types of contract to be granted by the Agency, this variation was established by the Staff Rules for application within the Maintenance and Operative Services category.²⁰⁰

A regular appointment was granted only after a period of probation and was stated to be "for an indefinite period and may last until retirement". However, this type of contract was subject to termination on one month's notice if, in the Director General's opinion, such action would be in the interest of the Agency.

At the recommendation of the Joint Advisory Committee the Director General in 1965 cancelled the Staff Rule providing for regular appointments, and converted such existing contracts into permanent ones.²⁰¹

24.6.3. Probationary appointments

This special type of contract is granted to create a testing period for a prospective permanent (or regular) appointee.²⁰² As pointed out in Section 24.6.1.4, in the Agency's practice probationary contracts are only granted after a period of fixed-term service, usually amounting to at least two years, which thus in effect constitutes a type of pre-probation. Though that period cannot be entirely substituted for the formal probation, the normal two-year period for the latter may be shortened to one year.

During the probationary period the Director General may, subject to certain procedural and financial requirements, terminate the appointment at any time "in the interest of the Agency".²⁰³

At the end of the period of probation the staff member is either granted a permanent (or formerly sometimes a regular) appointment, or is separated from the service. In exceptional cases the period may be prolonged for an additional year.

24.6.4. Fixed-term appointments

Most Agency staff members, at Headquarters and in the field, serve on fixed-term appointments. According to the Agency's "Appointments Policy for Staff in the Professional Category", initial fixed-term contracts are normally granted for two years and may be renewed for additional periods so that the total service with the Agency should in general not exceed three years. According to Staff Regulation 3.03(b),²⁰⁴ fixed-term contracts may not exceed five years but are subject to extension and renewal — so that on 30 June 1968 42 of the 257 Professional staff members subject to geographical distribution were holding fixed-term contracts with durations (together with those of previous appointments) of five years or more.²⁰⁵ As a matter of fact, the Director General announced to the Board in September 1968 that inspectors would normally be granted an initial probationary appointment of 2 years, followed by a series of 5-year appointments.²⁰⁶

Technical assistance experts, whose contract (or series of contracts) extends from 12 months to five years, are deemed to be in "intermediate-term status". Those whose contracts provide for five or more years of service are in "long-term status".²⁰⁷

Fixed-term appointments of over two years duration can be terminated by the Director General or the staff member on three months' notice; shorter contracts require one month's notice.²⁰⁸ Involuntary termination may take place for any of the reasons provided for in the case of permanent staff members, or for such other reasons as may be specified in the Letter of Appointment;²⁰⁹ however, the Director General need not engage in special consultations (with the Board of Governors, with the staff member's supervisor or with a special advisory board) on such terminations. Though normally these contracts are drawn up so as to expire when the holder becomes 60 years old, fixed-term contracts, unlike permanent ones, do not automatically terminate at such age.

24.6.5. Short-term appointments

Short-term appointments are actually a special type of fixed-term appointment, whose holders at Headquarters are subject to a special set of Staff

Rules.²¹⁰ An initial short-term appointment may not exceed three months, and the total arrangement should not be expected to exceed one year (i. e. , the period below which the staff member could not become a participant in UNJSPF).²¹¹

Technical assistance experts whose contract (or series of contracts) extends to less than twelve months are considered to have "short-term status".²¹² Experts employed for less than two months are normally given Special Service Agreements and thus do not become staff members.

24. 6. 6. Consultants

Consultants are engaged for a specified period and usually, unlike staff members, for a particular task.²¹³

24. 6. 7. Temporary appointments

Though Staff Regulation 3. 03(b) mentions "temporary appointments", no contracts of this type are provided for in the Staff Rules and none have been granted by the Agency.

24. 6. 8. Local appointments at hourly rates

Both the Headquarters²¹⁴ and the Privileges and Immunities²¹⁵ Agreements exclude from the definition of Agency "officials" (i. e. , those to whom privileges and immunities are granted), persons who are "locally recruited and assigned to hourly rates". In practice the Agency does not employ staff members on this basis — though certain Special Service Agreements have terms of this kind.

24. 6. 9. Secondment

Staff Regulation 3. 02 authorizes the Director General to appoint staff members "by direct appointment or on a secondment basis". Regulation 14. 01 defines this latter term as meaning "on loan from their regular employer".

Appointments on secondment may be either fixed- or short-term.

Though the Staff Regulations contain no limitation to that effect, the Agency only grants secondment to persons whose "regular employer" is the United Nations or a specialized agency, and indeed Staff Rule 3. 02. 1(A) only refers to such staff. While many fixed-term staff hold permanent posts with a private employer or a national civil service, from which they are on leave of absence or have nominally resigned (with the right to re-employment within a specified period), from the point of view of the Agency they are considered to be directly appointed and not as seconded.

24. 7. RECRUITMENT

24. 7. 1. Statutory provisions

Article VIII. E of the Negotiating Group draft of the Statute, which was evidently based on Article 101(3) of the UN Charter, read as follows:

"The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, technical competence and integrity. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

At the Working Level Meeting the Soviet Union proposed the addition of the following sentence:

"With this objective in view quotas shall be established for each Member of the Agency in proportion to the contribution of the given state to the budget of the Agency." ²¹⁶

However, later this proposal was withdrawn in favour of a unanimously accepted Canadian alternative, to add the following underscored words in the final sentence:

"... due regard shall be paid to the contributions of members to the Agency and to the importance of..." ²¹⁷

At the Conference on the Statute, Mexico formally proposed the deletion from Article VII. D of the phrase that had been added by the Working Level Meeting, in order "to secure a greater measure of equality among member States".²¹⁸ During the ensuing discussion the United Kingdom expressed the view that the "contributions" referred to were only the financial ones required to be made under Article XIV. D to the Administrative Budget, and did not include nuclear materials or technical assistance provided under Articles IX and X (which only very few States could make available);²¹⁹ but Pakistan expressed the view that other types of contributions should also be taken into account.²²⁰ Though Mexico withdrew its amendment,²²¹ the discrepancy between the British and Pakistani views caused the Danish representative to request the Co-ordination Committee to clarify this point, perhaps by including an explicit reference to Article XIV. D in Article VII. D.²²² However, that Committee decided that this suggestion "had implications of substance" and therefore did not adopt it, considering the record of the discussion in the Main Committee to be sufficient.²²³

During the debate in the Main Committee the Israeli representative also raised the point that in the United Nations the geographical distribution requirement stated in Article 101(3) of the Charter was by then well-established practice interpreted by reference to the contributions of member States (which are not referred to in this context in the Charter); however, the proposed statutory provision seemed to establish "contributions" and "geographic distribution" as two independent criteria. He therefore requested that the Co-ordination Committee indicate what criteria, aside from contributions, would be taken into account in establishing geographical distribution.²²⁴ However, the Committee considered the text of Article VII. D to be self-explanatory and declined to clarify it.²²⁵

24. 7. 2. Staff Regulations and Rules

Paragraph 1 of the General Principles ²²⁶ (relating to the Provisional Staff Regulations) adopted by the General Conference merely reproduces Article VII. D of the Statute. Paragraph 2 adds an additional principle, adapted from the UN Staff Regulations, that in the selection of staff there be no discrimination as to race, sex or religion.

These two principles are combined verbatim in Staff Regulation 3. 01. When this provision had first been discussed in the Preparatory Commission, the United States had proposed that the word "contributions" be followed by "of whatever nature or kind";²²⁷ however, it withdrew this proposal when the objection was raised that the Conference on the Statute had deliberately desisted from such a definition.

Staff Regulation 3. 01 is supplemented by several Staff Rules:

(a) Rule 3. 01. 1 provides:

"Recruitment on as wide a geographical basis as possible shall apply to posts of Deputy Director General and to posts of Directors, as well as to posts in the Professional category other than those requiring special linguistic skills."

(b) Rule 3. 03. 3(B) provides:

"(1) Persons shall not normally be appointed in the General Service category with non-local status unless they possess special skills not possessed by persons who can be locally recruited. . .

"(2) In non-local recruitment preference shall be given to candidates from the general geographic region in which the duty station is located."

(c) Rule 203. 7 (for technical assistance personnel) provides:

"(a) The highest professional competence shall be maintained in any services undertaken in rendering technical assistance to requesting countries.

"(b) Technical co-operation experts shall be selected not only for their technical competence, but also for their sympathetic understanding of the cultural backgrounds and specific needs of the countries to be assisted, and also for their capacity to adapt their methods of work to local conditions, social and material.

"(c) The appointment of stateless persons and nationals of states who are not members of the Agency will be made at the discretion of the Director General."

24. 7. 3. Policy on geographical distribution

24. 7. 3. 1. Overall composition

The question of the satisfactory geographical distribution of the staff has been raised from time to time in the Board and in the General Conference — usually on the basis of complaints that the composition of the staff is not as varied as it ought to be and that it tends to favour the developed Members of the Agency. In reply it has been pointed out that the Statute requires "wide" but not "equitable" geographical distribution and that the effort to obtain a variegated composition has already led to the inefficient use of staff and consequently to unnecessary increases in its size; even so it is difficult to achieve maximum variety in view of the relatively small size of the staff and of the degree of specialization and expertise required of its members.²²⁸

No formal national or regional recruitment quotas have ever been promulgated by any organ of the Agency. As a matter of fact, the Board has never given any guidance on how the principle of geographical distribution should be interpreted numerically. It has, however, been informed of and thus has implicitly accepted the principles set forth in the Staff Rules, that the distribution requirement is not considered as applying to General Service or Maintenance and Operative staff, or to any Professional post for which special linguistic skills are required. Except for these posts, no special attention is paid to linguistic factors in recruitment.²²⁹

The Board has recommended in this connection that an internship programme be established to enable national officials engaged in nuclear work to become familiar with the Agency.²³⁰

The Board is kept abreast of the geographical distribution of the staff by various reports prepared by the Secretariat. Each periodic report by the Director General includes a statement of the number of Member States represented among that part of the staff that is subject to geographical distribution, and the Board itself reports this figure, as of 30 June each year, to the General Conference in the Annual Report.²³¹ In addition a more detailed special report is prepared annually: initially this consisted merely of a statement of the number of Deputy Directors General, Directors and Professional officers attributable to each Member State; from 1960 onward the Board required the Director General to publish an annual list, in the unrestricted INFCIRC series, of the names of all staff members, indicating the unit each is assigned to as well as his nationality and grade; in later years this list has also identified the holders of permanent and of probationary appointments, and most recently several statistical summary tables have been added to show the distribution by grade and nationality of all staff members subject to geographical distribution and separately of those holding permanent contracts and of those holding fixed-term contracts of five years duration or longer.²³²

24. 7. 3. 2. The senior staff

The Board is in a position to exercise special influence over the composition of the senior staff, since the Director General is required to consult informally with all Board members on all senior appointments.²³³

During its initial discussion of the senior staff structure of the Agency the question was raised whether the principle of geographical distribution should also apply to these posts (i. e., to Deputy Directors General and to Directors). After opinions had been expressed for and against this proposition, a six-point proposal was advanced in the Board, on which no formal decision was taken but as to which the Chairman declared at the 33rd meeting that it substantially represented the views of the Board:

- (a) The international character of the Agency should be preserved at the highest level of the Secretariat, and the immediate assistants of the Director General should be chosen in such a way as to reflect not only the various scientific disciplines but also the ideas and feelings of the peoples of the world.
- (b) Senior scientific posts should be filled by nationals of developed countries but a large number of other posts at the Director-level should be given to nationals of developing countries.
- (c) No geographic area should be overlooked in selecting staff for the highest echelon.
- (d) In recruiting senior staff the impression should be avoided that the Agency is an association of producing countries.
- (e) The criteria of "contributions" should not be applied separately to units of the Secretariat, but only to the staff as a whole.
- (f) The Director General should be given the necessary authority to act flexibly in meeting the wishes of the Board.

Subsequently, from time to time, complaints have been raised about the under-representation of the developing States among the senior staff. These criticisms were met in part when, in 1964, an Indian official was promoted to Deputy Director General as head of the new Department of Technical Assistance. This change was made possible when the French and British Governments in effect relinquished their claim for each to have one of its nationals head a Department. In this they complied with an appeal the Director General has several times addressed to the Member States assembled in the General Conference that they should not insist that all senior positions held by their nationals remain theirs by right of inheritance — or to be traded against equally senior posts.²³⁴

24. 7. 3. 3. The inspectorate

Special attention has always been paid to the composition of the Divisions charged with the Agency's safeguards functions, and in particular to the inspectorate.

In the first Board the proposal was advanced that the Safeguards Division should at all times include at least one official from each of the eight areas listed in Statute Article VI. A. 1. This was rejected.

Later, in connection with the formulation of the Inspectors Document, it was suggested that each team of officials charged with performing an inspection be composed on a troika principle, or that each such team should include at least one national of the inspected State. These proposals were not accepted.

Ultimately, no formal decision about the composition of these Divisions has ever been made. However, the Board originally reserved for itself the right to approve all Professional and higher appointments to the Division of Inspection and later, when that Division was merged into the Division of Safeguards and Inspection, the Board instead assumed the power to approve which Agency officials might serve as safeguards inspectors. Thus each time the Director General proposes the names of new officials whom he desires to use as inspectors, the Board has an opportunity to review the composition of the entire inspectorate — a review facilitated by the Secretariat's practice of notifying the Board of the entire list each time it is requested to authorize any additions.²³⁵

24. 7. 3. 4. Guards

At the Working Level Meeting the Soviet Union formally proposed, in connection with the provisions that now are set out in Statute Article IX. H and I, that the guards engaged by the Agency to protect nuclear material in its possession should be recruited on a geographically distributed basis.²³⁶ The Meeting thereupon accepted an American proposal that this matter be dealt with in Article VII,²³⁷ and thus a new Article VII. G was formulated, by which "guards" were specifically included under the definition of "staff" and thus became clearly subject to Article VII. D.

Since up to now no guards have been appointed, the question of the composition of this element of the staff has not been considered by any organ of the Agency.²³⁸

24. 7. 4. Recruitment practices

Though not explicitly required by any Staff Regulation or Rule, the practice has been established, in imitation of that followed by the United Nations and the specialized agencies, of "advertising" every actual and prospective vacancy at all levels of the Secretariat. These "vacancy notices" are posted at Headquarters for the information of staff members, since Regulation 3.06 requires that:

"Subject to the provisions of Regulations 3.01 and 3.03, and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had in filling vacancies to the qualifications and experience of persons already in the service of the Agency. . ."

All notices relating to Professional vacancies are periodically transmitted to all Member States.²³⁹ In addition these notices, as well as those relating to General Service posts to be filled by non-local recruitment, are also sent to the United Nations and the specialized agencies for the information of their staffs.

Consequent on the fact that most Member States have only a limited number of candidates familiar with atomic energy and in particular with the operations of the Agency, a significant number of staff members are recruited from the permanent missions or the temporary delegations at-

tending Agency conferences. This practice is facilitated by the fact that most Professional staff members, and particularly those in the higher-grades, serve on only two-or-three-year fixed-term appointments, which also results in several former staff members appearing later as national representatives to the Agency. Thus two of the first ten Chairmen of the Board subsequently received senior appointments on the staff and one other Chairman had previously served as a Division Director.

The Director General has reserved to himself the power to make all professional appointments and all other appointments of a duration in excess of three months.²⁴⁰ To assist him in the appointment of Professional officers he has constituted the Deputy Directors General as an informal advisory panel. In addition, on all appointments of DDGs and Directors he personally consults all members of the Board, usually collectively in an informal off-the-record meeting from which staff members are excluded.²⁴¹

24. 8. EVALUATION AND ADVANCEMENT OF STAFF

24. 8. 1. Evaluation procedure

Though neither the Staff Regulations nor the Rules specifically foresee any periodic evaluation of staff members,²⁴² the Agency has informally adopted the practice of the United Nations and the related organizations of preparing a periodic, confidential report on staff members. With respect to staff in the General Service and in the Maintenance and Operative categories, the immediate supervisor of each staff member annually completes a form provided by the Division of Personnel, evaluating him on certain specific points and also giving an over-all rating. This report must be counter-signed by the head of the Division or unit, and also by the staff member concerned,²⁴³ both of whom may add comments. The completed reports are evaluated and filed by Personnel. Though the Staff Council has desired that this system be extended upwards and at least one abortive start was made in that direction, no such reports are made on the Professional officers.

These annual reports are not designed to initiate or support any special action, such as the grant of a step-increase, a promotion or a permanent contract, or to propose an extension or the premature termination of an appointment. For all of these, special reports or requests must be made, some of which are originated routinely by the Division of Personnel (e. g. , advice on whether the supervisor desires an expiring appointment to be renewed) while others require the initiative and special support of the head of the Division or Unit (e. g. , promotion).

24. 8. 2. Promotions

In view of the relatively brief service of most staff members with the Agency, the question of promotion does not play an important role in the Staff Regulations. Indeed only one provision refers to it, and that only obliquely:

"The decision as to whether any vacancy shall be filled by recruitment or promotion, and in the latter event the decision as to which staff member shall be promoted, shall rest with the Director General."²⁴⁴

In addition, Staff Rule 10.02.2(A)(ii) provides that the Director General may appoint one or more Personnel Advisory Panels to advise him, inter alia, on "the selection of staff members [to be recommended (sic)] for promotion". Staff Rule 5.91.4 contains a formula for adjusting salaries on promotion (to ensure that a promotion will in every case result in some increase in income, even if it involves a loss of step-in-grade or of certain allowances). The Staff Rules for technical assistance personnel indicate that promotion is not applicable to these experts.²⁴⁵

With respect to General Service and Maintenance and Operative staff, the Director of Personnel has informally promulgated a set of standards indicating the expected qualifications for each grade — and these serve as a guide in the proposed advancement of staff members.²⁴⁶ Promotions are recommended by the Advisory Panel on General Service and Maintenance and Operative Service Staff,²⁴⁷ and the final decision is taken by the Director General.

No standards have been promulgated indicating the qualifications expected of Professional staff at various grades, though such a guide has been under consideration and in informal use for some time.²⁴⁸ This tentative formulation makes the staff member's grade an approximate function of his age, education, experience and the quality of his work. Promotions are considered by the Joint Committee to Consider Promotions and Permanent Appointments of Professional Staff, which is chaired by the Director General who must make the final decisions.²⁴⁹ With respect to linguists, preliminary consideration of promotion is given by the Joint Advisory Panel on Professional Staff in the Languages Division, the Interpretation Service and the Editing Section.²⁵⁰

24.8.3. Step-in-grade increases

All Agency salary scales for regular and for technical assistance (but not for short-term) staff provide for incremental increases in salary within each grade.²⁵¹ The lowest figure in each grade, at which staff members are generally placed on appointment or promotion, is known as step I and each successive increment adds another step. The number of steps ranges from 1 (for Deputy Directors General — for whom thus no incremental increases are foreseen) to 16²⁵².

According to the Staff Regulations, increments are to be awarded annually on the basis of "satisfactory service" (except that for gross salaries above \$18 500 increments are granted biannually). The Staff Rules add that:

"Satisfactory service shall be defined as satisfactory performance and conduct of staff members in their assignments as evaluated by their supervisors."²⁵³

To obtain the required evaluations, the Division of Personnel each year solicits a written statement (on a short multiple-choice form) on each staff member from the appropriate supervisor(s).

24.9. CONTRACTUAL INSTRUMENTS

24.9.1. Staff members

24.9.1.1. Letters of Appointment

24.9.1.1.1. Requirements and practices

Staff Regulation 3.05 requires that on appointment each staff member receive a Letter of Appointment stating as far as applicable:

- "(a) That the appointment is subject to the provisions of these Regulations and of the rules applicable to the category of the appointment in question, and to changes which may be duly made in such Regulations and rules from time to time;
- "(b) The nature of the appointment;
- "(c) The date on which the staff member is required to enter upon his duties;
- "(d) The period of appointment, the notice required to terminate it and period of probation, if any;
- "(e) The terms of remuneration; and
- "(f) Any special conditions which may be warranted to cover exceptional circumstances."

This Regulation is supplemented by Staff Rule 3.03.1, which requires that the Letters of Appointment contain all the terms and conditions of employment. In addition, some Regulations and Rules require that particular exceptions to the normal conditions of service (e.g., the occasional non-reimbursability of national income tax²⁵⁴), must be set out in the Letter.

The Agency has evolved a number of standard printed form Letters of Appointment, applicable respectively to permanent, probationary, fixed-term, monthly short-term and daily short-term appointments at Headquarters and to technical assistance experts; each of these forms can be used for all grades and categories of staff. All these forms contain certain invariable elements, which are printed. The principal such provision is that the appointment is offered "in accordance with the terms and conditions specified [in the Letter] and subject to the Provisional Staff Regulations and the [appropriate set of] Staff Rules, together with such amendments as may from time to time be made thereto". Depending on the type of contract it is indicated whether or not staff assessment will be imposed and national income taxes reimbursed. A short reference is made to the regulations relating to the termination of appointments.

In addition to the invariant elements, each letter contains some individually adjusted items. Most of these are listed under the heading "initial assignment", and specify the functional title, the grade and step of the appointment, the Division or Unit and the official duty station, as well as the effective date and expiration (if applicable) of the appointment. The gross and the net base salaries (for the specified grade and step) are indicated—but the allowances are merely referred to in general terms. Finally space is left for setting forth any special conditions.

Letters relating to permanent appointments are signed by the Director General, and others by an official of the Division of Personnel or of the Technical Assistance Department; they must be countersigned by the staff member. If the appointment is renewed, a new letter of appointment is issued which either merely extends the terms of the previous letter (if none of the variable elements have changed), or consists of a new letter identical in form to that used on an initial appointment. If a staff member is promoted or receives a new assignment, no new letter of appointment is issued. However, if the type of appointment is changed, (e.g., from fixed-term to probationary) a new letter is issued and signed.

24.9.1.1.2. Legal nature

It can hardly be said that the Agency's Letters of Appointment, whose form and use is based on UN practice, are entirely satisfactory or legally unambiguous instruments. The principal reason for unclarity is that these short documents are burdened with a number of separate functions: they contain contractual elements, establish status, set forth certain information on points which experience shows should not be hidden by the blanket reference to the Staff Regulations and Rules, and finally fulfill certain formal requirements stated in the Regulations.

- (a) As appears from the jurisprudence of UNAT and ILOAT, which is equally applicable to the Agency whose Regulations and practices are closely patterned on those to which the decision of these Tribunals relate, the relationship between a staff member and the Agency partakes both of a contractual and of a statutory nature. The Letter of Appointment is contractual in form (it ostensibly constitutes a signed "offer" of an appointment which the staff member accepts by his counter-signature), but the terms and conditions are subject to Regulations and Rules which the Agency can unilaterally amend. Though the Regulations themselves preclude any amendment prejudicial "to the acquired rights of members of the Secretariat",²⁵⁵ there exists no definition of which rights are included in this category; indeed no attempt has been made by the Agency to clarify this point, since it is felt that leadership in this matter should be exercised by the United Nations.
- (b) The extra-contractual nature of appointments is emphasized by the practice of extending them through the conclusion of instruments identical in form to those used for initial appointments. The consequent continuity of certain rights (e.g., pensions) as well as the accumulation (e.g., leave) or postponement (e.g., Repatriation Grant) of others, is never referred to in the new Letter of Appointment, but merely follows from the Staff Regulations which implicitly treat any continuous series of appointments as a single one.
- (c) Certain of the points specified as part of the "initial assignment", for example: the grade and step, and the consequent functional title and gross and net salaries, in effect constitute merely a statement of the minimal conditions of employment from which there may be no detracting for the duration of the Letter. Improvements, such as result from a

promotion or step increase, can be considered as constituting offers by the Agency of a change in the contract, but for which no explicit acceptance is required since such can reasonably be presumed. For these no new Letters are issued – nevertheless it would not appear permissible for the Agency to revoke such an improvement.

- (d) Other points specified under the "initial assignment" heading, such as the Division or Unit and the official duty station, are more problematic, since Staff Regulation 1.02 provides that:

"Staff members are subject to the authority of the Director General and to assignment by him to any of the activities or offices of the Agency."

Thus a staff member has no contractual right to work in a particular Division or at a particular duty station and their specification in the Letter of Appointment would seem to be merely informative.

- (e) On the other hand, certain important elements of the contractual relationship are not specified in the Letter of Appointment and cannot be automatically derived from the Regulations and Rules, but are left for the determination of the Director General (unilaterally, though subject to appeal in so far as no element of discretion is involved).²⁵⁶
- (f) The Letters of Appointment of staff members selected for duty at headquarters are only signed after their arrival in Vienna and a satisfactory medical examination.²⁵⁷ However, the appointment is then back-dated to the start of the recruitment travel. Thus the prospective staff member travelling to Vienna is in a legal no-man's land, since it is conceivable that something could occur to prevent the expected retroactive validation of his status.

24.9.1.2. Oath of service

Staff Regulation 1.11 requires all members of the staff to subscribe to the following:

"I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the International Atomic Energy Agency, to discharge these functions and regulate my conduct with the interests of the Agency only in view, and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the Agency. "

Staff Regulation 1.12 requires the Director General to make this oath or declaration at a public meeting of the General Conference; when Dr. Eklund was appointed for second and third four-year periods he repeated this ceremony.²⁵⁸ Other staff members may be asked to take the oath orally before the Director General, but in any case they are required to do so also in writing; but the practice is not to require a new signature on the extension or conversion of a contract – i. e., the initial pledge is treated as co-extensive with the staff member's status as such.

24.9.2. Other employees

24.9.2.1. Special Service Agreements

Persons employed by the Agency in capacities other than as staff members receive a "Special Service Agreement", sometimes denominated as a "Memorandum of Agreement" or merely "Agreement". A number of standard forms for this type of instrument have been developed, covering work as an author, editor, proof-reader or designer (all in connection with the Agency's publications programme), as a technical assistance expert (for very short assignments), or as a consultant. In addition, non-standard agreements are concluded to meet particular requirements.

These instruments always specify the nature of the service to be performed, its duration or the date by which results are due, and the compensation — whether on a lump-sum, time or piece basis. It is usually stated explicitly that the person has the "legal status of an independent contractor" and that he is not entitled to any rights and has no obligations not explicitly set forth in the Agreement — i. e., he has neither substantive nor procedural rights deriving from the Staff Regulations and Rules. Since most contracts call for the production of some tangible work, such as a report, provisions are included for the transfer to the Agency of any right, title or interest (e. g., copyrights) that the contractor may have in it.²⁵⁹

24.9.2.2. Oath of service

Since holders of Special Service Agreements are not staff members, the oath of service required by Staff Regulation 1.11 does not apply to them. Nevertheless whenever these persons, particularly consultants, are charged with tasks requiring the exercise of substantive discretion, the following provision is included in their agreements:

"The subscriber shall be considered as having the legal status of an independent contractor. The subscriber shall not be considered in any respect as being a staff member of the Agency. Nevertheless, he undertakes to exercise in all loyalty, discretion and conscience the functions entrusted to him by the Director General of the Agency or on his behalf, to discharge those functions and regulate his conduct with the interest of the Agency only in view and not to seek or accept instructions in regard to the performance of his duties from any Government or other authority external to the Agency. He further undertakes to perform his functions in accordance with the further instructions which may be given him by the Director General of the Agency or on his behalf."

24.10. ADMINISTRATION OF THE STAFF REGULATIONS AND RULES

24.10.1. General delegations

The Director General has promulgated an Administrative Instruction on the "Administration of the Staff Regulations and Rules"²⁶⁰ by which he has:

- (a) Delegated to the Director of the Division of Personnel "authority to apply the Staff Rules (including the Travel Rules) in individual cases and to take the related decisions", except in so far as certain decisions are specifically reserved to the Director General (e.g., the appointment of all professional officers and the grant or confirmation of all permanent appointments), or delegated to some other official: the Deputy Director General for Administration or to any Deputy Director General with respect to staff under their supervision.
- (b) Allowed very limited powers of re-delegation.
- (c) Provided for the establishment, by the Director of the Division of Personnel, of personnel policies and practices, for which he is to obtain the approval of the Deputy Director General for Administration or of the Director General.
- (d) Reserved to himself the administration of the Staff Regulations, with narrow exceptions.

In addition, some further limited delegations in respect of personnel administration are contained in the Administrative Instructions relating to the delegation of authority under the Financial Regulations and Rules.²⁶¹

24.10.2. Committees and other bodies

The Staff Regulations and Rules call for the establishment of a number of committees, panels and other bodies, which may or must be consulted by the Director General in connection with certain administrative decisions; Their members are in part appointed by the Director General, either ex officio or by name, in some instances in consultation with the Staff Council,²⁶² in part designated by the Council or elected by the staff, and for the Staff Pension Committee elected in part by the General Conference.²⁶³

24.10.2.1. Joint Advisory Committee

The Joint Advisory Committee was established by Staff Rule 10.02.1, which implements the requirement in Regulation 10.02 that:

"The Director General shall establish administrative machinery with staff participation to advise him regarding personnel policies and general questions of staff welfare and to make to him such proposals as it may desire for amendment of the Staff Regulations and Rules."

The terms of reference of the Committee are to consider items requested either by the Director General or the Staff Council, and in particular any proposed amendments to the Staff Regulations or Rules. No individual cases may be considered, since these are within the purview of the Personnel Advisory Panels.

The Committee is composed of three members and three alternates designated by the Director General and of an equal number designated by the Staff Council. The Chairman is elected by the members from among themselves; the non-voting Secretary is appointed by the Director General from the Division of Personnel.²⁶⁴

24.10.2.2. Personnel Advisory Panels

Staff Rule 10.02.2 requires the Director General to establish one or more Personnel Advisory Panels. Their general terms of reference include the giving of advice on the selection of candidates to fill vacancies in certain categories of posts, on the selection of staff for promotion, and on the conversion of probationary to permanent appointments. In expanded form (see below) the Panels also advise on the imposition of disciplinary measures pursuant to Staff Regulation 11.01 or the quasi-disciplinary termination of permanent appointments under Regulation 4.01(b)(ii) or (iii).

The members of the Personnel Advisory Panels are to be "appointed by the Director General after consultation with the Staff Council". In practice, as indicated for the individual Panels mentioned below, the Director General has for the most part not constituted these on an ad personam basis, but has appointed holders of particular offices to serve ex officio – while inviting the Staff Council to designate one representative to each Panel.²⁶⁵

Three Panels have been established:

24.10.2.2.1. Joint Committee to Consider Promotions and Permanent Appointments of Professional Staff

This Panel consists of the Director General as Chairman, all the Deputy Directors General (including the Inspector General) and a representative of the Staff Council, with the Director of the Division of Personnel acting as Secretary.²⁶⁶

This Committee does not deal, as foreseen in Staff Rule 10.02.2(A)(i), with recruitment since this is the purview of an informally established advisory panel, consisting only of the Director General and his Deputies.²⁶⁷ The terms of reference of the Committee are therefore to consider the promotion of long-term staff members, as well as their permanent or long-term appointment, and to conduct the 5-year review of permanent appointees.²⁶⁸

24.10.2.2.2. Joint Advisory Panel on Professional Staff in the Languages Division, the Interpretation Service and the Editing Section

This Panel consists of some permanent members and of some variable ones depending on the linguistic group involved. The two permanent members appointed by the Director General are the Chief of the Division of Personnel and, as appropriate, the Chief of the Languages Division, the Chief Interpreter or the Chief of the Editing and Publications Section; in addition one representative is designated by the Staff Council. For each of the four linguistic groups the Director General has appointed the chief of the respective Translation Section and one other officer (traditionally of that mother tongue but serving outside the Languages Division). The Secretary-Rapporteur is appointed by the Director of the Division of Personnel, from his staff.²⁶⁹

The terms of reference are to advise the Director General on the selection of candidates to fill vacancies in the several language related services.

24.10.2.2.3. Advisory Panel on General Services and Maintenance and Operative Service Staff

This Panel consists of the Director of the Division of Personnel, or his Deputy, of the Administrative Officers of each Department, of a representative of the Staff Council, and of a Secretary/Rapporteur from the Division of Personnel.

The terms of reference are to advise on the selection of candidates for G-5 to G-8 appointments, to review probationary staff members, and to advise on the selection of staff members for promotion.²⁷⁰

24.10.2.3. Joint Appeals Committee

Staff Rule 12.01.1, promulgated to Staff Regulation 12.01, provides for the establishment of a Joint Appeals Committee, consisting²⁷¹ of:

- (i) A Chairman appointed by the Director General, separately for each case, from among a special panel he appoints annually after consultation with the Staff Council;
- (ii) A member appointed by the Director General;
- (iii) A member elected by the staff;
- (iv) A Secretary/Rapporteur appointed by the Director General from the Division of Personnel.

The terms of reference of the Committee are set forth in Section 27.3.2.1.

24.10.2.4. Joint Staff Pension Committee

Pursuant to UNJSPF Regulation XX the Agency has established a [Joint] Staff Pension Committee consisting of six representatives and six alternates,²⁷² one third of whom are respectively elected by the General Conference, appointed by the Director General and elected by the UNJSPF participants.²⁷³ A Secretary is appointed by the Director General upon recommendation of the Committee.

The organization and terms of reference of the Committee are those laid down by the Administrative Rules of UNJSPF. Its principal function is to exercise the discretionary powers with regard to the granting of benefits that are delegated to each local Committee by the UNJSPF Board. The Committee also appoints the Agency's representatives to the Board and has the power to make intermediate appointments to the Standing Committee. Though not specifically provided for in the Regulations and Rules of the Fund, the Committee also considers general policy matters concerning pensions (e.g., the exclusion of certain categories of persons from UNJSPF) and makes recommendations to the Director General of the Agency, and to the Agency's representatives on the Board and the Standing Committee of the Fund.

24.10.2.5. Advisory Board on Compensation Claims

The Advisory Board on Compensation Claims is established by Article 16 of Appendix D to the Staff Rules.²⁷⁴ Its functions are to make recommendations to the Director General concerning the implementation and administration of the Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties, and especially to make recommendations in relation to claims for compensation, including requests for the reconsideration of the Director General's initial decision.

The Agency's Board, by analogy to that of the United Nations, consists of the members appointed to the Staff Pension Committee by the Director General and those elected to it by the UNJSPF participants. A Secretary is appointed by the Director General.

24.10.2.6. Joint Disciplinary Committee

This Committee is chaired by the Director of the Division of Personnel, with the Director of the Legal Division and the Chairman of the Staff Council serving as additional members, together with one member elected by the staff belonging to the same "group" (I: M & O and GS; II: P-1 to P-4; III: P-4 to D-2) as the staff member concerned, and a Secretary appointed by the Director of the Division of Personnel from his staff.

The terms of reference are to advise the Director General on the imposition of disciplinary measures pursuant to Provisional Staff Regulation 11.01 and Staff Rule 11.01.1, and on the termination of permanent appointments pursuant to Regulation 4.01(b)(ii) and (iii).²⁷⁵

24.11. SETTLEMENT OF DISPUTES

The procedures for resolving disputes between members of the staff and the administration are set forth in Section 27.3.2.

24.12. THE STAFF ASSOCIATION

24.12.1. Staff Regulations and Rules

Staff Regulation 10.01(a) provides:

"(a) A Staff Council, elected by the staff members, shall be established for the purpose of ensuring continuous contact between the staff members and the Director General."

Staff Rule 10.01.1 provides:

"(A) The Staff Council shall be consulted on questions relating to staff welfare and administration, including policy on appointments, promotions and terminations and on salaries and related allowances, and shall

be entitled to make proposals to the Director General on behalf of the staff on such questions.

"(B) Except for instructions to meet emergency situations, general administrative instructions or directions on questions within the scope of paragraph (A) above shall be transmitted in advance to the Staff Council for consideration and comment."

In addition, several Staff Regulations and Rules and Administrative Instructions provide for the Staff Council or for direct representatives of the staff to participate in or to be consulted about certain decisions or on the composition of specified committees or boards.²⁷⁶

Though all these provisions merely refer either to a Staff Council or to direct staff representation, they have been taken as a basis for establishing, in imitation of the pattern set by the United Nations and the larger specialized agencies, of a full Staff Association of which the Council itself is only the principal one of several organs. Belatedly, the first formal administrative instructions concerning the Staff Association are to be inserted into the Administrative Manual.²⁷⁷

24.12.2. Statutes of the Association

In February 1958 the Director General appointed a committee to advise him on the implementation of Staff Regulation 10.01, and to draft a statute for a Staff Association and regulations for the election of a Staff Council.²⁷⁸ As soon as the committee completed its preparatory work a month later, a General Assembly of the staff was convened for the purpose of establishing the Association.²⁷⁹

On 25 March 1958 the "First Ordinary Staff Assembly" unanimously adopted the "Statutes of the Staff Association of the IAEA" and the "Rules of procedure of the Staff Assembly".²⁸⁰ Certain minor amendments were adopted in 1964. In March 1968 the Staff Council prepared a not particularly drastic "revision" of the Statutes,²⁸¹ which the next Council slightly amended in November 1968²⁸² and which were then adopted by a referendum later that month.

The stated purposes of the Staff Association are:²⁸³

- (a) To promote working conditions for the staff which permit the most efficient discharge of its duties.
- (b) To safeguard the rights and promote the interests of all members of the staff, and in particular, to seek to ensure that the staff shall be treated not less favourably than the staffs of other international organizations in the UN family.
- (c) To inform the Director General and the competent organs of the Agency of the views and wishes of the staff on all questions of concern to it.

In view of these purposes one touchy and perpetually unresolved issue is the extent to which the Association should be and act like a trade union. On the whole, any tendencies in that direction have been restrained.

One means of pursuing the Association's purposes is stated to be full participation in the Federation of International Civil Servants Association

(FICSA).²⁸⁴ In practice it is probably true that to the extent that the Association exerts any significant influence on the fundamental terms and conditions of the employment of staff members, it does so less through the Staff Council's pressure on the administration in the multitude of joint committees on which it is represented but rather through persuading FICSA to make appropriate recommendations to CCAQ and the UNJSPF Board.²⁸⁵

All members of the Agency's staff holding an appointment for at least six months are automatically members of the Staff Association.²⁸⁶ However, though this membership is thus in effect compulsory, no duties arise out of it since participation in any activities and elections, as well as the contributions are voluntary. Associate membership is provided for the members of the staffs of other UN family organizations who are attached to the Agency for at least 6 months (e.g., the FAO members of the FAO/IAEA Joint Division).²⁸⁷

24.12.3. Organs of the Association

The Statutes of the Staff Association establish a variety of organs to carry out its functions.²⁸⁸

24.12.3.1. Referendum

The highest quasi-organ of the Staff Association is a referendum, in which all members of the Association are permitted to vote. The decisions so taken are binding on all organs of the Association.

A referendum may be held pursuant to a decision of the Staff Council or at the written request of 20% of the members of the Association. Voting is by secret ballot. Ordinarily decisions require merely a majority of those voting (not counting abstentions), but amendments to the Statutes or the dissolution of the Association must be approved by a two-thirds vote.²⁸⁹

24.12.3.2. Staff Assembly

An Ordinary Staff Assembly must be convened annually, and Extraordinary Staff Assemblies are to be convened by the Staff Council at its own initiative or at the request of 20% of the members of the Association.²⁹⁰

The Assembly, which has no quorum requirements, only has the power to make, by majority vote, recommendations to the Staff Council. It must consider the annual report of the Council, the annual financial report and the report of the Board of Auditors thereon.²⁹¹ It may also consider other items proposed by the Council or requested by 5% of the members. Its Rules of Procedure were adopted at the first Ordinary Assembly and have never been amended.

The Assembly has not become a significant organ of the Association. Its principal function is to receive a report, usually oriented toward staff concerns, from the Director General — which is usually the only occasion in the year in which he addresses the staff personally. For the rest, the meeting serves as an opportunity for staff members to vent miscellaneous gripes against the Administration, the Staff Council and the operation of certain services such as the Commissary and Restaurant.

24.12.3.3. Electoral Units

The entire staff is divided into a number (17 in 1968) of Electoral Units of approximately 45 members each belonging to the same or to closely related services.²⁹²

The principal function of each Unit is to elect annually a representative and an alternate to serve on the Staff Council, whom it may recall by a two-thirds vote. Each Unit is also to be convened at least every two months (though in practice in most Units this is rarely done) so that it might serve as the means by which staff members can communicate their views to their representatives on the Council and by which these can inform the staff of the activities of the Council.

Each Electoral Unit also elects a Chairman, who cannot be its representative on the Council but may participate in its meetings, and who collectively constitute yet another organ of the Association.²⁹³

24.12.3.4. Staff Council

The Staff Council is the executive organ of the Association. It consists of one representative and one alternate (who may always speak, but may only vote in the absence of his principal) from each Electoral Unit.²⁹⁴ Its principal functions are:

- (a) To consider matters affecting the welfare of the staff, in particular those referred to it under Staff Rule 10.01.1 or reported to it by its representatives on various joint committees.
- (b) To elect (and instruct) members to various joint committees called for by the Staff Rules (e.g., the Joint Advisory Committee and the Personnel Advisory Panels) and to consult with the Director General, through its officers, on the appointments to be made to other committees (such as the panel of chairmen of the Joint Appeals Committee).²⁹⁵ In addition, the Council also designates certain members to the committees or boards responsible for the operation of the special services listed in Section 24.13.
- (c) To appoint and instruct the Agency's representatives to FICSA.
- (d) To consider, initiate and conduct, directly or through subsidiary bodies, various staff activities and the special services referred to in Section 24.13.
- (e) To elect officers (a Chairman, two Vice-Chairmen, a Secretary and a Treasurer), who serve as the Council's principal channels of communication with the Director General.
- (f) To take overall responsibility for the finances of the Association through the adoption of Financial Rules and the election of a Treasurer.

The Council functions in accordance with Rules of Procedure adopted by it.²⁹⁶ According to these, it meets at least once a month.

24.12.3.5. Chairmen of the Electoral Units

The Chairmen of the Electoral Units are collectively assigned certain limited functions, which in effect constitute them into a shadow Staff Council:

- (a) To elect the members of the Board of Auditors;²⁹⁷
- (b) To elect the Polling Officers;²⁹⁸
- (c) To approve the constitution of Electoral Units on the proposal of the Polling Officers.²⁹⁹

24.12.3.6. Polling Officers

Three polling officers are elected annually by the Chairmen of the Electoral Units. Their functions are:³⁰⁰

- (a) To propose, from time to time as necessary, changes in the constitution of Electoral Units;
- (b) To conduct elections and by-elections for the Staff Council;
- (c) To conduct all other elections called for by the Staff Rules:³⁰¹
 - (i) To the Joint Appeals Committee;
 - (ii) To the expanded Joint Disciplinary Committee;
 - (iii) To the Joint Staff Pension Committee³⁰² – and thus also to the Advisory Board on Compensation Claims;
- (d) To conduct referenda.

24.12.3.7. Board of Auditors

The Board of Auditors consists of three members elected by the Chairmen of the Electoral Units. It is charged with making an annual report to the Ordinary Staff Assembly on the financial report prepared by the Treasurer of the Staff Council and submitted by the Council to the membership of the Association.³⁰³

24.13. SPECIAL STAFF SERVICES

In addition to the emoluments and benefits granted to staff members pursuant to the Staff Regulations, the Agency also provides or assists in providing a number of special services to its staff. Most of these are designed to make life in a foreign country more agreeable and to provide substitutes for the local ties and connections which it is difficult to establish in the headquarters city during a relatively brief period of work for the Agency.³⁰⁴ Some of these services are also made available to the members of Missions accredited to the Agency – both in order to broaden the base of their operation and to nurture contacts between officials of the Agency and of Governments.

The special services are not financed by the Agency itself, but in principle by the persons benefitting from them – though the costs to these may be substantially reduced by the ability to use without charge the Agency's premises and some administrative facilities, and to benefit from the privileges and immunities (particularly the tax and customs exemptions) provided for in the Headquarters Agreement. The greater part of the ser-

vices mentioned below are as a matter of fact financed directly or indirectly from the profits of the Commissary. To the extent that the persons employed to conduct these services are engaged as Agency staff members, the Agency is reimbursed for the emoluments it pays to them.

Each of these services is administered by a specialized organ, composed in various proportions of representatives of the Director General and of the Staff Council.³⁰⁵ However none of the services have a legal personality separate from that of the Agency – indeed no such personality is sought since this would not only lose the benefits conferred by the Agency's special status but would also require conformity to Austrian law both for the method of operation and for the form in which conducted (e.g., as a registered business). However, care is taken (both in the instruments relating to the establishment and operation of these services as well as in any agreements concluded with third parties), on the one hand to avoid engaging the financial responsibility of the Agency in these ancillary operations and on the other to enable the Director General to exercise a veto over any actions that might embarrass the Agency.

24.13.1. Commissary

The Agency's Commissary is a co-operative store established to enable its members to take advantage of the privilege granted to them by the Headquarters Agreement to import articles for personal use or consumption without payment of custom duties. Its unofficial, secondary advantages are:

- (a) The reduction in prices made possible by the use of the co-operative device.
- (b) The offering of a number of national products not otherwise available in Vienna.
- (c) The use of "profits" to finance a variety of staff activities.
- (d) The availability of a store in which staff members, and especially their spouses, can shop for many daily needs without having to resort to the German language.

Section 38 of the Headquarters Agreement³⁰⁶ provides in part:

"Officials of the IAEA shall enjoy within and with respect to the Republic of Austria the following privileges and immunities:

...

"(j) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

" (iii) Subject to a supplemental agreement to be concluded between the IAEA and the Government, limited quantities of certain articles for personal use or consumption and not for gift or sale. "³⁰⁷

On 17 July 1958 the Agency and the Austrian Government concluded a Supplemental Agreement in which provision is made for the implementation of the quoted Section through the establishment of a "service within the IAEA called

the 'Commissary'.³⁰⁸ This Agreement lists the categories of articles that may be sold through the Commissary as well as the categories of persons who are to have access to it; it also imposes special restrictions on Agency officials having Austrian nationality and special privileges on persons having diplomatic status. It requires the Director General to issue and to communicate to the Austrian Government regulations to ensure that the use of the Commissary will be consistent with the Headquarters Agreement, and especially that articles purchased are not used for gift or sale.

The original Commissary Regulations were promulgated by the Director General in 1958, after he had obtained the approval of the Board.³⁰⁹ It was felt that such approval was required since these Regulations, aside from complying with the special requirements of the Commissary Agreement, also could be considered as constituting rules or regulations "to ensure that no abuse of a privilege or immunity conferred by [the Headquarters] Agreement shall occur", for which Section 48(a) of the Headquarters Agreement requires Board approval. However, the approved Regulations authorize the Director General to promulgate amendments, in consultation only with the Board of Management established by the Regulations, and thus in March 1963 the Director General promulgated a revised set of Regulations without submitting these to the Board of Governors.³¹⁰

The Regulations provide that "the Commissary shall be an integral part of the Agency's Secretariat and shall have no legal personality of its own".³¹¹ They define the categories of persons who may use the Commissary: officials of the Agency (except locally recruited persons appointed for less than three months - i. e., those on daily short-term contracts), Governors and Resident Representatives as well as their alternates, advisers and experts who have diplomatic status, and other categories of persons designated by the Director General in agreements with the Austrian Government.³¹² Though purchases may in any event only be made for personal use or consumption (except that participants having diplomatic status may also use them for official entertainment), certain short-term staff and all Austrian participants are specifically restricted in the quantity of spirits and tobacco products they may purchase.³¹³

The Regulations established a Board of Management of the Commissary, three of whose members were appointed by the Director General and three by the Staff Council in consultation with him.³¹⁴ Originally the Board could exercise considerable independent authority (e. g., in establishing the manning table and in setting prices) part of which it could delegate to particular Agency officials; in March 1968 this body was transformed into the Joint Commissary Advisory Board with merely consultative functions, while its administrative authority was transferred to an "executive officer" appointed by the Director General.³¹⁵

The Board is required to submit two reports a year to the Director General and the Staff Council. Persons employed for service in the Commissary are to be staff members of the Agency, whose emoluments are reimbursed to the Agency by the Commissary.³¹⁶

The Commissary is housed free of charge on the Agency's Headquarters premises, and the Agency provided the initial capital equipment required for its establishment and later extension. Though the Board of Governors

originally decided that these outlays should be reimbursed to the Agency from the profits of the Commissary,³¹⁷ in 1963 (before any repayments had been made), it accepted the recommendation of the Director General and the External Auditor that no reimbursements be required (on the ground that the Commissary was an integral part of the Agency's operations) and that the Commissary should only be responsible for replacing worn-out or obsolete equipment.³¹⁸

The initial working capital of the Commissary was provided by a temporary advance from the Working Capital Fund,³¹⁹ which supplemented the fund created from the deposits the participants are required to make on obtaining their membership cards.³²⁰ The income of the Commissary derives from the sale of merchandise at a price calculated by adding to the wholesale price paid by the Commissary a flat percentage rate established by the Board of Management (at present 10%) plus a rounding-up factor; this margin and factor are calculated so as to meet all expenses of the Commissary, including its obligation to repay to the Agency the initial loan and the practical necessity of maintaining a working capital at least equal to the cost of the current inventory.³²¹ In addition, a special mark-up (at present 25%) is added to the prices of tobacco products and alcoholic beverages, the revenues of which are transferred to the Staff Welfare Fund or assist in covering the deficit of the Restaurant.³²² After initially deciding that the Agency's External Auditor should not audit the books of the Commissary, in 1962 the Board yielded to his repeated recommendations and charged him with the review of these records.³²³

It is foreseen that when the Agency and UNIDO occupy their permanent headquarters buildings, their separate Commissaries will be combined and operated jointly.

24.13.2. Restaurant

The Agency's Restaurant (which includes a cafeteria) is operated primarily for the use of the officials of and the representatives to the Agency. It uses the premises of the dining facilities included in the Headquarters building from its earlier existence as a luxury hotel.³²⁴

Legally the Restaurant is tied very closely to the Commissary. Article VI of the Supplemental Agreement relating to the Commissary³²⁵ foresees the establishment of a restaurant and cafeteria and permits these to make duty-free purchases from the Commissary. In addition, the Commissary Regulations authorize the granting of special discounts to the Restaurant and even to subsidize its operation.³²⁶ The Regulations Concerning the Agency's Restaurant, which were promulgated by the Director General in March 1963,³²⁷ closely follow the revised Commissary Regulations issued at that time. Though a separate Board of Management was provided for, its composition was based on the same formula as that relating to the Commissary Board, and the Director General was specifically authorized to appoint the same Board for both services³²⁸ — which indeed he always did until a separate Joint Restaurant Advisory Board was established.³²⁹

The provisions relating to the staffing, capital expenses, reports and audit of the Restaurant are the same as those relating to the Commissary.

Prices are to be set to cover operating expenses and to allow a small margin for unforeseen risks.³³⁰ However, in spite of these requirements and in spite of the special discount granted by the Commissary, the Restaurant practically always operates at a slight deficit. Though originally not provided for in the Regulations of either of the two services, their common Boards of Management always covered these deficits by transfers from Commissary profits; later specific provision was made for applying thereto the income from the "special mark-up" of the Commissary.³³¹

Access to the facilities of the Restaurant is granted not only to persons who may participate in the Commissary but also to anyone working for the Agency, even if only on Special Service Agreements, to persons attending any Agency or UN meeting, to the staff of UN organizations in Vienna, as well as to members of the families and guests of any of these.³³²

24.13.3. Staff Welfare Fund

The Staff Welfare Fund is a conduit of the income derived from the special Commissary mark-up on tobacco and alcoholic products³³³ to:

- (a) Support certain "activities which are of potential benefit to the staff as a whole";
- (b) Assist "in exceptional circumstances, . . . individuals in cases of real hardship when help cannot be obtained from other sources".

After an initial period of ad hoc operation,³³⁴ the Fund is at present managed pursuant to Regulations promulgated by the Director General in 1962³³⁵ at the urging of the External Auditor.³³⁶ These Regulations establish a Joint Staff Welfare Committee composed of three members appointed by the Director General and three designated by the Staff Council.³³⁷ Within limits established by the Regulations the Committee has authority to disburse the resources of the Fund. It reports annually to the Director General and to the Staff Council.

Aside from approximately a score of individual staff members, the principal beneficiaries of the Fund have been a number of activities initiated by or under the sponsorship of the Staff Council, the grants being made at its request to:

- (i) The Country Club;³³⁸
- (ii) The Kindergarten;³³⁹
- (iii) The Recreation Rooms, established by the Staff Association in the Headquarters building;
- (iv) Balls and Christmas parties;
- (v) The Music Club.

However, the bulk of the Fund's resources have been loaned to the Staff Assistance Fund.

24.13.4. Staff Assistance Fund

The Staff Assistance Fund is a "loan institution operating within the framework of the Agency", i.e., it is a source of low interest loans to staff

members. After aborted efforts were made to establish a Staff Credit Union or to permit Agency staff members to participate in the UN Credit Union in Geneva, it was decided that the only feasible way of establishing a loan fund was to secure its capital principally from the Staff Welfare Fund.

The Staff Assistance Fund was established on 1 December 1962 pursuant to Rules approved by the Staff Welfare Committee.³⁴⁰ In 1968 these Rules were revised and approved by the Director General. According to them the administration of the Fund is vested in the Joint Staff Assistance Fund Committee, consisting of a representative of the Director General, two members designated annually by the Staff Council, and a Secretary appointed by the Committee in consultation with the Director General.³⁴¹ The Committee established its own rules of procedure; these provide that the meetings are to be closed and that all decisions are to be taken by majority vote and be final (i. e., not subject to appeal). The Committee is required to report to the Director General, the Staff Council and the Staff Welfare Committee.

The Committee is authorized to grant loans to staff members within fiscal and time limits established by the Rules. It is authorized to set the interest rate to be charged, and the interest received is added to the resources of the Fund. The only security that it may accept for loans are the emoluments and other benefits due to the staff member concerned under his current contract, and the borrower must agree that any unpaid balance of a loan may be deducted by the Agency from the amounts due to him on separation.³⁴²

24.13.5. Country Club

The Country Club consists of a small recreation area leased by the Staff Association since 1962.³⁴³ All staff members and members of accredited Missions are entitled to join, upon payment of membership fees related roughly to level of income and to size of family.

The Club is administered by the Country Club Committee, all of whose members are appointed by the Staff Council, to which it is required to report.

The Club is largely financed by grants from the Staff Welfare Fund. In addition it receives income from membership dues, guest cards and profits from the sale of refreshments. The employees of the Club are not members of the Agency's staff, but are hired directly by the Country Club Committee in the name of the Staff Association, which also is named as the lessee of the premises.

24.13.6. Kindergarten

The Agency's Kindergarten has been operating since October 1961 to relieve staff members of the care of pre-school children; however, on a space-available basis the children of members of accredited Missions are also accepted.

The Kindergarten is administered by the Kindergarten Committee, whose Chairman and two other members are appointed by the Staff Council, with an additional member representing both the Director General and the Staff Welfare Committee and a fifth elected by the parents.

The capital for the establishment of the Kindergarten (mainly for renovating its premises — which are located close to the Headquarters building) was obtained from the Staff Welfare Fund. Operating costs are largely covered by fees charged to parents, which may be reduced for those of low income; to make these reductions possible the Staff Welfare Fund has also been making annual grants. The employees are members of the Agency's staff, whose emoluments are reimbursed to the Agency by the Kindergarten.³⁴⁴

24.13.7. Housing

Because of the difficult housing situation in Vienna, the Agency has undertaken various projects to assist staff members in securing accommodations:

- (a) Initially arrangements were made by the Agency with the City of Vienna for the latter to make available to staff members directly, but only for a limited period, a number of flats in a new housing project.
- (b) On the expiration of the above arrangements, the Agency leased, in its own name, several blocks of flats constructed by the City of Vienna in consultation with the Agency; the Agency sub-leases these flats to staff members.³⁴⁵
- (c) The Secretariat's Housing Unit keeps up-to-date lists of flats or houses available for sale or rental for which it regularly advertises in local papers.³⁴⁶
- (d) Administrative assistance is given to groups of staff members in forming co-operatives for the purpose of erecting apartment projects.³⁴⁷
- (e) The Staff Assistance Fund³⁴⁸ is authorized to make loans beyond the usual limits for the purpose of assisting staff members in purchasing a house or flat.

These several projects are administered under the responsibility of a Joint Housing Committee, which replaced an earlier Standing Housing Committee, appointed by the Director General. The present Committee is composed of three Division Directors appointed by the Director General and three other members designated by the Staff Council.³⁴⁹ It is this body which conducts negotiations with the Tenant's Committee representing the staff members leasing flats in the projects mentioned under paragraph (b) above.

24.13.8. Miscellaneous Staff Activities

A number of clubs and activities have been established by members of the Agency's staff, often with the participation of members of accredited Missions. Some of these are sponsored by the Staff Council, while others result entirely from individual initiative. To the extent that these activities were founded by organs of the Staff Association, or receive any support from the Association or the Staff Welfare Fund, they are required to report to the Staff Council through its Staff Activities Committee.³⁵⁰ Most other such organizations operating within the Agency also voluntarily report on a similar basis.

NOTES

- 1 WLM Doc.12, para. 3.D, E.
- 2 WLM Doc.17, para. 9.B.
- 3 GOV/3-GC.1/2.
- 4 GC.1(S)/COM.2/12.
- 5 GC.1(S)/23; GC.1(S)/RES/13.
- 6 GC.1(S)/COM.2/OR.7, paras. 27 and 28. This somewhat doubtful ruling assumed that the General Conference's powers under Statute Article VII.D are restricted in the same way as its powers under Article V.E.5-7, to approve a draft proposed by the Board or to return it with a request for changes. Since, evidently through an oversight, the power to approve these "general rules" is the one significant specific function of the Conference not recited in Article V.E, it is difficult to decide, by a mere comparison of the cited provisions, whether that assumption is justified.
- 6A INF/CIRC/6/Rev.2. The Agency's Provisional Staff Regulations have been taken as the model of the Staff Regulations adopted by the Agency for the Prohibition of Nuclear Weapons in Latin America (see Draft IV attached to the Final Act of the Preliminary Meeting to establish the Agency (REOPANAL/2, reproduced in UN doc. A/7639) and adopted by OPANAL/RES/10(I) (OPANAL/CG/Pres.7, reproduced in A/7681).
- 7 Initially this requirement was met, probably as originally intended, by the inclusion of the text of such amendments in the Board's Annual Report to the General Conference (e.g., GC(III)/73, para.88 and Annex III). However, more recently the Reports have not included any such information; instead the Secretariat merely issues a revised or modified version of document INFCIRC/6, which is circulated to all Member States for information.
- 8 Section 24.10.2.1.
- 9 Section 24.12.3.4.
- 10 Statute, Annex I, para. C.5(b).
- 11 IAEA/PC/W.39(S).
- 12 IAEA/PC/8; Section 3.2.2; IAEA/PC/OR.43, p.3.
- 13 IAEA/PC/OR.43, pp.6-11; /OR.48; /OR.49.
- 14 IAEA/PC/OR.43, p.5; Section 28.5.
- 15 IAEA/PC/OR.43, p.4; Section 31.1.2.
- 16 GOV/3-GC.1/2.
- 17 UN Staff Regulation 9.1(a); UN Staff Rule 109.1.
- 18 IAEA Staff Regulation (INFCIRC/6) 4.01(c).
- 19 The latest version of the Regulations appears in INFCIRC/6/Rev.2, which indicates by footnotes when provisions were last amended.
- 20 Section 24.2.2.
- 21 In contrast, the Financial Regulations are not labelled as provisional; nevertheless, in 1960-61 the Board gave extensive consideration to their fundamental revision and re-structuring (Section 25.1.2.1).
- 22 GC.1(S)/RES/13; Section 24.1.2.
- 23 In particular, Regulations 1.02, 2.01 and 3.01.
- 24 Staff Regulations, Preamble.
- 25 For example, Regulation 4.01(a) (gross basic headquarters salary scales for General Service staff); 5.02(b) (introduction of a staff assessment plan); 8.03 (establishment of health insurance scheme); 8.04 (establishment of a scheme of compensation in the event of service incurred injuries); 9.01 (promulgation of travel rules).
- 26 Staff Regulation 4.01(c).
- 27 Staff Regulation 1.10; Section 28.5.
- 28 Staff Regulations 12.01 and 12.02; Section 27.3.2.
- 29 Staff Regulation 4.04.
- 30 Decision of 30 October 1957; paraphrased in GC(II)/39, para.88. The suggestion for such a restriction on the power of the Director General was first raised in the Preparatory Commission (IAEA/PC/OR.43, pp.6-8; /OR.48, p.13).
- 31 Decision of 19 December 1957.
- 32 Decision of 29 June 1961, GC(V)/INF/39, para. 2; Sections 21.8.1.1 and 24.7.3.3.
- 33 For example, Staff Regulation 7.04 (sick and maternity leave).
- 34 Supra note 25.

- 35 One other difference is that as to all Staff Rules, even if requiring Board approval, the initiative must formally come from the Director General, while the Regulations can be amended by the Board on its own initiative – though in practice it has only acted in this area on proposals of the Director General.
- 36 Section 24.10.2.1.
- 37 Section 32.1.1.
- 38 Section 24.3.3.
- 39 These Rules generally apply also to staff members in duty stations other than Vienna, though the salary structure for General Service and for Maintenance and Operative staff is set forth in separate schedules. For the applicability to the Trieste Centre, see AM.I/4, Appendix E, para.3 et.seq.
- 40 SEC/INS/23.
- 41 SEC/INS/77.
- 42 Section 34.2.5; PM/Pt.2/1 – originally SEC/INS/136.
- 43 AM.II/1.
- 44 Staff Regulation 9.01.
- 45 SEC/INS/23, Rule 13.01 and Annex II.
- 46 SEC/INS/77/Add.1.
- 47 PM/Pt.3/1.
- 48 AM.III/1.
- 49 This is still provided for in Staff Rule 8.04.1(B), AM.II/1.
- 50 AM.II/1, Appendix D.
- 51 SEC/INS/113.
- 52 AM.II/10.
- 53 SEC/INS/70. Since the Agency's Staff Regulations are largely based on those of the United Nations, there are relatively few discrepancies which would prevent the application of a set of Staff Rules based on the UN Regulations to persons governed by the IAEA Regulations. Nevertheless, certain structural differences between the two sets of Regulations made this a somewhat awkward improvisation which occasionally led to differences of interpretation.
- 54 Special unnumbered booklet.
- 55 SEC/INS/1. Section 34.2.5.
- 56 SEC/INS/99.
- 57 SEC/INS/139 and 140.
- 58 SEC/NOT/137; Section 34.2.5.
- 59 AM.II/2, para.3.
- 60 Unnumbered mimeo document.
- 61 Section 24.8.1.
- 61A INFCIRC/132; Section 19.1.3.
- 61B Section 12.4.3.1.
- 61C AM-I/3, para.4. Chapter 12, note 216.
- 62 See Theodore Meron, "The United Nations 'Common System' of Salary, Allowance, and Benefits: A Critical Appraisal of Coordination in Personnel Matters", *Int'l Org. Vol. XXI*, pp.284-305 (No.2, Spring 1967).
- 63 GC.1/1, paras. 164-165.
- 64 INFCIRC/11, Part I.A.
- 65 Thus the ILO Administrative Tribunal ruled, in its first decision concerning the Agency, that in view of this provision of the Relationship Agreement it was not unreasonable for the Director General to adopt on an ad hoc basis, the UN Rules as to maternity leave before such Rules had been promulgated under the Agency's own Regulations (Wawrik v. IAEA, ILOAT Judgment No. 41 (13 September 1960). XLIII ILO Official Bulletin 468-471), Section 12.2.1.3.
- 66 Section 24.5.2.
- 67 For example, UNGA/RES/1561(XV), para.1.3.
- 68 Section 12.2.2.4.
- 69 Sections 25.1.4.8, 25.2.2.5 and 25.8.2.5.
- 70 Sections 24.4.1.1, 24.4.2 and 24.4.4.
- 71 Section 24.5.2.3.
- 72 Section 25.2.4.1.3.
- 73 Section 24.4.1.1.2.
- 74 Section 24.5.2.

- 75 Section 27.3.2.3.
- 76 Section 27.3.2.2.
- 77 But Staff Regulation 3.03(d) contains special provisions regarding transferees from such organizations.
- 78 See, e.g., INFCIRC/22/Rev.8, p.29.
- 79 UN Staff Regulation 4.4 – which, however, requires reciprocity and, on its face, applies only to the specialized agencies (Section 12.1.4.2).
- 80 Section 24.12.2.
- 81 A term that does not appear in the Statute (cf. UN Charter, Chapter XV).
- 82 Section 24.9.
- 83 Section 9.2.5.
- 84 INFCIRC/9/Rev.2, Section 20.
- 85 INFCIRC/15, Part I, Section 39(a). As pointed out in Section 28.6 below, the diplomatic status of the Director General and of some other officers of the Secretariat is not provided for in the Staff Regulations or Rules, but derives entirely from the Privileges and Immunities and Headquarters Agreements.
- 86 AM.II/1, Appendices B(1) and (2).
- 87 Section 24.13.
- 88 Section 24.7.3.
- 89 These officers correspond in grade to UN Assistant Secretaries-General (formerly Under Secretaries).
- 90 Section 24.1.4.1.
- 91 Section 28.6.
- 92 Unlike in the United Nations, in the Agency Principal Officers (D-1) are also considered to be at the Director level.
- 93 Section 24.1.4.1.
- 94 Staff Regulation 4.01(c).
- 95 Section 28.6. Under the Headquarters Agreement (INFCIRC/15, Part I, Section 48(c)) and under the Staff Rules (e.g., Rule 8.01.3) a number of special provisions apply to "nationals of Austria or stateless persons permanently resident in Austria"; for convenience these persons are called "Austrians" throughout this Chapter.
- 96 Section 24.4.1.2.
- 97 AM.II/1, Appendix B.
- 98 Sections 24.5.2-3.
- 99 Staff Rule 3.03(D)(2). The definitions relevant to who is and who is not locally recruited are laid down in Rule 3.03.3(A) - (B). Because of the substantial benefits of non-local status (in particular the Non-Resident's Allowance – Section 24.4.1.2.2) the application and interpretation of this Rule has led to much controversy, and has indeed been the subject of one complaint decided by ILOAT (Benedek v. IAEA, ILOAT Judgment No. 113 (18 October 1967), LI ILO Official Bulletin 113-115).
- 100 Staff Rule 3.03.3(D)(3).
- 101 This was indicated in Interim Staff Rule 7.03, by which this category of staff was established (SEC/INS/23/Add.4).
- 102 Sections 24.5.2-3.
- 103 Section 24.1.5.2.2.
- 104 Section 24.1.5.2.3.
- 105 Technical Assistance Staff Rule 200.1(c).
- 106 Technical Assistance Staff Rule 214.1(f).
- 107 Section 24.7.3.4.
- 108 IAEA/CS/OR.20, pp.63-64.
- 109 During 1968, the security personnel in the Headquarters building, who were formerly called "porters", were retitled as "guards"; however, it seems evident that these are not the "guards" referred to in the Statute.
- 110 Section 21.7.2.4(ii) and (2).
- 111 INFCIRC/9/Rev.2, Sections 18(b) and 23. Section 21.4.3.3.
- 112 Sections 21.8.1.1, 24.1.4.2 and 24.7.3.3. It should be noted that the approval required with respect to safeguards inspectors is a formal decision by the Board, rather than the mere informal consultations required for senior staff appointments (Section 24.1.4.1).
- 113 INFCIRC/9/Rev.2, Sections 18(b) and 23.
- 114 SEC/INS/65, later PM/Pt.2/4.

- 115 AM.II/11.
- 116 Section 24.9.2.1.
- 117 AM.II/11, para.10.
- 118 Staff Regulation 5.01(a) and Annex II.
- 119 Section 25.2.4.1.3. See the debate on this point in GC(VI)/COM.1/OR.45, paras. 1-11.
- 120 Staff Rule 5.01.9; AM.II/4; Interim Financial Rule 4.04 (AM.V/3); SEC/NOT/58.
- 121 Staff Regulation 5.01(b).
- 122 Like the UN General Assembly, the Board has considered the advisability of entirely eliminating the possibility of negative Post Adjustments, but has decided to maintain them in principle. In practice, however, no negative Adjustment was ever applied to Vienna, for the one time (the early months of 1962) when a negative Adjustment appeared necessary and was actually applied for some months at the direction of the Board, a later calculation showed that the cost of living in Vienna had actually advanced sufficiently to make a negative Adjustment inappropriate and thereupon the Board rescinded it with retro-active effect.
- 123 The results of these studies are published in the ILO's Inter-Cities Price Surveys.
- 124 Staff Regulation 5.01(b).
- 125 Staff Regulations, Annex II, para. B.1
- 126 Staff Regulation 5.01(a).
- 127 Staff Regulation 5.01(a) and Appendix B(1) and (2).
- 128 Staff Association Document C.59/7, Parts II.A and D, III.
- 129 UN doc. CO-ORDINATION/R.284, Annex II.
- 130 Staff Association Documents C.59/7, Part II.B, C.59/7/Add.1 and C.60/OR.5/Add.1, all of which were forwarded by the Director General to the Administrative and Budgetary Committee of the Board.
- 131 Staff Regulations, Annex II, para. B.1.
- 132 AM.II/1, Appendices B, B(1) and B(2).
- 133 Supra note 99.
- 134 Staff Regulations, Annex II, para. B.4; Staff Rule 5.01.7.
- 135 Staff Regulation 5.02(b).
- 136 Staff Rule 5.02.2.
- 137 For the reason pointed out in Section 24.4.6, the Agency has not established a Tax Equalisation Fund, such as the one to which the United Nations credits its Staff Assessment income.
- 138 Section 24.5.2.3.
- 139 Some countries (such as Canada) which do not grant an automatic tax exemption to their nationals serving as international officials, provide instead that these must report as taxable income the gross income calculated by the Agency, but that they may also credit the Staff Assessment deducted by the Agency against the resulting national income tax - a type of "double taxation relief" which results in full exemption from the domestic tax if its rates are lower than those of the Assessment (e.g., Sections 41 and 139(1) of Canadian Income Tax Act (Chapter 148 of the Revised Statutes of Canada)). Other countries (such as the United States) which tax certain staff members but do not permit them to credit their Staff Assessment against the national tax bill, merely require that the net international income be reported - thus treating the Assessment not as a type of foreign income tax (from which double taxation relief might be granted) but rather as an arrangement between an employer and an employee by which only the net amount is significant for national tax purposes.
- 140 Staff Regulation 5.03 and Staff Rule 5.03.1.
- 141 Staff Regulations, Annex II, para. B.5; AM.II/1, Appendices B, B(1), B(2) and C.
- 142 Staff Regulation 5.04 and Staff Rules 3.03.3(D)(2) and (3), 5.04.1.
- 143 AM.III/1, Travel Rule 7.01.
- 144 Staff Regulations 9.02 and 9.03; Staff Rule 9.02.2.
- 145 Staff Regulation 9.02 and Annex IV; Staff Rule 9.02.1; Travel Rule 3.03(b) (AM.III/1); SEC/NOT/180. The granting of an Assignment Allowance is thus an alternative subject to the Director General's discretion; during the early years of the Agency this alternative was frequently chosen, but in 1969 he decided that this practice should be discontinued.
- 146 Staff Regulation 6.01 and Annex V; Staff Rule 6.01.1.
- 147 INFIRC/6, Regulation 6.02.
- 148 SEC/NOT/95.
- 149 Staff Regulation 4.03 and Annex I.
- 150 INFIRC/15, Part I, Section 38(d).

- 151 INFCIRC/9/Rev.2, Section 10(a) (ii).
- 152 Section 28, 1.2.
- 153 Section 28, 3.3.
- 154 Conforming to a decision of UNAT in a case involving a claim by a UN staff member for reimbursement of the US Social Security Tax (*Davidson v. Secretary-General of the United Nations*, UNAT Judgement No. 88). Agency Staff Rule 5.02.1(C)(1) specifically excludes from reimbursement payments "with respect to a social security or similar system . . . which, even if denominated as taxes may serve to increase the benefits the staff member might receive from the system".
- 155 Staff Regulations, Annex II, para. B.1 provides that if the salaries of General Service or Maintenance and Operative staff are subject to national income taxes, these salaries may be set in terms of gross taxable figures and be exempted from Staff Assessment, in which case no tax reimbursement is to be paid. However, no use has yet been made of this provision.
- 156 26 U.S.C. Sec. 911.
- 157 To some extent the practices as to the type of coverage to be offered to staff members recruited on various bases will be codified in AM.11/9.
- 158 IAEA/PC/8.
- 159 SEC/INS/23, Regulation 8.01. See also SEC/INS/47.
- 160 IAEA/PC/OR.12, p.22.
- 161 UNGA/RES/1201(XII). See Chapter 12, note 35.
- 162 IAEA/PC/15, para.1.
- 163 INFCIRC/11, Part III.
- 164 INFCIRC/11/Add.1. Section 27.3.2.3.
- 165 JSPB/G.4/Rev.4, Regulation II.bis.
- 166 As a matter of fact, the Director General applied the "half gross" scale at a time when the Agency had not yet adopted the Staff Assessment plan (Section 24.4.2) to which the partial and full gross scales nominally relate.
- 167 Staff Rule 8.01.1.
- 168 Implicit in GC(II)/DEC/9.
- 169 GC(VII)/DEC/9.
- 170 Administrative Rules E.1 and E.10 also indicate which of the three interest groups composing the Agency's Staff Pension Committee are to be represented on the Board and the Standing Committee in any given biennium, according to a system of rotation designed to maintain in those bodies an exact parity of representation of the three groups from among the representatives of the Staff Pension Committees of the several participating organizations.
- 171 This provision is to be restricted slightly by Article III of an agreement amending the Headquarters Agreement negotiated in 1969 (Section 28.2.2).
- 172 Somewhat similar, though simpler provisions appear in the agreement relating to the establishment of the Monaco Laboratory (INFCIRC/129, Article 11(b)), but none are contained in the agreements relating to the Trieste Centre (INFCIRC/51 and /114).
- 173 INFCIRC/15, Part VI.
- 174 INFCIRC/15/Add.3.
- 175 INFCIRC/15, Part VII.
- 176 Section 24.5.2.3. As long as the Agency was still granting Service Benefits to certain staff members on leaving the Agency (Section 24.4.5.4), the amount payable under that heading was especially designed to enable non-career staff members to maintain or reinstate their coverage under a national or private insurance scheme.
- 177 Section 24.4.6.
- 178 Staff Rule 8.04.1.
- 179 IAEA Staff Rule 8.04.2 and Appendix D. Procedural questions are regulated by AM.II/8.
- 180 Staff Regulation 8.03 and Staff Rule 8.03.1.
- 181 AM.II/7.
- 182 Technical Assistance Staff Rule 208.3.
- 183 For example, *Gordon v. Secretary-General of the United Nations*, UNAT Judgement No.29 (21 August 1953).
- 184 For example, *Duberg v. UNESCO*, ILOAT Judgment 17 (26 April 1955).
- 185 Effect of Awards of Compensation made by the United Nations Administrative Tribunal, 1954 ICJ 47 - 63; Judgements of the Administrative Tribunal of the International Labour Organisation upon Complaints made against the United Nations Educational, Scientific and Cultural Organization, 1956 ICJ 77 - 103.

- 186 For the success of this campaign in the United Nations, see, e.g., UNGA/RES/2241(XXI). Henti Reymond, "The Staffing of the United Nations Secretariat: A Continuing Discussion", *Int'l Org.*, Vol. XXI, pp. 751-767.
- 187 WLM Doc. 2(Add.8). Bechhoefer (*op. cit.* Annex 5, No. 4, p. 51) points out that the issue really was whether the Agency was to have a fully international civil service staff.
- 188 WLM Doc. 12(Rev. 1), para. 3.C.
- 189 Thus, when a Director with a permanent appointment was promoted to the rank of Deputy Director General, it was specified that while maintaining his tenure as a staff member (INFCIRC/22/Rev. 8, fn. 5, and Table 2, fn. a) the new post and title could only be held on a fixed-term basis.
- 190 Staff Rule 3.03.2(B) (2).
- 191 Technical Assistance Rule 203.3(b).
- 192 Section 24.8 describes the method of evaluating the performance of staff members.
- 193 SEC/NOT/8.
- 194 For example, GC(IX)/OR.98, para. 29.
- 195 Section 15.4.
- 196 GC(XI)/362, para. 53, Section 24.7.3.
- 197 Section 32.1.1.
- 198 For example, INFCIRC/22/Rev. 8.
- 199 See 1966 Annual Report of the UNJSP Board (UN document A/6308, UNGA Off. Rec.: 21st Sess., Suppl. No. 8), paras. 22 and 27 (which do not name the Agency explicitly, though identification is easy by reference to Tables 1 and 2 of Annex III, showing the total number of Full and Associate Participants for each organization).
- 200 SEC/INS/136 (PM/Pt. 2/1), Staff Rule 3.032(A) and (C).
- 201 SEC/NOT/102.
- 202 Staff Rule 3.03.2(C).
- 203 Staff Regulation 4.01(e).
- 204 Also Staff Rule 3.03.2(D).
- 205 INFCIRC/22/Rev. 8, Table 3.
- 206 Section 21.8.1.1.
- 207 Technical Assistance Staff Rule 214.1(f) (ii) and (iii).
- 208 Staff Regulations 4.02(b) and (c), 4.04.
- 209 Staff Regulation 4.01(d).
- 210 Staff Rule 3.03.2(E).
- 211 AM. II/10.
- 212 Technical Assistance Staff Rule 214.1(f) (i).
- 213 AM. II/11, para. 2.
- 214 INFCIRC/15, Part I, Section 1(o).
- 215 INFCIRC/9/Rev. 2, Section 1(v).
- 216 WLM Doc. 2(Add. 8); WLM Doc. 6(Rev. 1), Attachment 4.
- 217 WLM Doc. 12(Rev. 1), para. 3.F(a); WLM Doc. 17(Rev. 1), para. 9.A.
- 218 IAEA/CS/Art. VII/Amend. 3.
- 219 IAEA/CS/OR. 20, p. 55.
- 220 IAEA/CS/OR. 21, p. 22.
- 221 IAEA/CS/OR. 26, pp. 6-7.
- 222 IAEA/CS/OR. 21, pp. 23-25; /OR. 26, p. 7; IAEA/CS/COORD/2, para. 8.
- 223 IAEA/CS/10, para. 6.
- 224 IAEA/CS/OR. 20, p. 63; /OR. 26, p. 11-12; IAEA/CS/COORD/2, para. 8.
- 225 IAEA/CS/10, para. 7.
- 226 GC.1(S)/RES/13; Section 24.1.2.
- 227 IAEA/PC/OR. 43, p. 5.
- 228 For example, GC(V)/OR. 48, para. 83; GC(V)/COM. 1/OR. 37, para. 8; GC(VI)/OR. 63, paras. 53-57; GC(VIII)/OR. 83, para. 45. For a more extended exposition of the views of the Secretariat, see GC(XI)/362, Annex C, paras. 126-133.
- 229 Section 33.3. The Agency's reasons for not using linguistic criteria in its normal professional recruitment are similar to those stated in UN doc. A/6860, Part V.
- 230 GC(XI)/362, paras. 54-55.
- 231 For example, GC(XII)/380, para. 136.

- 232 INFCIRC/22 and annual revisions (INFCIRC/22/Rev.9 gives the staff as of 30 June 1969).
- 233 Section 24.1.4.1.
- 234 GC(VI)/OR.63, para.56; GC(VIII)/OR.83, para.45.
- 235 Section 21.8.1.1 and note 440 thereto.
- 236 WLM Doc.2(Add.10); WLM Doc.13(Rev.1), para.3.A(a).
- 237 WLM Doc.17(Rev.1), para.9.A.
- 238 Section 24.3.2.1 and note 109 thereto.
- 239 GC(XI)/362, Annex C, para.129.
- 240 AM.II/2, para.4(c).
- 241 Sections 9.3.3 and 24.1.4.1.
- 242 Except for the review, after 5 years, of permanent appointments, provided for in Staff Rule 3.03.2(B)(3) and mentioned in Section 24.6.1.3.
- 243 Originally only unsatisfactory reports were required to be shown to staff members, but at the insistence of the Staff Council (Staff Association Document A/62/1, para.18) this requirement was broadened.
- 244 Staff Regulation 3.06. See also Regulation 3.01.
- 245 Technical Assistance Staff Rules, Article III, footnote 1.
- 246 Unnumbered mimeo document.
- 247 Section 24.10.2.2.3.
- 248 The Staff Council has complained about the "lack of established criteria" in this field (Staff Association Document A/65/1, paras.28 and 33).
- 249 Section 24.10.2.2.1.
- 250 Section 24.10.2.2.2.
- 251 Staff Regulation, Annex III, Notes, para. A.2 and B.3; Staff Rule 5.01.3 and Appendices A-C.
- 252 For the GS-6 grade in Monaco (AM, II/1, Appendix B(3)).
- 253 Staff Rule 5.01.3(B).
- 254 Staff Regulation 5.02(a). Another, recent addition is Staff Rule 3.03.3(c), which requires that "the local status of a staff member shall be indicated in his contract", a provision designed to avoid disputes such as the one referred to supra note 99.
- 255 Staff Regulation 13.01. Thus when the Travel Rules were amended in 1965 to provide that most duty travel be by Tourist Class flights, the Staff Council unsuccessfully argued that this was in violation of "acquired rights" to First Class travel. However, whenever changes are made which would result in reducing net remuneration (except if due to a decline in cost-of-living), care is taken to couple them with other, related changes designed to increase remuneration, so that net payments for any staff member should never be reduced.
- 256 For example, the place to which a staff member may travel on home leave (Staff Rule 7.02.1(G)(1)) and to which he is to be repatriated (Staff Regulation 9.03).
- 257 Staff Rule 3.04.1(A).
- 258 Section 9.2.3.4.
- 259 AM, II/11, paras. 14 and 15; Sections 31.1.2 and 31.2.4.
- 260 AM, II/2; formerly "Administration of the Staff Rules", SEC/INS/88 and later PM/Pt.2/2.
- 261 AM, V/4, para.16.
- 262 Section 24.12.3.4.
- 263 AM, II/13, para.3.
- 264 AM, II/13, no.2. The ex officio appointees are named in that Section of the Administrative Manual, while the ad personam appointees are listed in an annual Notice to the Staff (e.g., SEC/NOT/175), which also contains the names of the staff representatives who were designated or elected within the first two months of the year.
- 265 See infra note 275.
- 266 AM, II/13, no.1.
- 267 Section 24.7.4.
- 268 Section 24.6.1.3.
- 269 AM, II/13, no.7; SEC/NOT/175, no.8.
- 270 AM, II/13, no.8.
- 271 AM, II/13, no.12.
- 272 AM, II/13, no.10. In 1958 the General Conference arranged for the Committee to consist of six representatives and three alternates (implicitly, by GC(II)/DEC/9); the addition of three more alternates was decided by the Conference in 1963 (GC(VII)/DEC/9).

- 273 The Agency allowed Associate Participants to vote in these elections on the same basis as Full Participants. This practice was challenged at the 12th session of the UNJSPF Board, but was ultimately left to the local option of each participating organization.
- 274 See also AM.II/8.
- 275 AM.II/13, no.13. Until the establishment of this Committee, similar functions were assigned to the Personnel Advisory Panels (Section 24.10.2.2), which were designed to be expanded, when dealing with questions of this type, by an additional member elected by the staff in accordance with the pattern now specified for the Committee. However, the first such elections were only held in 1966, not long before the Panels were deprived of this function due to the establishment of the Committee.
- 276 Section 24.10.2.
- 277 AM. Contents, Part II.
- 278 SEC/INS/34.
- 279 SEC/INS/39.
- 280 Reproduced in a special, unnumbered booklet of the Staff Association.
- 281 SA(XI)/3.. The documentation of the Staff Association is explained in Section 34.2.7.
- 282 SA/EL.68/20.
- 283 Staff Association Statutes (hereinafter "Statutes"), Article 2.
- 284 Statutes, Article 3(d). The IAEA Staff Association was provisionally admitted to FICSA on 11 June 1958 by the latter's Executive Committee; final admission was approved by the FICSA Council on 12 December 1958 at its 11th session (A/59/2, paras. 35-37).
- 285 Section 24.2.4(b) and (c).
- 286 Statutes, Article 4.
- 287 Statutes, Article 5.
- 288 Though Article 6 of the Statutes specifically refers only to three organs (referendum, Assembly, Council), in effect all those listed in this Section of the study may exercise certain independent functions and therefore should be considered to be organs of the Association.
- 289 Statutes, Articles 8(3), 30(1) and 31.
- 290 Statutes, Articles 9-12.
- 291 See, e.g., the Report of the Eighth Staff Council to the Ninth Ordinary Staff Assembly (SA/(IX)/1), to which the financial report was annexed.
- 292 Statutes, Articles 22-24.
- 293 Section 24.12.3.5.
- 294 Statutes, Articles 13-18.
- 295 Rules of Procedure of the Staff Council, Rule 17(2).
- 296 These Rules are published in the same booklet as the Statutes.
- 297 Statutes, Article 29.
- 298 Statutes, Article 19(2).
- 299 Statutes, Article 22(2).
- 300 Statutes, Articles 20-21.
- 301 AM.II/13, para.3.
- 302 Sections 24.10.2.4 - 5. Strictly speaking, this function, which involves the polling of only those staff members who are UNJSPF participants, is not provided for in either the Staff Rules or in the Statutes of the Staff Association, but has been performed by the Polling Officers at the request of the Joint Staff Pension Committee itself.
- 303 Statutes, Articles 9(2)(c) and 29.
- 304 Most of these services are described in Part 2, Chapters IV and V of Monica Krippner's *Presenting Vienna: A Handbook for Agency Staff Members* (IAEA, Vienna, 1968).
- 305 The membership and the terms of reference of these organs are specified in AM-II/13, para.3 of which contains general rules as to the selection of members. The names of the persons serving at any given time appear in annual Notices to the Staff (e.g., SEC/NOT/175).
- 306 INFCIRC/15, Part I.
- 307 This provision is to be altered by Article IV(3) of an agreement amending the Headquarters Agreement that was negotiated in 1969 to bring the latter instrument into line with certain more favourable provisions of the UNIDO Headquarters Agreement (Sections 28.2.2 - 3).
- 308 INFCIRC/15, Part V and INFCIRC/15/Add.1. The original Supplemental Agreement on the Establishment of an Agency Commissary was concluded for one year but was later twice extended; after the expiration

- of the second extension on 31 December 1964 the Agreement has been continued in force by an informal understanding while negotiations for a more permanent arrangement proceed.
- 309 These Regulations were not published until March 1961 (SEC/INS/125), after repeated complaints by the Staff Council (e.g., A/60/2, para.19; A/61/1, para.33).
- 310 SEC/INS/125/Rev.1, Annex I; later PM/Pt.9/3, Annex I; and later, with an amendment, AM.VIII/11, Annex I.
- 311 AM.VIII/11, Annex I, para.1.2.
- 312 Ibid., para.2.1. Such designations have occasionally been made for participants in various UN meetings or activities – such as the vanguard of the UNIDO staff preparing the establishment of the headquarters of that organization in Vienna.
- 313 Ibid., paras. 2.2 and 2.7.
- 314 Ibid., para. 3.1.
- 315 SEC/NOT/146; AM.II/13, no.3.
- 316 AM.VIII/11, Annex I, para.4.1.
- 317 GC(IV)/117, Part I, para.4, referring to Part II, section XII.
- 318 GC(VII)/231, Part II, para.10, referring to Part III, paras.42-47.
- 319 GC(II)/42; GC(II)/RES/30.
- 320 AM.VIII/11, Annex I, para.2.5.
- 321 Ibid., paras.5.1 and 5.2.
- 322 Ibid., paras.3.5(b), 5.3 and 5.4. Sections 24.13.2-3.
- 323 GC(V)/156, Part I, para.7, referring to Part II, paras.26-27; GC(VI)/199, Part II, para.8; GC(VII)/231, Part II, para.9.
- 324 Section 28.2.4.2.
- 325 INFCIRC/15, Part V.
- 326 AM.VIII/11, Annex I, paras.5.4 and 5.5.
- 327 SEC/INS/125/Rev.1, Annex II; later PM/Pt.9/3, Annex II; and later AM.VIII/11, Annex II. Originally the Commissary Regulations had been applied mutatis mutandis to the Restaurant (SEC/INS/125, Annex, para.23).
- 328 Footnote 3 to Commissary Regulation 3.1, and footnote 1 to Restaurant Regulation 3.1.
- 329 SEC/NOT/139 and /146; also SEC/NOT/130/Mod.1. AM.II/13, no.4.
- 330 AM.VIII/11, Annex II, para.5.1.
- 331 AM.VIII/11, Annex I, para.5.4.
- 332 AM.VIII/11, Annex II, para.2.1.
- 333 AM.VIII/11, Annex I, para.5.4.
- 334 Staff Association documents A/59/2, para.23; A/60/2, para.18; A/61/1, paras.73-74; GC(V)/156, Part II, paras.19-21.
- 335 Unnumbered mimeo document, dated 30 June 1962.
- 336 GC(V)/156, Part II, para.22.
- 337 AM.II/13, no.5. The Committee was originally established by the Director General in 1960 under the name of Staff Activities Committee (SEC/INS/101; later PM/Pt.2/12) – but should not be confused with the later Staff Council Committee of the same name which is mentioned in Section 24.13.8.
- 338 Section 24.13.5.
- 339 Section 24.13.6.
- 340 Unnumbered mimeo document, issued in amended form in July 1964.
- 341 AM.II/13, no.9.
- 342 Staff Rule 5.01.11(C) - (E). Aside from loans from the Staff Assistance Fund, the Agency can also aid staff members by salary advances (Staff Rule 5.01.10 – which of course are made from budgeted funds and must be repaid by the beneficiary), ex gratia payments (Financial Regulation (INFCIRC/8/Rev.1)10.04 – which must be reported to the Board of Governors), or direct grants from the Staff Welfare Fund (Section 24.13.3).
- 343 Staff Association documents A/62/1, para.48; A/65/1, para.36.
- 344 Staff Association documents A/64/1, paras.9 and 14; A/65/1, paras.18 and 27 and Annexes VI, paras.3-5, VII, paras.4-6.
- 345 AM.I/10, para.16. Staff Association documents A/62/1, para.35; A/65/1, para.26.
- 346 AM.I/10, para.15.

- 347 However, the Board in 1960 disapproved of a recommendation by the Director General that funds be loaned by the Working Capital Fund (Section 25.4) to finance loans to staff members for the purchase or building of accommodations.
- 348 Section 24.13.4.
- 349 AM.II/13, no.6.
- 350 Staff Association document A/64/1, para.13.

CHAPTER 25. FINANCIAL ADMINISTRATION

PRINCIPAL INSTRUMENTS

IAEA Statute Article XIV, but also Articles V.E.5, V.E.8, XI.B, XI.F.3, XIII, XVIII.E and XIX.A, and Annex I, paras. B, C.5(a), (b)

Financial Regulations (INFCIRC/8/Rev.1; AM. V/2)

Interim Financial Rules (AM. V/3)

Board Procedural Rules 18, 34, 36(a) (GOV/INF/60)

General Conference Procedural Rules 67, 69(a), 97 (GC(VII)/INF/60)

UN Relationship Agreement (INFCIRC/11, Part I.A), Articles XII.3, XVI

Annual General Conference Resolutions:

Regular Budget appropriations (e.g., GC(X)/RES/210)

Operational Budget allocations (e.g., GC(X)/RES/211)

Use of the Working Capital Fund (e.g., GC(X)/RES/212)

Scale of Members' contributions (e.g., GC(X)/RES/218)

The Agency's Accounts (e.g., GC(X)/RES/203)

Annual Budget document (e.g., GC(X)/333)

Guiding Principles for the Assessment of Members' Contributions (GC(III)/RES/50)

Rules Regarding the Acceptance of Voluntary Contributions of Money to the Agency (INFCIRC/13, Part II)

Establishment of the Working Capital Fund (GC.1(S)/RES/7)

Resolutions relating to the Publications Revolving Fund:

Establishment (GC(III)/RES/53)

Abolition (GC(X)/213)

Master Contract for US Financing of Agency Research (INFCIRC/89)

The Agency's Accounts (e.g., GC(X)/331)

Standing Interdepartmental Committees of the Secretariat:

Preparatory Committee on Programme and Budget (AM.1/7, Appendix D)

Contract Review Committee (idem, Appendix B)

Travel Co-ordination Committee (idem, Appendix H)

Supplemental Agreement on Currency Exchange Facilities (INFCIRC/15, Part II)

25.1. BASIC DOCUMENTS

25.1.1. Statutory provisions

25.1.1.1. Development

25.1.1.1.1. Original text

Even though the fiscal regime of the Agency was subjected to at least as much searching scrutiny during the formulation of the Statute as any of its other more basic and unique provisions, and even though a number of refining amendments were adopted both at the Working Level Meeting and at the Conference on the Statute, the financial sections in the end emerged among the most obscure and least satisfactory dispositions. In part this resulted from the fact that the ultimate formulation of the Statute, in this as in several other areas, reflects a number of incompletely digested compromises. However, the principal source of the difficulty is the extensive miscalculation

about how the operations of the Agency would develop – so that elaborate provisions were made for functions that have not yet been initiated (e.g., Agency operated service facilities for Member States) and none were made for the activity which during the first decade was by far the most significant one (technical assistance). That this unexpected pattern of operations could be maintained at all testifies to the considerable facility at adapting the Statute to reality that has fortunately always been displayed by the organs of the Agency.

While the US Sketch of the Statute did not disregard the financial aspects entirely, the solutions suggested were evidently not fully considered – and though some of them were later drastically altered, others remained substantially in their original, undeveloped state. In effect, three different approaches were proposed:

- (a) Funds for the "central facilities and fixed plant" and for "research projects" were to be obtained from assessments on the Member States¹ – a device that was later largely abandoned and maintained only for the "administrative expenses";
- (b) Projects by Members were to be financed by them, though the Agency might assist in making appropriate financial arrangements² – a solution which was maintained substantially unchanged;
- (c) No realistic source was proposed for the resources the Agency would need to syphon off from Member States substantial quantities of military grade nuclear materials,³ except to specify that to the extent that these were used for peaceful projects the user States would pay for them and that all Members able to do so should donate nuclear materials to the Agency⁴ – two incomplete and wishful approaches whose incorporation into the Statute helped to assure the inoperability of the entire nuclear materials supply provision.

The Negotiating Group Draft contained many of the financial provisions of the present Statute in embryo form⁵ – with two important exceptions: all Agency activities were to be financed from assessed contributions, and no provision was made for voluntary contributions. On the other hand, the principle that States contributing materials and other items would ordinarily be reimbursed by the Agency, and that the funds for this purpose would be recovered from equitable charges levied by the Agency on those receiving assistance from it, were already firmly anchored.

The Working Level Meeting scrutinized the financial provisions carefully, and introduced two major changes: it provided for a dual budgeting procedure, making it possible to assess the Members only for the administrative (including all safeguards-related) expenses of the Agency, while leaving the costs of any substantive activities (e.g., the establishment or operation of any facilities) to be paid for by other means (i.e., primarily by charges to the users of the facility, but also from voluntary contributions and profits on transactions in nuclear materials);⁶ the possibility of the Agency receiving voluntary contributions was mentioned only incidentally.⁷

At the Conference on the Statute a number of amendments were proposed. These related to: the majority by which financial decisions of the Agency were to be taken in the two representative organs (2/3rds or 3/4th);⁸ the

method of financing the application of safeguards to bilateral or multilateral arrangements;⁹ the respective authority of the General Conference and the Board;¹⁰ the specification that the UN scale should be used for the assessment of contributions;¹¹ the method of financing the acquisition or establishment of Agency facilities;¹² and the power of the Agency to borrow funds.¹³ Considering the few amendments that were approved to the Statute as a whole, relatively many of these related to the financial regime; in particular: the power of the General Conference was enhanced by authorizing it to approve rules concerning the acceptance of voluntary contributions and the use of the General Fund; on the other hand the power of the Conference was somewhat restricted by explicitly requiring it to be guided by UN principles in fixing the scale for assessing contributions; the possibility of using receipts from voluntary contributions to cover some of the expenses of organizing and establishing facilities and even to cover the cost of assistance furnished to Members was now explicitly foreseen; and finally the borrowing power was circumscribed by specifying that loans contracted by the Agency should in no case impose any liability on its Members.

25.1.1.1.2. Proposed amendment

While the Preparatory Commission may still have harboured the illusion that the Agency might actually function and be financed in the way foreseen in the Statute,¹⁴ by the time of the Second General Conference it had become evident: that technical assistance would for some time be the principal function of the Agency, even though it was not mentioned explicitly in the Statute¹⁵ and thus was not located anywhere in its financial framework; that this activity could only be financed from voluntary contributions, since assessed contributions might not be used for that purpose and no "profits" were likely to develop out of trading in nuclear materials; and consequently that the major current work of the Agency would be at the annual vagary of the independent decisions of each Member as to how much to contribute, making it impossible to perform any reliable advance budgeting and planning. During the following years, the unsatisfactory aspects of financing the Agency's "Regular Technical Assistance Programme" exclusively from voluntary contributions in cash and kind became more and more evident: each year a relatively high "target" was set to encourage large contributions, and the Budget at least nominally assumed that that target would be met; however, each year only about two-thirds of the goal was reached and the real expenditures had to be altered radically to allow for this short-fall.¹⁶ This situation was not improved significantly even after the Fifth General Conference requested each economically developed Member to make voluntary contributions bearing at least the same ratio to the target as is represented by its share of the assessed budget; response to this appeal was slow, and only over the years has there been a slight improvement due to wider compliance.¹⁷

In May 1962 the British Government consequently proposed a radical amendment to Statute Article XIV, whose purpose was to eliminate the two-budget system and make all expenses of the Agency, except those covered by charges for assistance or by voluntary contributions, assessable on all

Members.¹⁸ This proposal was formally communicated to the Member States in time to enable consideration at the Sixth General Conference.¹⁹ The Board considered it just before the Conference was convened but was unable to formulate any "observations" within the meaning of Statute Article XVIII.C(i); all it could agree on was to forward the record of its discussion to the Conference.²⁰ The Conference, after extensive debate in its Administrative and Legal Committee,²¹ merely requested the Board to study the question of financing the Agency's activities in the light of any proposals put forward and to report to the Conference at its next regular session.²²

By the time the Board started its discussion in response to this Resolution, it had received a revised British proposal²³ as well as the comments of 27 Governments that had responded to an inquiry by the Director General;²⁴ it thereupon resolved to refer the matter to its Administrative and Budgetary Committee.²⁵ However that Committee, which in addition to the earlier material had also received a new American proposal as an alternative to the British ones, was unable to do more than to summarize to the Board the radically diverging views of the Committee's membership.²⁶ By this time the main lines of the disagreement had become clear: the Soviet Union and its associates were fundamentally opposed to the proposed change on the ground that technical assistance should be supported entirely voluntarily and any change in this principle would violate the traditions of the UN system, constitute an improper total "revision" and not merely an "amendment" of the Statute, and would lead to potentially sky-rocketing budgets; in addition several of the under-developed nations feared that they would be unable to meet their assessments if these were increased to include technical assistance operations. When the proponents of the amendment attempted to meet these points and also to allay fears about unlimited budget increases by proposing to introduce into the Statute and into the Financial Regulations some restrictive definitions of technical assistance, other recipient States objected that these limitations would unjustifiably hamper the Technical Assistance Programme itself. The Board, after further extensive debate in June 1963, finally adopted (by a vote of 12:5:6) a modified American package proposal,²⁷ which would have amended Article XIV.B.1 by adding a third category (technical assistance — rather narrowly defined) to those expenditures which would be assessed on the Members,²⁸ while at the same time amending the Financial Regulations to relieve the developing States of the burden of meeting the increased assessed contributions in convertible currency and also to place an upper limit on the value of the equipment component of any technical assistance project.²⁹ This proposal was then formally communicated to Member States pursuant to Statute Article XVIII.A, and to the General Conference pursuant to its request.³⁰

At the Seventh General Conference the proponents assessed their support and evidently concluded that even if a two-thirds majority could narrowly be secured, the chances of later receiving ratifications from two-thirds of all Members were minimal. Consequently the Conference, on the basis of a report by its Administrative and Legal Committee,³¹ decided not to act on the Board's recommendation, but to request continued study and a further report.³² However, by then the issue was dead, and after a desultory discussion in June 1964 the Board so reported to the General Conference.³³

25.1.1.2. Summary

25.1.1.2.1. Division of responsibility

An interesting aspect of the financial regime established by the Statute is that in this one area the authority of the Board is at least partly overshadowed by that of the General Conference, and even the Director General is assigned a particular task. In addition this is the only area in which the Statute requires a two-thirds vote by the Board³⁴ and one of the few areas in which such a requirement is set for the General Conference.³⁵

- (a) In the fiscal field, the General Conference:
- (i) Approves, by a two-thirds vote, the annual budget recommended by the Board or returns it to that body with its recommendations (Statute Articles V.E.5, XIV.A, H);
 - (ii) Fixes the scale of assessed contributions (XIV. D);
 - (iii) Approves rules and limitations regarding the exercise by the Board of the Agency's power to contract loans (V.E.8, XIV.G);
 - (iv) Approves rules regarding the acceptance by the Board of voluntary contributions (V.E.8, XIV.G);
 - (v) Approves the manner of the use of the General Fund (V.E.8; XIV.F);
 - (vi) May permit a Member State to vote even though delinquent in paying its assessed contributions (XIX.A).
- (b) In the fiscal field, the Board of Governors, in addition to exercising its general authority to carry out the functions of the Agency (VI.F):
- (i) Submits to the General Conference, by a two-thirds vote, the annual budget estimates (including revised estimates if the original ones are returned by the Conference) (V.E.5, XIV.A, H);
 - (ii) Establishes a scale of charges for assistance furnished by the Agency to Member States (XIV.E);
 - (iii) Agrees with Member States furnishing assistance to the Agency as to the reimbursement due (XIII);
 - (iv) Exercises the Agency's power to borrow, subject to rules and limitations approved by the Conference (XIV.G);
 - (v) Accepts voluntary contributions, subject to rules approved by the Conference (XIV.G);
 - (vi) Decides on the use of the General Fund, subject to the approval of the Conference (XIV.F);
 - (vii) Determines the expenditures to be recovered for the administration of bilateral or multilateral safeguards (XIV.C);
 - (viii) Apportions the "administrative expenses" of the Agency among the Member States (XIV.D).
- (c) The Director General is charged with the initial preparation of the annual budget estimates for consideration by the Board (XIV.A).

25.1.1.2.2. Methods of financing various activities

The main defect of the financial provisions of the Statute is that it is impossible, by a mere examination of these clauses, to determine how the various types of activities of the Agency can be financed — indeed whether some of them can be financed at all within the statutory framework. The actual answers depend sometimes on the history of a particular provision and on the explanations given during its formulation, and more frequently on the established practices relating to its implementation. Therefore, instead of merely summarizing the statutory provisions, the following list attempts to show how various types of expenditures are matched against various categories of incomes under the Statute.

- (a) "Administrative Expenses", as broadly defined by Statute Article XIV.B. 1(a),³⁶ are assessed on all Member States.³⁷
- (b) The costs of implementing safeguards with respect to Agency projects (as well as certain related expenses)³⁸ are assessed on all Member States.
- (c) The costs of implementing safeguards with respect to bilateral and multilateral arrangements (and perhaps unilateral submissions) may be required to be reimbursed under the relevant safeguards agreements (presumably by the Governments parties thereto, though this provision has never yet been enforced)³⁹ and for the rest are assessed on all Member States.
- (d) The acquisition or establishment of Agency facilities may be financed from voluntary contributions,⁴⁰ or temporarily from loans contracted by the Agency⁴¹ and repaid from the receipts resulting from the charges levied for the use of these facilities;⁴²
- (e) The operations of Agency facilities are to be financed primarily from the receipts of charges levied for their use (which charges must also meet any related loan amortization costs),⁴³ and perhaps also by the use of voluntary contributions.
- (f) The Statute never clearly indicates whether and how the Agency is to bear the cost of nuclear materials merely stockpiled by it; in part materials might be donated and in part they would merely be on loan or rather in a type of bailment, to be either returned to the State concerned in certain contingencies, or resold to another Member for an Agency project.⁴⁴
- (g) Materials and services purchased from a Member or from some private source and supplied by the Agency to another Member under an Agency project must be paid for by that Member according to the applicable scale of charges,⁴⁵ unless the latter finds (perhaps with the Agency's help under Statute Article XI. B) an external source of financing.
- (h) Materials and services transferred directly from one Member to another within the framework of an Agency project must be paid for (unless furnished free) by the recipient directly to the supplier — without the Agency becoming directly engaged financially.⁴⁶
- (i) Technical assistance, for which no explicit provision is made in the Statute, can in general be considered as a special case of (g), i. e., as materials and services furnished by the Agency to a Member, with no

charge being made either because no cost was incurred by the Agency (if it itself received the assistance free of charge as a voluntary contribution in kind)⁴⁷, or because the applicable "scale of charges" was reduced to zero because of the use of voluntary contributions for this purpose (see Statute Article XIV. E, second sentence, second clause)⁴⁸, or because there was an external source of financing (e. g., UNDP)⁴⁹.

- (j) The cost of research contracts may, depending on various considerations (e. g., the subject of the research), be financed as an "administrative expense" under (a) above, or by the use of voluntary contributions applied to this purpose pursuant to Statute Article XIV. F,⁵⁰ or finally by special contributions from a Member State (or perhaps another outside source), which in turn might be considered either as a restricted voluntary contribution or as a payment by the latter State for a service (the research) performed for it.⁵¹

25.1.2. The Financial Regulations

25.1.2.1. Development

The drafting of financial regulations was not one of the tasks explicitly assigned to the Preparatory Commission by the Annex to the Statute — as a matter of fact, such Regulations are not mentioned anywhere in that instrument. Nevertheless, some fiscal rules to supplement the sketchy statutory provisions were obviously necessary to enable the Agency to start its operations. Consequently, in one of its first decisions, the Commission requested its Executive Secretary to prepare working papers on financial regulations and rules.⁵² By June 1957 a first draft of the Agency's Financial Regulations was presented to the Commission,⁵³ which was clearly based on the UN Regulations unless a different disposition was required by the Statute.⁵⁴ After a brief discussion⁵⁵ the Executive Secretary undertook to prepare a revised draft, which was presented to⁵⁶ and debated by the Commission later in the same month.⁵⁷ During neither consideration were any particularly controversial aspects uncovered. The Commission consequently recommended the draft Regulations to the Board, and at the same time communicated the text to the General Conference for information; no covering document or any explanatory comments were attached.⁵⁸

When the newly created Board came to consider the draft Regulations, it was faced by a series of three Soviet amendments by which that Government attempted to write into that instrument several principles which it had not succeeded in having incorporated into the Statute. In particular, it proposed that the Regulations state explicitly that the entire cost of safeguarding bilateral and multilateral arrangements be borne by the parties thereto,⁵⁹ and that the Agency should not acquire facilities except from available funds or from voluntary contributions (i. e., not by the use of loans repayable from charges imposed for the use of such facilities). After some heated debate and a series of votes, the Regulations were adopted with minor amendments reflecting some of the wording but not the sense of the Soviet proposals. These Regulations were never communicated officially to the General Conference, but were first published in the SEC/INS/... series⁶⁰ and later as an INFCIRC.⁶¹

The Regulations have been amended by the Board several times, always on relatively minor points. The initiative for all these changes has come from the Director General – but by no means have all his proposals been accepted. Normally proposed amendments are first considered by the Board's Administrative and Budgetary Committee, but the final decision must be that of the Board.⁶²

In February 1961 the Director General proposed a complete revision of the Regulations, stating that in spite of several piecemeal amendments, the Regulations remained unsatisfactory in form and language and consequently difficulties of interpretation continued to arise. The Board's Administrative and Budgetary Committee endorsed the new draft, with some minor amendments. However, when the revised text was considered by the Board in April 1961 it ran into a heavy and unexpected barrage of oral Soviet amendments. The principal one of these, which was raised in connection with the assessments for both the Regular Budget and the Working Capital Fund, was that these charges should not automatically become due and payable at the beginning of the fiscal year (as had already been provided in the existing Regulations, which in this followed the UN pattern),⁶³ but that they should only be due and payable "within time limits laid down by the financial legislation of each Member State". This and the other proposed changes reflected the general Soviet position on financial matters with the UN system (in connection with the then pending Charter Article 19 controversy) and would generally have reduced the flexibility of the Agency's use of its financial resources. The result of these proposals was that the Board, without completing its consideration of the draft, referred it and the amendments back to its Administrative and Budgetary Committee – which, presumably after high-level consultations among the principal Members and the Secretariat, never considered the matter again. The structure of the Regulations thus remains as originally drafted by the Executive Secretary of the Preparatory Commission, subject to the minor corrective amendments approved both before and after the 1961 debacle.⁶⁴

25.1.2.2. Provisions

The Financial Regulations deal in detail with practically all aspects of the Agency's fiscal operations. They can thus not be conveniently summarized. The principal subjects dealt with are the following:

- (a) "The Budget", in which, inter alia, the various headings under which expenses can be incurred are defined and categorized – following the statutory pattern but adding some detail.
- (b) "Financing of Expenses" indicates the type of resource from which the expenditure categories to be included in the Budget are to be financed (a break-down considerably less detailed and direct than that presented in Section 25.1.1.2.2).
- (c) "Authority for Incurring Expenditures" is the direct source of the Director General's power to disburse appropriated funds and to incur obligations subject to stated limitations.
- (d) "Money Provision" deals principally with the mechanism of assessing Member States and the method of returning any surplus.

- (e) "Funds" again deals with the several categories under which the Agency's operations are conducted and establishes special limitations for each — making some of them more and some of them less flexible tools of fiscal administration (in terms of transferability of resources from one purpose to another and from one fiscal period to another); not surprisingly, the least flexibility is allowed in the Administrative Fund which is financed directly by assessments on Member States.
- (f) Finally there follow a series of provisions relating to custody, control and delegation; these include an Article devoted to the "External Audit" and an Annex setting forth the Principles to Govern Audit Procedures.

25.1.2.3. Legal status and interpretation

Though various specialized types of fiscal rules are mentioned in the Statute (in general in the sense of requiring the Board to act in conformity with principles or limitations approved by the General Conference),⁶⁵ there is no mention of any general Financial Regulations. Since, however, such Regulations are plainly necessary, it follows that, to the extent that this particular function has not been assigned specifically to the General Conference, the Board has the power to adopt such Regulations either pursuant to Statute Article VI. F ("authority to carry out the functions of the Agency") or Article VII. B (binding the Director General to "perform his duties in accordance with regulations adopted by the Board").⁶⁶ Under either interpretation, the General Conference has no authority in this area, and in fact the Regulations (and the changes in them) have never been either referred or even officially reported to the Conference.⁶⁷

Some of the Financial Regulations merely reproduce, sometimes by paraphrasing and sometimes by incorporation by reference, certain provisions of the Statute. For the most part, however, they go considerably beyond the statutory rules and it is therefore necessary to consider the legal force that these provisions have with respect to the Agency's organs:

- (a) The Director General is bound by the Regulations, since they undoubtedly constitute "regulations adopted by the Board" as foreseen in Statute Article VII. B. Though the Regulations do not themselves refer to that Article for authority, they were already cited during the first series of meetings of the Board as examples of the types of regulations binding on the Director General.⁶⁸
- (b) The Board itself is presumably not bound by the Regulations, in particular since it can at any time, without notice or other formality, amend or suspend them by a simple majority.⁶⁹ Nevertheless, the Board has never deliberately violated these Regulations, though it has occasionally waived the application of some provisions — usually in relation to and at the request of the Director General (e. g., time limits for presenting certain reports). However, to a limited extent and only temporarily, the Board might have to consider itself bound: each annual Budget approved by the General Conference relies implicitly and to some extent explicitly on the Financial Regulations — i. e., in appropriating funds the Conference is aware of and in a sense depends on certain requirements and restrictions in the Regulations; if the Board were to violate these

- significantly then it would, to that extent, disregard the decision of the Conference in a field in which the latter's authority is binding.⁷⁰
- (c) The General Conference itself can of course not be bound by the Regulations – and to the extent that these purport to do so they are plainly ineffective. Thus the first sentence of Regulation 13.01, according to which the Conference and its subsidiary organs may not take any decision involving expenditures without appropriate reports from the Director General and from a Conference Committee, is only given vitality by restatement in Procedural Rule 67 of the General Conference⁷¹ – an instrument which the latter can amend or suspend at any time. On the other hand, some of the Regulations confer certain functions on the Conference that are not granted by the Statute itself; those Regulations may therefore be considered as effective grants of authority, made by the Board pursuant to Statute Article V.F.1;⁷² for example, Regulation 12.01 assigns the power to appoint the External Auditor to the Conference.⁷³
 - (d) The External Auditor of the Agency, who might be considered as a rudimentary subsidiary organ, is presumably bound by the Regulations and in particular by those that relate directly to him, since he assumes his functions pursuant and therefore also subject to the Regulations.⁷⁴
 - (e) The other subsidiary organs of the Agency, such as SAC, have no independent financial functions or authority and thus are not directly subject to the Regulations.

The Board, having adopted the Regulations, is the organ best suited to interpret them, and indeed it has several times issued formal interpretations when requested to do so by the Director General. In doing so, the Board need in general not rely on or be guided by any external authority – except to the extent that Article XVI.1 and 2 of the UN Relationship Agreement⁷⁵ requires the Agency "to conform, as far as may be practicable and appropriate, to [the budgetary and financial] standard practices and forms recommended by the United Nations". In addition, since the Regulations are largely adapted from those of the United Nations and contain many similar provisions, the Board has endeavoured to interpret them in conformity with the UN pattern.⁷⁶ For this purpose it has taken account of the recommendations of the competent UN organs, and in particular of ACABQ; on several occasions the Agency has explicitly requested that Committee to recommend an authoritative interpretation,⁷⁷ which the Board has subsequently adopted. Another channel through which such a unification of interpretation is achieved is the Panel of External Auditors, in which the Auditors performing functions for the various organizations in the UN system coordinate their approach to common problems.⁷⁸

25.1.3. The Financial Rules

25.1.3.1. Development

At the end of the first series of meetings of the Board, the Acting Director General submitted for its approval a set of "Draft Interim Financial Rules", drawn up under Financial Regulation 10.01(a) (adopted some days earlier). Neither in the covering document nor in the brief discussion in the Board

was any indication of the origin of the draft given, except for the statement that the suggested Rules were almost identical with the Financial Rules of the Preparatory Commission.⁷⁹

The Board approved the proposed draft, without any change, but on the understanding that any Governor could raise the matter at the next series of meetings – and consequently the instrument was initially (and still is) characterized as the Interim Rules. In the event, the subject was not referred to again and the Board was not asked to reconsider or reaffirm its original tentative approval. Since then, the Director General has made only a single minor change in the original Rules (in spite of several intervening changes in the Regulations).

The Interim Financial Rules were originally promulgated with effect from 1 November 1957, as part of SEC/INS/20, in which the Regulations first appeared. Later they were incorporated into the Administrative Manual.⁸⁰

25.1.3.2. Provisions and legal status

Superficially, the Financial Rules appear to relate to the Financial Regulations in the same way as the Staff Rules do to the Staff Regulations.⁸¹ Actually, however, the role and significance of the Financial Rules is quite different.

In the first place, the scope of the Financial Rules is extremely limited. While the subject-matter of the Staff Rules is practically co-extensive with that of the Regulations, so that almost each one of the latter is supported by one or more of the former (a relationship emphasized by a parallel system of numbering), the Financial Rules deal with only very limited areas and only a few of them can be related to any particular Regulation (and therefore are supplied with a completely separate numbering system). Though the Regulations deal with most of the financial affairs of the Agency and in particular with the relations among the principal organs, the Rules deal almost solely with the assignment of responsibilities within the Secretariat and with the form and maintenance of the main financial records. The principal subjects covered are:

- (a) Assignment of authority for incurring obligations and expenditures;
- (b) Contracts and purchases – which principally establish the conditions under which competitive tenders must be let;⁸²
- (c) The receipt and management of funds, supplies and other types of property;
- (d) The accounts and financial statements – specifying the form, contents and timing of various internal and external reports;
- (e) Miscellaneous provisions – including one holding staff members personally and financially liable for any actions that contravene the Rules or other instructions.⁸³

In the second place, the Financial Rules can only be established and amended by the Director General "with the approval of the Board of Governors"⁸⁴ while he is free to adopt and change most Staff Rules, subject only to the requirement of limited consultations with representatives of the staff. For all practical purposes, therefore, the Financial Rules can only be extended

or amended in the same way as the Regulations themselves, though in theory a change in the former requires and in the latter does not need any initiative from the Director General. The result has been that these Rules have remained entirely unchanged since their original approval – the Director General preferring to regulate additional details in this area by means of various administrative instructions not requiring Board review; for example, all the delegations of fiscal authority within the Secretariat have been issued in the latter form.⁸⁵

The Financial Rules are thus addressed solely to the staff and, unlike the Regulations, do not pretend to control the conduct of the Board or the General Conference. Except as provided in particular Rules, the Director General has no general powers of suspension.

25.1.4. Other instruments regulating Agency finances

Though the Statute does not call for the adoption of a set of general fiscal regulations, it does explicitly require certain specialized financial regulatory instruments. In addition, several other instruments specified or authorized by the Statute have provisions directly impinging on this field.

25.1.4.1. Rules and limitations on the power to borrow

As indicated in Section 25.6.1, the General Conference has never approved any general rules or limitations regarding the exercise by the Board of the borrowing powers of the Agency, as foreseen in Statute Articles V.E.8 and XIV.G.

25.1.4.2. Rules regarding the acceptance of voluntary contributions of money

As indicated in Section 25.5.1.2, the Third General Conference adopted "Rules Regarding the Acceptance of Voluntary Contributions of Money to the Agency", as foreseen in Statute Articles V.E.8 and XIV.G.

25.1.4.3. Rules regarding the use of the General Fund

As indicated in Section 25.2.4.2, the General Conference has not yet exercised the power assigned to it by Statute Articles V.E.8 and XIV.F to approve standing rules regarding the use of the General Fund, but has instead each year included specific instructions in the Operational Programme budget resolution – though the relative invariability of these dispositions almost gives them the character of permanent rules.

25.1.4.4. Scale of assessed contributions

As indicated in Section 25.3.1, the General Conference has exercised its power under Statute Article XIV.D to fix a scale for the assessment of contributions to the Administrative Budget, not only by periodically doing so, but also by adopting general Recommendations and Guiding Principles regarding the establishment of these scales.

25.1.4.5. Scale of charges

As indicated in Sections 17.6 and 25.7.2, the Board has never yet exercised its authority (and fulfilled its obligation) under Statute Article XIV.E to establish "a scale of charges . . . for materials, services, equipment, and facilities furnished to members by the Agency", nor has it promulgated and rules regarding the formulation of such scales or the imposition of any charges.

25.1.4.6. Use of the Working Capital Fund

Though the Working Capital Fund is not mentioned in the Statute, such an account was established by the General Conference at its first special session, with the proviso that its use "shall be defined in an annual resolution of the General Conference". As indicated in Section 25.4.1, these resolutions have, over the years, become largely standardized and in effect constitute part of the standing fiscal provisions of the Agency.

25.1.4.7. Rules of Procedure

Both the General Conference and the Board of Governors have included in their respective Rules of Procedure certain provisions relating to the fiscal affairs of the Agency. In particular, both organs have adopted Rules implementing the restriction in Financial Regulation 13.01 against the making of decisions having financial implications in the absence of a report from the Director General.⁸⁶ Both organs have also interpreted or extended the two-thirds voting requirement in Statute Article XIV.H to apply also to amendments to or separate votes on parts of resolutions covered by the statutory provision.⁸⁷ Finally, the Rules of Procedure of the Conference also specify that each new Member of the Agency must make a contribution for the year in which it joins⁸⁸ - a provision evidently adopted by the Conference in the exercise of its powers under Statute Article XIV.D.

25.1.4.8. Relationship Agreement with the United Nations

Though the UN Relationship Agreement⁸⁹ is not an internal financial regulatory instrument, some of its provisions are of direct relevance to the Agency's fiscal administration. In particular, Article XVI provides for the establishment of a "close budgetary and financial relationship" between the organizations, requires the Agency to conform as far as practicable and appropriate to standard practices recommended by the United Nations, and directs the transmission of the annual Budget "for such recommendations as the General Assembly may wish to make on the administrative aspects thereof"; the United Nations may also arrange for special financial and fiscal studies to be undertaken, which are to be relevant to the Agency and the specialized agencies. Article XIII.3 (which was imitated in formulating corresponding provisions in the relationship agreements with the specialized agencies⁹⁰) provides for consultation between the two organizations to establish the most equitable manner of financing special services or any assistance furnished by one organization to the other.

25.2. THE BUDGET

25.2.1. The "two-budget" system

Though a number of international organizations, including the United Nations, use multiple budget systems, i. e. , systems under which certain operations are financed independently from the central core of activities,⁹¹ the Agency's "two-budget" system is unique in the way it is formulated and in which it is incorporated in the Statute. In brief, the expenditures of the Agency are divided into two categories: "administrative expenses", which are assessed to the Member States; and "operational expenses", which are met from the income of the operations to which they relate, or from voluntary contributions.⁹²

The original purpose of this device was to protect the Member States from being assessed for the large expenditures that the Agency was expected to incur in establishing and operating expensive nuclear facilities. The two budget categories were introduced (on the proposal of Canada)⁹³ into the draft Statute at the Working Level Meeting – none of the previous versions having contained any suggestion of such a differentiation.⁹⁴ At the Conference on the Statute a number of anxious questions but no challenges were raised about this point:⁹⁵ the poorer countries (which constituted the most active element at the Conference) were as concerned as the participants in the Working Level Meeting lest they be assessed for the development of a grandiose infrastructure for the Agency; however, they also feared that if the Agency's facilities would have to be entirely self-supporting, then their users (i. e. , the States too small or poor to establish their own) would have to maintain them through high operating charges – a fear which was in the end slightly allayed by making more prominent the provisions relating to voluntary contributions.⁹⁶

In fact, almost no Agency facilities were built during its first decade – a result which may be attributed in part to a lack of demand and in part to the restrictive financial conditions.⁹⁷ A proposed facility would either have to be so obviously necessary that its construction could be financed from a loan repayable out of operating charges set high enough to cover not only the operating costs but also amortization of the capital outlay (a condition not yet satisfied by any plant); alternatively the capital funds would have to be donated (as was done for the Seibersdorf Laboratory).⁹⁸ The actual and more obvious effect of the restrictive two-budget device has instead been to inhibit the Agency's present main programme: technical assistance. Since that activity, almost by definition, does not generate any operating income, and since only ancillary portions of it can be classified as administrative, it must primarily be financed by voluntary contributions (made either directly to the Agency, or through UNDP)⁹⁹.

The frustration resulting from limiting the technical assistance programme to the sum of the never overly generous contributions of Member Governments, and the administrative inconvenience of experiencing each year a substantial shortfall from the target figure on which the budget was nominally based, motivated the one serious attempt to amend Statute Article XIV. As originally conceived, the amendment would simply have abolished

the dual budgeting procedure and thus also the protection it provided against assessments for capital projects; in its final form it would merely have shifted the classification of technical assistance outlays (defined somewhat restrictively) into the category of expenditures for which Members could be assessed.¹⁰⁰

Aside from this single, frontal assault on the dual budgeting device, the system has been exposed to a series of minor incursions, due largely to the poorly defined distinction between the two budget categories.¹⁰¹ This lack of a clear-cut dividing line has made it possible for the advocates of an expanded programme for the Agency (including of course the Secretariat), to move the boundary lines slightly so as to include gradually more and more activities in the "administrative" category which can be financed without reliance on the individual generosity of the Members; these shifts have of course not gone unchallenged, its opponents relying on both political and legal arguments.

There are several difficulties in defining the boundary between the two statutory categories of expenditures:

- (a) The statutory characterization of one category as "administrative expenses" (and no name at all for the other) is not very helpful. In particular, it is clear from the list included in Article XIV.B.1 that this category was not meant to be limited to a conventional definition of administration (e.g., it includes the distribution of information and the cost of handling and storing special fissionable material).¹⁰² The Agency has renamed the first budget category as "Regular" and has named the second as "Operational"¹⁰³ — but the use of these terms does not help in interpreting the Statute.
- (b) A second, related difficulty, comes from the phrase: "these shall include", following the words "administrative expenses" in Article XIV.B.1 and introducing the illustrative list. Since that enumeration is neither homogeneous nor do its items come within a customary definition of the term to be illuminated, it is not clear to what extent the principle of ejusdem generis applies.
- (c) The "safeguards" which the Statute arbitrarily classifies as "administrative" are defined both by reference to Article III.A.5 (which includes only controls against military diversion) and to Article XII (which apparently includes health and safety measures¹⁰⁴). Moreover, while controls in relation to Agency projects and those based on bi- or multi-lateral submissions are mentioned, unilateral submissions to safeguards are not referred to and thus a gratuitous doubt is created as to their classification.¹⁰⁵
- (d) A nice circularity is created by a reference in Article XIV.B.1(a) to XIV.B.2, which in turn refers to XIV.B.1 again. If the categories were otherwise clear this would cause no difficulties; as is, confusion is compounded.

The uncertainty about the precise boundary between the two budget categories as well as the almost steady shift towards an enlargement of the "administrative" category, can be illustrated by a number of examples:

(i) Research contracts

The changing classification of the expenditures for research contracts (the arrangements under which the Agency pays a private contractor to perform a specified piece of research) demonstrates both the uncertainty and the nature of the shift.¹⁰⁶ When the programme was first started, only such contracts were financed from the Administrative (later Regular) Budget, as could be linked, even if only remotely, to one of the functions listed in Statute Article XIV.B.1: thus standardization and calibration were related to the distribution of information; all types of biological research were related to health and safety, which in turn was included in a broad definition of "safeguards" under Article XIV.B.1(b); even reactor studies were financed on the tenuous ground that eventually they might lead to Agency projects and thus constituted "preparation" for them.¹⁰⁷ But, even with generous interpretation, it was not in the early days thought possible to accommodate every type of research in the administrative budget, and thus the scope of this programme appeared confined since the limited Operational Budget (the other possible source of funds) was out of political considerations pre-empted for "technical assistance".

However, relying on the magic of those words, the 1960 Operational Budget allowed the financing of a few research projects of limited interest and outside of the "administrative" categories, under the tentative heading of "research assistance". These were to be carried out primarily in the developing countries.¹⁰⁸

Some years later a significant shift occurred: on the advice of SAC, the 1962 budget document explained that any agricultural, medical or hydrological project providing

"a means for generating some information not only of general interest to the Agency's membership as a whole, but of specific interest to developing countries, and relating to a field of work with which a substantial part of the Agency's technical assistance projects are concerned"

could be financed from the Regular Budget. Only

"research, of clearly limited interest to one or a small group of Member States, or designed especially to assist an institute in a Member State"

would in the future be financed from the Operational Budget.¹⁰⁹

The final withdrawal from the Article XIV.B.1 standards came in the 1967 Budget in which, using the pious argument that research contracts should serve purely scientific purposes and not constitute a concealed form of assistance, the entire research contracts programme (without limitation as to purpose) was placed in the Regular Budget.¹¹⁰

(ii) Laboratory

The distribution of the expenditures of the Laboratory follows a similar trend, though the stages were different. The 1961 Budget (the first year

in which the Laboratory was fully operational) assumed that about 40% of its work would be "in the fields of health, safety, standardization, calibration, safeguards, etc." — which "under Article XIV.B of the Statute ... is considered an 'administrative expense' to be funded under the regular budget".¹¹¹ This arbitrary allocation of 40% to the Regular Budget, which was repeated in 1962,¹¹² was challenged by Governors who felt this figure to be excessive; they induced the Board to require the institution of a system of cost analysis in the Laboratory, the criteria for which were stated:

"(i) Items of general interest to the Agency's membership as a whole should be charged to the Regular Budget; and

"(ii) Items of limited interest, that is, of interest to one Member or a small group of Members, such as a regional project, should be charged to the Operational Budget."¹¹³

On the basis of his analysis, the cost accountant concluded that in 1962 67% (instead of merely 40%) of the expenses of the Laboratory should be financed from the Regular Budget¹¹⁴ (an adjustment contrary to that desired by the sponsors of his work). Over the years, without any explicit change in the criteria used but ostensibly due to a gradually altering pattern of work of the Laboratory, the Regular Budget percentage of its costs was increased by the accountant to 75%.¹¹⁵

However, impatience continued with even the 25% remaining charge to the Operational Budget and the consequent reduction of funds available for technical assistance. Explicitly responsive to this consideration, the Board announced in 1968 that "because a larger part of the work performed in the Laboratory might now reasonably be considered as of benefit to the membership at large", a still greater part of the expenses should be met from the Regular Budget.¹¹⁶ Pursuant to this policy, the 1970 budget contains a deliberate transfer, without any special justification, of \$60 000 in laboratory charges from the Operational to the Regular Budget.¹¹⁷

(iii) Preliminary Assistance Missions

The source of financing Preliminary [Technical] Assistance Missions¹¹⁸ early led to extended debates, in both the General Conference and the Board, as to the application of Article XIV.B to this type of activity. After the Board had included the cost of the first of these Missions in the 1959 Regular Budget,¹¹⁹ the Conference defeated a move to have these expenses transferred outright to the Operational Budget,¹²⁰ but amended the appropriation resolution to:

"Note that the inclusion of the expenses connected with 'special missions' ... among the administrative expenses is without prejudice to the future treatment of such expenditures in the light of the experience to be gained about the character and purpose of the special missions."¹²¹

However, the following year the Board, after having had an opportunity to study the "experience" gained in connection with the initial Missions, was unable to agree on the proper allocation of their expenses. In part influenced

by the suggestion that these expenses might be considered as "preparation for Agency projects" (by helping Members to file technical assistance requests), it confirmed their allocation to the Regular Budget as proposed by the Director General in the draft budget¹²² – and this time the Conference took no negative action.

Some years later the Board again had to face the issue, with a slightly different twist: in agreeing that Missions might, *inter alia*, visit some Non-member States (in which they obviously could not be preparing Agency projects¹²³), it decided that the expense of the visits to those States should be charged, without explanation, to "Duty Travel of Staff"¹²⁴ (another Regular Budget item). Still later, when the financing of Follow-up Missions (*i.e.*, those that were to retrace the steps of Preliminary Assistance Missions some years later) was in question, it was again argued that these would not be "preparing" Agency projects and thus the only plausible excuse for charging mission costs to the Regular Budget would be inapplicable; however, once more the Board refused to alter the established pattern and thus by implication once more stretched the bounds of Article XIV.B.1.¹²⁵

(iv) Technical Assistance administration

A different and somewhat less direct raid on the Regular Budget was authorized by the Board and the General Conference in connection with the Administrative and Operational Services Costs (AOS) which EPTA formerly reimbursed, at an across-the-board percentage rate, to the organizations administering projects for it.¹²⁶ Since this reimbursement was meant to cover administrative (primarily staff and travel) expenses that had been charged to the Regular Budget, the Board initially decided to allocate these EPTA payments as miscellaneous income to that Budget. However, it later yielded to the temptation to increase the Operational Budget and recommended to the Conference that the AOS reimbursements be credited to Operating Fund II and thus make possible a corresponding increase in technical assistance activities. Though the Board justified this recommendation purely with arguments of expediency (and nominally entirely ignored the Article XIV.B issue),¹²⁷ the Conference accepted the recommendation.¹²⁸

In the end, the Agency was saved from further doubtful transactions of this type when EPTA abolished the use of "agency sub-totals" in its 1963-64 programme.¹²⁹ This meant that the Agency was no longer free to initiate new projects with the AOS funds it received, and it was therefore decided that these should henceforth be credited to the Regular Budget as miscellaneous income, and thus serve to reduce the amounts assessed to Member States.

Conclusion

It should not, however, be concluded that Statute Article XIV.B is a dead letter. Though the boundaries may be indistinct and therefore flexible, no really massive subversion of the statutory principles has ever been permitted. Thus the occasionally expressed desire of the developing States, that savings in the Regular Budget should not be returned to Member States but be spent for technical assistance, has always received short shrift.¹³⁰

In view of these uncertainties as to the statutorily proper allocation of certain expenditures, the question arises: what organ is to make the decision. As is usual in the Agency, almost all of them play a role. In general, the initial decision is made by the Director General, in presenting his draft of the annual budget to the Board: therein he may either implicitly assume certain allocations, or explicitly call the attention of the Board to some doubtful point. The Board's function is clear: it must approve the budget document as a whole, and thereby definitely sponsor the allocations proposed therein, though sometimes it invites the attention of the General Conference to certain doubtful questions. Though the Conference is, in a sense, the final financial arbiter, its function in resolving questions in this field is not well defined: if the Board explicitly refers a question to it, it may of course take a decision pursuant to Statute Article V.F.1; however, if a certain point is merely stated in (or implied by) the budget document, it is not entirely clear whether the Conference's approval of the budget resolutions (which list only the main income and expenditure sub-totals under less than a score of headings) necessarily constitutes full approval of every allocation scheme contained in the Board's explanatory text.¹³¹

The Board, supposedly a scientific body and certainly a political one, does not always pretend to have the fiscal expertise to resolve problems of allocation. However, by and large, it has not demanded or received assistance from outside sources. ACABQ, which has refereed other financial disputes of the Agency, from the very beginning took care to keep clear of this area, by stating that the "demarcation line between administrative and operational expenses is not rigidly defined and the Statute may be a little unclear on this point, leaving the decision in some measure to the General Conference";¹³² aside from suggesting that the "Administrative Budget" should properly be called the "Regular Budget" (since the statutory use of "administrative" was different from the conventional accounting one)¹³³ the Committee has made no further recommendation in this area, which does not affect a common concern of the UN organizations. On several occasions, members of the Board unable to convince their colleagues in any other way as to the alleged impropriety of a past or proposed allocation, have asked the External Auditor to give his advice; that official has, however, also considered it the more prudent course to remain silent on these issues — though in other fields he has sometimes suggested to the Board that particular provisions of the Statute or the Financial Regulations are being misapplied by the Agency.¹³⁴

Though several Member States have (in the Board and the General Conference) more or less consistently opposed the trend of allocating more and more items to the Regular Budget, and have in particular questioned certain of these allocations on statutory grounds, none has ever suggested that the resultant budget was partially illegal and that consequently it might refuse to pay a corresponding fraction of the contributions assessed to it. No doubt the principal reason for this forbearance is the relatively small size of the entire Regular Budget, of which at best only a minor portion could be challenged by even the most conscientious defenders of the purity of the statutory fiscal scheme.

25.2.2. The budget-making process

The process of formulating the Agency's budget is succinctly outlined in Statute Article XIV.A, and each of the statutory organs is assigned a role.¹³⁵ Certain aspects of this procedure, concerning particularly the transmission of the budget from one organ to another, are expressed in somewhat greater detail in Financial Regulations 3.01-3.04. By a decision taken in June 1967, the Board tentatively introduced an additional step into the budgetary process in order to improve its control thereof.

All three of these instruments relate to the interaction of the statutory organs, and none of them, nor any other, specifies the internal procedure whereby each organ formulates its successive contribution to this decision-making process.

25.2.2.1. The Secretariat

The Statute specifies that the Director General "shall initially prepare the budget estimates".¹³⁶ The Director General of course carries out this function largely through the Secretariat, though a number of formal and informal methods of consultation with certain outside sources have also evolved.

The formal process of formulating a budget normally starts in October, some 15 months before the beginning of the calendar fiscal year to which it is to apply. At that time the Director General's Roundtable Meeting (DGM – consisting of the Director General and his Deputies) decides, generally without the use of any staff papers, on general policy guidelines for the budget in question. These guidelines (which also constituted the substance of the preliminary submission of a budget outline to a Board Committee in accordance with the 1967 procure) are then translated into directives by the Budget Office of the Division of Budget and Finance and distributed by the DDG for Administration within the Secretariat; by the end of November the Budget Office also prepares a per-Division break-down of the budget and asks the head of each Division and Office to present, on prescribed forms, their financial wishes (consistent with the guidelines) for the year in question. By January preceding the year in question the completed forms are returned and are then consolidated and analysed by the Budget Office for use of a Committee (until 1965 the Technical Planning Committee (TPC) – since then the Preparatory Committee on the Programme and Budget (PCPB)) – consisting of all the DDGs and of the Director of the Division of Budget and Finance, whose Chief Budget Officer acts as Secretary.¹³⁷ This Committee, without taking votes but recording any strongly-held minority views, prepares recommendations to the Director General. These recommendations are in turn discussed in the DGM, in which the Director General, early in February, himself finally makes and announces his decisions (which do not necessarily follow even unanimous recommendations of the TPC-PCPB).

Aside from these internal preparations, a number of external consultations take place throughout this period, whose results are considered by the Director General and the competent Secretariat Committees. The tentatively introduced but potentially most significant of these was a meeting in December 1967 of a Committee of the Whole Board on the Tentative Programme and Budget Proposals, which considered a brief preliminary out-

line of the Secretariat's coming proposals, indicating tentative budget levels and listing the Programmes to be initiated, increased, decreased or discontinued. More traditionally, certain parts of the budget, usually in the form of their first outline, are submitted to SAC; these regularly include the Research Contracts Programme, the work of the Laboratories in Seibersdorf and Monaco, and the schedule of scientific meetings. In some years the Director General in addition convenes ad hoc groups of consultants to advise him on the development of particular areas of the Agency's programme. Finally during this entire process of incubation, the Permanent Missions in Vienna endeavour to receive information on the developing plans and to influence them by interventions at appropriate points and levels of the Secretariat – probably the most significant policy-oriented function of these representatives.¹³⁸

25.2.2.2. The Board

The Director General's draft of the budget document is submitted to the Board late in March. Though in the first years of the Agency's operation it was then preliminarily examined by the Board at a series of meetings in April, the Board now meets less frequently and the procedure has been simplified. The budget is now submitted directly to the 13-member Administrative and Budgetary Committee of the Board, which considers it at a series of meetings in May. These meetings, of which until 1967 no summary record was made, result in the preparation for the Board of a relatively short document containing the recommendations of the Committee (usually reached by consensus rather than by vote) and recording any strongly held minority views. The Committee's proposals usually relate to both the form (i.e., the presentation) of the budget document and to its substance (i.e., the amount of the budget and the desirability of particular projects).

The Board itself considers the budget at its series of meetings in June, on the basis of the Director General's draft, of the recommendations of its Committee, of special reports on certain existing and proposed projects, of a summary of SAC's recommendations to the Director General, and of a statement of the extent to which currently budgeted staff positions are filled or vacant. Two important procedural points relate to this consideration, both of which appear to have become firmly established during the formulation of the 1961 budget: First of all, the Board's official point of departure is considered to be the report of the A & B Committee – and thus any deviation from these recommendations requires a majority vote (e.g., if the Committee recommended a figure different from that in the Director General's draft, the restoration of the Director General's proposal requires the adoption of an amendment;¹³⁹ if the Committee made no recommendation with respect to a certain figure, then any departure from the Director General's original proposal requires an amendment); Secondly, amendments to the draft budget are not considered as requiring a two-thirds vote pursuant to Statute Article XIV.H or Procedural Rules 36(a) or (d). The Board, which must ultimately adopt the budget document as a whole (including the budget totals, the resolutions recommended for adoption by the General Conference and the expository passages), naturally takes decisions primarily on the

inclusion or exclusion of certain projects and on the various sub-totals; however, frequently enough it requires changes in the statement of various policies and in the general format of the document. At the end of its consideration the Board usually takes separate decisions on the resolutions to be recommended to the Conference on the Regular and on the Operational Budgets; these, if a formal vote is taken, require a two-thirds majority.¹⁴⁰ Finally the budget document as a whole is adopted (i.e., the instructions to the Director General on how to change his original draft are approved – since the final text incorporating all changes made necessary by the Board's various decisions is never available until some weeks after the Board has adjourned), but this is generally done without a formal vote.

The method and timing of the Board's consideration of the Director General's draft budget results in the importance of this document considerably transcending its ostensible statutory purpose as a mere administrative convenience. For several reasons it is not easy for the Board to alter significantly the Director General's proposals. In the first place, the relatively short interval between the publication of the budget and its final consideration by the Board (only a few weeks before the obligatory date for its submission to the General Conference),¹⁴¹ permits the making of certain reductions and deletions but practically precludes the addition of any substantial projects that the Director General had seen fit to exclude. In the second, the Director General's proposals are the formal point of departure – and any change therein must be approved either by a majority of the Administrative and Budgetary Committee or of the Board itself; though superficially it may seem that a simple majority should be easy to obtain to change a doubtful proposal, in practice the Board's reluctance to take decisions by vote (particularly close ones), coupled with the consideration that those disaffected with a specific proposal (if it is politically skilfully formulated) may be unable to agree to a remedy, gives any proposal by the Director General a considerable inherent advantage.

The reality that a formally impotent Secretariat should, in fact, predominate in the budget-making process over the theoretically dominant political organs is not, of course, a situation unique to the Agency. In fact, the complaint of these latter organs appears to be a general one, and led the UN's Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies to recommend that the executive heads of these organizations (including the Agency) transmit preliminary and approximate budget estimates to the political bodies responsible for their examination about a year before final action on the budget needs to be taken.¹⁴² In compliance with that recommendation the Board in June 1967 established a Committee of the Whole on the Tentative Programme and Budget Proposals, and charged it to meet in December 1967 or early 1968 to consider outlines of the programme for 1969 (the start of a programme-biennium, and in the event also of a six-year programming period) and subsequent years and of the budget for 1969.¹⁴³ This tentative essay in early Board involvement was not repeated in preparing the 1970 and 1971 budgets, perhaps because it was considered that the Board had had sufficient opportunity to influence them by preparing, two years earlier, the Programme for 1969-74.

25.2.2.3. The General Conference

Financial Regulation 3.03 requires that the budget estimates approved by the Board be transmitted to all Member States at least six weeks before the scheduled convening of the regular session of the General Conference. At the Conference, the budget is invariably assigned to the plenary Programme, Technical and Budget Committee.¹⁴⁴ The consideration of this item constitutes the principal assignment of that body. Though ultimately it must focus on the two draft resolutions submitted by the Board relating to the amounts of the Regular and the Operational Budgets (as well as a related one on the use of the Working Capital Fund), the start of the consideration is a general debate, sometimes initiated by the Chairman of the Board,¹⁴⁵ on the proposed Programme of the Agency, as expressed in the budget and the related documents. At this time usually a number of resolutions are proposed, some of which relate directly to the draft budget resolutions though most are independent and concern the Programme (and are generally so formulated as merely to urge the Director General or the Board to study, report on or initiate certain projects).

At the end of the Committee's debate the budget resolutions and any amendments proposed thereto are considered first. By and large few amendments to these resolutions are proposed, even fewer are pressed to a vote and almost none have been adopted – the reason for this caution being the concern lest any change in these resolutions require the Conference to return the entire budget to the Board with appropriate recommendations.¹⁴⁶ However, several times the budget resolutions have indeed been amended, though never by changing any of the specified amounts, but usually only by adding hortatory language addressed to the Director General or the Board to urge them to observe economy;¹⁴⁷ still, pursuant to Procedural Rule 69(a) and (d), a two-thirds vote has always been required on these amendments. The two budget resolutions are voted on separately, sometimes indeed in several parts, and each of them (and each part) requires a two-thirds vote (or the more frequent unanimous consent) of the Committee – which up to now has invariably been obtained.

The PTCB Committee then reports to the Plenary itself, where the proposed resolutions generally receive only cursory consideration and are then adopted – generally without a vote, though a two-thirds majority is required if one is taken. This concludes the process of formulating the Budget.

25.2.2.4. Potential difficulties

A consideration of the relevant statutory provisions (Articles V.E.5 and XIV. A and H) shows that the process of formulating the budget is subject to a number of potential snags and deadlocks; these possibilities are not negated (and by their nature can hardly be) by the Financial Regulations or by the Rules of Procedure of either the Board or the General Conference. That none of these potential obstacles have yet arisen is thus due not to strictly legal factors but principally to political ones, including both the ad hoc diplomatic efforts of the representatives to the Agency and the generally realistic composition of the Board which appropriately reflects both the concerns of the principal

contributors and of all the significant interest groups represented in the Conference.^{147A}

The first potential deadlock is merely that to which the Board is exposed due to the statutory two-thirds voting requirement "on the amount of the Agency's budget",¹⁴⁸ a majority short of that mark would be unable to adopt its own figures but might be unwilling to make the changes required by the minority. In the Conference itself, the similar two-thirds voting requirement on "financial questions"¹⁴⁹ may, however, lead to an additional perplexity: if the Conference is unable to approve (by a two-thirds majority) the budget recommended by the Board, it cannot defeat or change it but must "return it with recommendations as to its entirety or parts to the Board";¹⁵⁰ a minority able to defeat approval may be unable to muster a majority for making a recommendation to the Board, particularly if it should be decided that such a recommendation is itself a "financial question" requiring a two-thirds vote for passage.¹⁵¹ Finally, as in any bicameral legislative system, there is the possibility of a deadlock between the Conference and the Board, if the latter should refuse to accept the recommendations of the former for adapting the budget to the desires of the Conference.¹⁵²

In this connection, attention should be called to one potential procedural trap that the Agency has baited for itself quite unnecessarily, and into which it might once stumble unwittingly. Though the Agency's "two-budget" system has been described at length above,¹⁵³ that term is really a misnomer: it would be better to call it a "dual-budget" or a "bifurcated" budget, for according to the Statute the Agency has only one budget, which classifies expenditures into two categories.¹⁵⁴ Moreover, this budget must be approved as a whole by the General Conference, or it must return the entire budget to the Board, with recommendations relating to "its entirety or parts"; thus no partial adoption of the budget is permitted. However, the custom has developed for the Conference to take its action on the budget by means of two separate resolutions: one relating to the Regular Budget Appropriations and the other to the Operational Budget Allocations.¹⁵⁵ Though considered together by the Programme, Technical and Budget Committee, that body votes on the two draft resolutions separately,¹⁵⁶ and so does the Plenary.¹⁵⁷ It could thus happen that after the first resolution has passed by a two-thirds vote, the second fails (e.g., if there is opposition to the size of the target for voluntary contributions). At that point the Regular (part of the) Budget would appear to be adopted, and Financial Regulation 5.01 and 5.02 would appear to authorize the Director General to obligate these funds; but technically the "Budget" would not have been approved,¹⁵⁸ and the return of the perfected Regular Budget to the Board would require considerable legerdemain. All this could be avoided by combining the traditional two resolutions into a single one.

25.2.2.5. Submission to the United Nations

Though the steps described above complete the formulation of the Budget, Article XVI.3 of the UN Relationship Agreement¹⁵⁹ requires the Agency to transmit its annual budget "for such recommendation as the General Assembly may wish to make on the administrative aspects thereof". It will

be recalled that this provision, which grants the Assembly somewhat less power than it has with respect to the specialized agencies, constitutes a difficult compromise formulated in negotiating the Agreement.¹⁶⁰ However, once that instrument had entered into force, the Board was inclined to take a less jealous view of the Agency's prerogatives, and it therefore agreed that ACABQ be requested to undertake "a detailed examination of the Agency's administrative and budgetary practices".¹⁶¹ The UN Secretary-General agreed, and on the recommendation of the General Committee of the General Assembly the latter agreed that the Agency's budget for 1959 should be considered in the same way and under the same agenda item as those of the specialized agencies.¹⁶² This arrangement has proven satisfactory and has been continued since then without any further decision of the organs concerned. The smooth co-operation can no doubt in large part be attributed to the fact that the General Assembly (acting directly or through ACABQ) has up to now not seen fit to utilize even the greater powers granted to it vis-à-vis the specialized agencies, and thus there has been no occasion to assert the Agency's special status; in particular, the Assembly has not, in this area, passed any intrusive resolutions requiring (pursuant to Article V of the Relationship Agreement) consideration by the Agency's organs and a report of actions taken.¹⁶³

The only minor, practical complication has been the need, for scheduling reasons, of a slight juggling to permit ACABQ to receive information on the Agency's budget in time for its consideration of the financial plans of all UN organizations in September/October of each year; consequently a summary of the Budget is submitted to the Committee in August, before the General Conference has actually approved it. (For some years the Agency also submitted a budget summary, prepared in a slightly different way, to the UN Comptroller for inclusion in a presentation of the consolidated budgets of all UN organizations published annually for the information of the General Assembly.) Over the years, a smooth pattern of collaboration has evolved between the Agency and ACABQ. In its initial detailed examination of the Agency's budget (made in response to the Board's request), the Committee included several criticisms and recommendations, most of which the Agency later followed;¹⁶⁴ however, later reviews have contained little substantive comment. The Agency has also supplied information for several special surveys, such as those that ACABQ carries out for ECOSOC on the activities of the specialized agencies.

25.2.3. Form and legal status

Before analysing the legal status of the "Budget", it is necessary to consider a certain ambiguity, or rather multiplicity in the use of that term. The confusion starts with the statutory language: Article V.E.5 requires the Conference to approve the "budget"; Article XIV.A calls for approval of the "budget estimates". It has been further compounded through the practice of the Agency. The document that is actually submitted by the Board to the Conference for its approval was, until the Eighth General Conference, called the "Programme and Budget for 19.."; since then the style has been "The Agency's Budget for 19.." or "The Agency's Budget for 19.. and

Programme for 19.. - ..". The Conference, though it considers the entire document, "approves the budget" by taking direct decisions on only three of four draft resolutions that merely summarize the financial highlights of the document.

The budget document¹⁶⁵ contains, principally:

- (a) A narrative Introduction, commenting on the principal features and novelties of the budget proposals and on certain important administrative matters;
- (b) A central textual core, also entitled "The Budget", which presents, first in consolidated form and then broken down in greater and greater detail, comparative data relating to the actual operations (income and expenditures) of the last previous year, and the estimated operations for the following year (to which the budget in question is to apply). All this is supported by narrative passages (originally quite extensive, but in the 1969 Budget¹⁶⁶ reduced by the liberal use of cross-references to the "Programme"), explaining the proposed estimates and stating both the assumptions on which they are based and the policies which they are to implement (e.g., the programmes to be accomplished) or which are to be followed in executing the budget (e.g., the method of scheduling official travel). Until 1969 the structure of this portion followed primarily functional lines, i.e., the analysis did not show the cost of particular programmes¹⁶⁷ but rather "objects of expenditures", which are the headings into which the formal budget estimates were divided (e.g., "salaries and wages"; "duty travel of staff"). Starting with the 1970 Budget, the Board segregated all "safeguards" expenditures into a separate Appropriation Section and announced its intention of shifting to complete "programme budgeting", beginning with the 1971 Budget.¹⁶⁸
- (c) Next follow a number of tables which present the consolidated financial material for the current and the following year in several different ways.
- (d) Finally come the draft resolutions (which will be commented on further).

Until the introduction of biennial programming¹⁶⁹ (starting with the Programme for 1965-66), the Programme itself was part of this document, constituting a bulky section between the "Introduction" and the "Budget"; the form, contents, evolution and status of this document are described in Section 15.3.2.

The budget document itself always contains a sentence by which the Board recommends to the Conference the "adoption" of the "Budget",¹⁷⁰ or to "accept its budgetary proposals ... contained in [the] document",¹⁷¹ as long as the Programme was still included in the document, that recommendation related to the "Programme and Budget".

The Conference, through its Programme, Technical and Budget Committee, gives extensive consideration to the entire budget document; at the same time it also scrutinizes the Programme (if one was submitted that year), whether that is included in the same document or is presented separately. However, the two principal resolutions included by the Board in the draft document merely record that the Conference:

- (i) "Appropriates" a given amount for "administrative expenses", in accordance with a break-down into a dozen "Sections"; "decides" on the

- sources from which these appropriations are to be financed (always principally from contributions assessed on Members); and "authorizes" transfers between appropriate Sections under stated conditions;¹⁷²
- (ii) "Decides" on a target for voluntary contributions and "urges" Members to contribute; "allocates" a given sum (i.e., the targeted amount plus any additional expected income) between Operating Funds I and II; and "authorizes" the Director General to incur certain additional expenditures if specified types of income are received.¹⁷³

Neither of these resolutions explicitly specifies that the Budget (and/or the Programme) is "approved" – though of course the figures included in the resolutions are those detailed, analysed and justified in the budget document. The only suggestion of a blanket approval of the document arises from the use of the same preambular clause in both resolutions: "[The General Conference] Accepting the recommendations of the Board of Governors relating to the [Regular Budget of the Agency]/[Agency's operational programme] for 19.. [footnote]" – with the footnote referring to the budget document as a whole and not merely to the single recommendation by which the Board commends the Budget to the Conference.

There can be no doubt that it is the general impression and probably also the intention, that the Conference annually approves the entire budget document (including the "Programme" to the extent that is contained in it).¹⁷⁴ This indeed is a reasonable, but by no means the only possible implication from the practices described above. It may, however, also be argued that the "budget" referred to in the Statute and approved by the Conference consists merely of the summary figures included in the two budget resolutions.

Though this point has never been explicitly resolved (or possibly even considered), it is a matter of some importance. If the Conference adopts the entire budget document (either because it is an inseparable part of the "Budget" approved under Statute Article V.E.5, or because the Board gratuitously submitted it to the Conference for a decision pursuant to Article V.F.1), then presumably the Director General and the Board itself would be entirely bound by every programme and policy expressed in it, except to the extent that the document itself leaves open certain alternatives. In fact, while lip-service is always paid to the "Conference-approved budget", strict fidelity to it is not always feasible, and the Board has frequently directed, authorized or tolerated certain departures from it – thus implying that the textual parts are merely an explanatory gloss on the budget rather than constituting integral parts of that sacrosanct instrument itself.

Whether or not the two budget resolutions "enact" the entire budget document, the Budget that is adopted does have a certain legal status, the detailed implications of which will be analysed in some of the following Sections. With respect to the Regular Budget, the "appropriations" for "administrative expenses" constitute, according to Financial Regulation 5.01, authority for the Director General to incur obligations and make payments for the indicated purposes; at the same time, according to Regulation 6.01, they constitute the basis for assessing contributions on the membership. With respect to the Operational Budget, the amounts mentioned are merely "allocated", which according to Regulation 5.06 gives the Director General

authority to incur expenses "to the extent authorized by the Board ... (having) regard to the funds available ...".

25.2.4. Administration

Once the budget as a whole has been adopted and its execution must be undertaken, the differences between its two principal constituent parts again become apparent. While the distinctions are superficially merely procedural, they actually result from the basic difference in the sources of financing the two parts of the budget. The Regular Budget is financed from contributions assessed on all Members;¹⁷⁵ consequently little flexibility is allowed in the use of these funds: ordinarily they must be spent for the objects indicated in the approved budget and within or in relation to the budget year in question; funds not so spent must be returned to the Members; on the other hand the money is sure to flow in and can thus be obligated and even spent before all the contributions have been paid. The Operational Budget is financed primarily from unrestricted voluntary contributions;¹⁷⁶ there is no assurance that the targeted amount will be obtained and thus habitually only part of the budgeted projects can be implemented; however, there is no obligation to spend the funds within a given period, or to return any to the donors if not so spent. The procedures relating to the implementation of the two parts of the budget reflect these differences.

The implementation of the approved Programme through the execution of the Budget is largely the function of the Director General, the "chief administrative officer of the Agency". Subject to certain standing restrictions set out in the Financial Regulations and to a few ad hoc ones relating to particular budget items or projects, he has reasonably unfettered authority in this field - i.e., he can undertake most necessary transactions without further specific permission from the Board. However, as indicated below, the extent of this authority is different for the two parts of the Budget.

25.2.4.1. The Regular Budget

25.2.4.1.1. Timing of expenditures

As soon as the General Conference has adopted the Regular Budget resolution (approximately three months before the start of the fiscal year in question), the Director General is free to incur obligations with respect to that year - and this authority continues until the end of the fiscal year.¹⁷⁷ His authority to make payments starts with the beginning of the fiscal year and continues in full force until the end of that year; at that point his authority to make payments is curtailed to the discharge of "obligations in respect of goods supplied and services rendered in such fiscal year and to liquidate any other outstanding legal obligations of such year", but even this limited authority is available for only 12 months with respect to most obligations, and for 24 months with respect to research contracts.¹⁷⁸ For a number of early years the Director General's exercise of this authority to obligate funds during a fiscal year for payment during the following year was subject to severe criticism in the Board and the General Conference;

it was charged that too many obligations were incurred late in the fiscal year and liquidated after its expiration, and that the goods and services to which they related were often not available to the Agency until long after the fiscal year had terminated. (In effect the Secretariat was being criticized for hoarding funds received from Member States, and of implementing major parts of the programme on a crash basis late in the fiscal year, just before the power to obligate funds lapsed). This issue was largely resolved after ACABQ gave an interpretation of the Financial Regulations in question, which had been adapted from the corresponding rules of other UN organizations where similar problems had previously arisen; the Director General has endeavoured to stay within that interpretation, and the degree of his success in doing so is annually certified by the External Auditor who especially examines a statement of all year-end unliquidated obligations.¹⁷⁹

One major result of these restrictions is that the Agency considers itself unable to enter definitively into any long-term commitments to be financed from the Regular Budget.¹⁸⁰ However, the types of projects for which guaranteed long-term support is required should in any event usually be financed from the Operational Budget, which is not subject to this constraint (Section 25.2.4.2.3).

Since the assessed contributions from which Regular Budget expenditures are financed are not "due and payable" until the start of the fiscal year,¹⁸¹ and rarely flow in promptly then, the Agency's expenditures in the early months of a year may, in spite of the tendency to defer the initiation of programmes, exceed its income. Any temporary shortfall is, however, covered from the Working Capital Fund described in Section 25.4.

Any cash surplus remaining at the end of a fiscal year is, after adjustments are made for any savings achieved on the liquidation of obligations during the next 12-month period (such savings are customary, since for safety's sake the obligations tend to be overestimated), returned to the Member States in proportion to their assessed contributions for the year in question.¹⁸² Thus such savings may not be used to increase the Regular Budget in future years; this restriction flows both from the Financial Regulations (which could be changed by the Board alone) and from the wording of the annual budget resolution ("the General Conference ... appropriates ... \$... for the administrative expenses of the Agency in 19.."¹⁸³ - a formulation which could be changed by the Board and the Conference). However, even if the Regulations and future resolutions were changed, it would not be permissible (as some States have desired) to use any Regular Budget savings for technical assistance or other "operational" expenditures, since this would violate Statute Article XIV.B.¹⁸⁴ Though it would probably be permissible to credit the surplus to the Working Capital Fund, and thus to increase it gradually without further payments from Member States, the Board in 1960 rejected a proposal that the Director General made to that effect.

25.2.4.1.2. Transfers within the budget

Financial Regulation 3.05 requires the budget to be divided into "parts, sections, chapters and articles" (moving from the largest to the smallest classification). In practice only the first two types of headings are used.

There has never been any question of the Director General's authority to make transfers within a budgetary Section – in effect to disregard the explanatory estimates by which the total expenditures proposed for each Section are supported in the narrative portion of the budget.¹⁸⁵ Of course, to the extent that sub-divisions relate to particular programmes that he is directed (or strongly urged by the Board) to carry out, his actual freedom of action is considerably restricted.

Consequent on a request of the Board that followed a recommendation by the UN's Ad hoc Committee of Experts,¹⁸⁶ the Director General as of 1968 inserts into the annual statement of accounts for the prior year an analysis of "Budgetary Performance: 19 Regular Budget" in which over- and underexpenditures for every sub-item of each appropriation Section are stated and explained.¹⁸⁷

One particular example of the Director General's authority along this line is his power to effect transfers of posts within the Secretariat. Though the Section for "Salaries and Wages" is always supported by a table showing the proposed break-down of the Secretariat by grade, and by an even more detailed Manning Table showing the distribution of staff by grades and Divisions, it has always been understood that the Director General is free to change the strength of Divisions and Offices and to reclassify particular posts, so long as the total number of Professional posts filled does not exceed the total authorized for that category and the total authorized strength of all categories is not exceeded. For several years this understanding was explicitly stated in the Budget,¹⁸⁸ but in later years this statement was omitted on the ground that the Director General's authority derived directly from Statute Article VII.B, making him responsible for the "appointment, organization and functioning of the staff".¹⁸⁹ The External Auditor has approved this interpretation, though he suggested that any posts permanently transferred should be so reflected in the following budget instead of maintaining indefinitely a misleading status quo.¹⁹⁰

Transfers between Sections of the budget involve greater difficulties. The authority to make such transfers is stated each year in the Conference's Regular Budget Resolution, in approximately the following terms:

"The General Conference,

"Authorizes, the Director General, with the prior approval of the Board of Governors, to make transfers between any of the Sections listed in paragraph 1 [of this Resolution]."¹⁹¹

The requirement of Board approval merely restates a restriction more permanently anchored in Financial Regulation 5.05. Nevertheless, this limited grant has raised three questions: does it amount to an unstatutory delegation of the Conference's budgetary powers; the extent of this delegation; the possibility of granting the Director General a limited standing authority to make transfers.

The first two issues were largely fought and settled during the first three years of the Agency. The matter came to a head consequent on an objection by the External Auditors who remarked that although the General Conference annually authorized transfers "between sections of the Budget"

this did not clearly enough authorize transfers between parts (i.e., groups of sections) of the Budget.¹⁹² The Board thereupon concluded that it should amend Financial Regulation 5.05 to clarify this point (though for some reason it never did so) and also that it should improve the wording of the draft resolutions it would propose to the Conference by referring in them to transfers "between any sections ...".¹⁹³ When the first such draft was presented to the Conference,¹⁹⁴ objection was raised in both Main Committees of the Conference that this would amount to an undesirable and possibly improper delegation of the Conference's budgetary authority.¹⁹⁵ However, instead of proposing to delete this paragraph of the Resolution entirely (which would have been the logical consequence of assuming illegality), the opponents merely moved that the power to make transfers be explicitly restricted to "sections within one part"¹⁹⁶ – but even this modest amendment failed.¹⁹⁷ Since then, no serious challenge has been raised on this point, and starting with the 1963 Budget the "parts" classification has been entirely omitted from the Regular Budget resolution, thus mooted this issue, at least in its original form.

More troublesome has been the merely political question of the extent to which the Board should grant the Director General any standing authority to make transfers. In the initial years of the Agency, when operations were new, budgeting was tentative and large transfers were consequently required, the Director General was obliged to obtain ad hoc approval for each transfer. But, in reviewing the accounts for 1962, the External Auditor noted that the total volume of such inter-section transfers had steadily decreased from \$291 271 in 1958 to \$9500 in 1962; he also noted that the Board was no longer routinely meeting in December (at which time the possible need for any transfers with respect to the past year would be clearest) and therefore suggested that the Director General be granted standing authority to make transfers of up to a certain percentage of each sectional appropriation.¹⁹⁸ From then on the Director General, with the continuing support of the Auditor,¹⁹⁹ repeatedly requested such authority, subject to variously designed upper limits: \$5000 to or from any Section; \$5000 increase in any Section; a 2% change in any Section; or various combinations of these ceilings – any of which could conveniently be granted either by amending Financial Regulation 5.05 or by a standing resolution of the Board.¹⁹⁹ That body has, however, up to now not been willing to grant any continuing standing authority, but no longer insists on approving each transfer on an ad hoc basis; instead, the Board has in several years granted the Director General authority to make transfers of up to \$5000 in any Section during that year.²⁰⁰ However, this question is not yet resolved and attempts to formulate an acceptable standing, flexible authority are continuing.

25.2.4.1.3. Supplementary Budgets and contingent appropriations

The Statute does not indicate what is to happen if the approved budget estimates (appropriations) should prove to be insufficient for the year for which they were designed. However, Financial Regulation 3.04 authorizes the Board to submit to the General Conference "such supplementary estimates as it may deem necessary". The Board has found such necessity three times

during the first decade,²⁰¹ each time because of an increase in staff costs: twice because the Board felt compelled to follow salary increases granted by the UN General Assembly to Professional and high staff members²⁰² (and because local salary surveys indicated a need to increase General Service and Maintenance and Operative salaries²⁰³), and once because the "lapse and lag factor" (i.e., the planned vacancy rate due to deliberately slow recruitment) had been over-estimated in a year in which a number of minor increases in staff emoluments also decreased budgetary flexibility.

Procedurally, supplementary budget proposals follow much the same course as the regular estimates.²⁰⁴ The Director General prepares a draft document which is debated, changed and approved by the Board, usually after consideration in its Administrative and Budgetary Committee. It is then considered by the Conference, first in the PT&B Committee²⁰⁵ and then in Plenary.²⁰⁶ As usual, approval by a two-thirds vote is required both in the Board and in the Conference.

The substantial difference is one of timing. The Conference considers supplementary estimates towards the end of the fiscal year to which they pertain. This consideration usually takes place months after the Board has taken the decision making the increased appropriations necessary (e.g., if the UN General Assembly decides in December preceding the year in question to raise Professional salaries as of the beginning of that year, the Board, meeting the following February echoes that decision retroactive to the beginning of the year).²⁰⁷ Though it has frequently been argued that the Board has no right to authorize an increase in the rate of expenditures over that foreseen in the approved budget until the Conference has acted on the request for supplemental funds, this argument has in each case been rejected by the Board and the Conference. These rejections take account of the fact that each of the increases approved by the Board has been morally (and perhaps even legally) necessary because of the Agency's participation in the UN "common (staff) system"²⁰⁸ and the convening of a special session of the General Conference, while within the power of the Board,²⁰⁹ would in each case have been more expensive than the increase at issue.

What would happen if the Conference, meeting in September, should decline to approve a supplementary budget? Clearly, any expenditures in excess of the original budget could not then be assessed to the Member States or withdrawn from the Working Capital Fund. Therefore, unless some large scale donations were made and accepted for that purpose, it would be necessary to cut expenditures drastically during the balance of the year - a course of action which might be destructive of much of the programme and probably be highly wasteful, but which would not be illegal since the actual commitments made during the first 9 months of a fiscal year (even including the inflexible ones for the staff establishment) are never close to the total budgetary authorizations for the year. Presumably, however, if the needed supplement were so high that the excess expenditures incurred before the Conference's negative decision could not be saved during the balance of the year from funds not subject to obligations, a special session of the Conference would have to be convened early enough in the year to preclude the possibility of a legal impasse.

To avoid these several actual and potential difficulties (to which particular attention was called by the UN's Ad hoc Committee of Experts, which

objected to the habitual use of supplementary appropriations by many UN system organizations²¹⁰), the Board in 1967 proposed and the General Conference accepted an innovation in the budgetary procedure: in anticipation of an increase in Professional Post Adjustments during 1968, the Regular Budget Appropriation Resolution includes a \$130 000 contingency item which can only be used with the specific approval of the Board.²¹¹ Presumably this device can be used whenever there appears a reasonable possibility that a particular contingency should arise during a budgetary period. Though it might also be used routinely, the procedure would then be vulnerable to two objections: that it represents an unstatutory delegation of part of the Conference's budgetary power to the Board, or that it merely extends the powers of the Board vis-à-vis the Director General who would then be unable to implement the entire annual Programme as planned without having to justify to the Board the need for spending that fraction of the budget which is constrained by the contingency provision.

25.2.4.2. The Operational Budget

25.2.4.2.1. Authority to implement the Operational Programme

While Regular Budget appropriations constitute immediate authority and to an extent a duty for the Director General to obligate and later spend funds, the Operational Budget allocation is merely the Conference's approval, given pursuant to Statute Article XIV.F and in accordance with Article V.E.8, for the Board to use the General Fund for the indicated purposes. In principle, nothing can be undertaken by the Director General until: voluntary contributions are received by or at least pledged to the General Fund; and the Board has taken action to allocate the resources in that Fund.

Typically, the resources of the General Fund consist of some relatively minor amounts received as miscellaneous income,²¹² of a few somewhat larger contributions tied to particular purposes, and finally for the most part of funds pledged and contributed without restriction.²¹³ Unlike the Regular Budget, whose income (from assessed contributions) is adjusted to the estimated (i.e., desired) expenditures, the Operational Budget expenditures must be kept within the limits set by assets plus income; this is reflected both in the formulation and in the implementation of this Budget. At the former stage, the framers of the Budget (i.e., in succession the Director General, the Board and the General Conference) establish a target for voluntary contributions, add this to the estimates of miscellaneous income and tied contributions, and make tentative allocations of expenditures within the resulting limit.²¹⁴ At the implementation stage, however, the fiction of the target is replaced by the reality of actual pledges of contributions. On the basis of the pledges garnered before and after, but largely at the General Conference, the Director General by the beginning of the fiscal year can advise the Board of the amount of funds over which the latter can expect to dispose under the authority granted by the Conference.

In the early years of the Agency, when the pattern of contributions to the General Fund had not yet been set and the programmes for which funds were required were just being developed, the Board kept a tight rein on the

administration of the Operational Budget. In effect it required the Director General to report to it at almost each series of meetings on the inflow of income, and then passed on his recommendations for its expenditure. Later these examinations were reduced to two a year (in January for the first half and in June for the balance) and then to only one. The present procedure is that the Director General presents to the Board, for consideration at its February series of meetings, an estimate of the Operational Budget income for the current year (typically about 60-70% of the amount budgeted); at the same time he proposes an allocation along the following lines: the Agency's own activities (e.g., its Laboratory) are to receive substantially all the funds estimated to be required for their operation (the actual allocations for this purpose being reduced by any income these activities are expected to generate and by any contributions made directly for these activities); the remaining income (some 70% of the estimated total) is to be allocated to the other operational activities (principally technical assistance). Since the latter are originally generally budgeted to receive about 80% of the hoped for income, it is these projects which thus regularly take the brunt of the shortfall of voluntary contributions from the established target.²¹⁵ The Board's decision takes the form of an allocation of the expected resources, generally in accordance with the Director General's recommendation; this is usually coupled with an additional directive that any income realized in excess of the estimates should automatically be allocated to the operational activities whose original scope has been restricted, up to the original budgetary limits (which have never yet been reached). These allocations are then considered as constituting the authority required by the Director General, pursuant to Financial Regulation 5.06, to incur expenditures for operational purposes.

25.2.4.2.2. The General and the Operating Funds

The Operational Budget is administered through transactions within and between three separate "Funds":

The General Fund is provided for in Statute Article XIV.F (and in Financial Regulation 7.09). Its income comes largely from the deposit to it of all voluntary contributions (whether tied or untied) and from some miscellaneous sources (e.g., income from the investment of temporarily idle funds).²¹⁶ No direct expenditures are made from it, but its resources are periodically transferred to the two parts of the Operating Fund in accordance with the decision of the Board referred to in Section 25.2.4.2.1.

Operating Fund I is technically one part of the Operating Fund created by Financial Regulation 7.07. Because of the almost complete circularity of the relevant definitions (in Financial Regulations 3.06(b-d) and 3.07(b-c)) its distinction from Fund II can best be understood in practice: Operating Fund I was established to finance the Agency's own operational activities using its own facilities: i.e., at present the Seibersdorf Laboratory, the Monaco Laboratory and the Theoretical Physics Centre. Income (but not voluntary contributions) directly attributable to these activities is directly

credited to this Fund, but the bulk of its resources comes from the General Fund by means of the above-mentioned transfers.

Operating Fund II finances the balance of the Agency's operational programme – at present principally technical assistance in its various manifestations (including fellowships and training, regional projects and, for some years, certain research contracts). (It should, however, be noted that the technical assistance funds administered by the Agency for UNDP (TA or SF) or under funds-in-trust arrangements are not passed through this Fund;²¹⁷ nor are payments received and made in connection with "Agency projects", in which the Agency really acts only as a conduit for payments from the Receiving to the Supplying States²¹⁸). Operating Fund II is credited with minor items of "income" directly attributable to it (e.g., local project costs reimbursed to the Agency by States receiving technical assistance),²¹⁹ but the bulk of its resources comes from transfers from the General Fund.

25.2.4.2.3. Timing of expenditures

Formally, the Director General has no authority to expend or even to obligate funds for the Operational Programme of a given year until the Board has made its allocations at the end of February of that year. In practice, of course, this would be somewhat late to start the implementation of the annual Programme. Various devices have therefore been developed to bridge this gap. In Operating Fund I, there are usually sufficient funds left over from the previous year to permit continuity of operations until the Board has approved an infusion of new money. With respect to technical assistance the following informal practice has developed: the recommendations of the Board's Technical Assistance Committee to its parent organ, made after the Committee has considered in December the projects proposed for the coming year, serve not only as tentative authority for the Director General to start the implementation of the projects favourably reported, but also to undertake certain financial obligations to that end (e.g., to recruit experts).²²⁰

Coming now to the end of the fiscal year in question, it is important to note that the Regular Budget-type temporal limitations on the incurring of obligations and on the expenditure of funds do not apply here. Once a project has been approved and funds have been allocated ("earmarked") for it, obligations may be incurred against or expenditures made from these funds at any time. In Operational Fund I, this is subject to the somewhat indefinite limitation that the "rules governing the accounting procedures ... shall be based on sound commercial practices" – a somewhat vague standard which has not yet been put to a test.²²¹ With respect to Operating Fund II, the Board has given the Director General standing authority to "release, subject to prior consultation with the Government concerned, funds earmarked but not obligated for projects that had been approved for at least two years";²²² in the absence of such release the funds remain tied for the project indefinitely until it is fully implemented (at which time any savings are automatically released) – a state of affairs which has been criticised by the External Auditor.²²³

The more liberal temporal rules relating to the Operational Budget are due simply to the fact that there is no rigid obligation to identify the expenditures of a given year with its income, and to refund any savings to the contributors - nor is there a possibility of assessing additional contributions if a deficit should be incurred. Thus savings realized through the cancellation of particular projects or through their implementation at a cost lower than the funds earmarked, can automatically be re-allocated for other, approved projects to which allocations could not be made sooner for lack of funds.

25.2.4.2.4. The Reserve in the General Fund

A somewhat opaque interlude in the already complex financial operations of the Agency involved an abortive attempt to establish for the Operational Programme a special reserve, whose functions would be somewhat analogous to those of the Working Capital Fund in respect to the Regular Budget.²²⁴ The ostensible reasons for such a reserve were the need for temporary funds at the beginning of each fiscal year to finance the start of the Operational Programme before the first voluntary contributions are received, and possibly to finance any shortfalls in the income expected and required for that Programme; a third, though largely unstated function would have been to serve as a repository of windfall income (such as the US \$106 000 realized in 1959 from the resale to Japan of uranium donated by Canada to the Agency),²²⁵ to prevent its immediate consumption for the insatiable demands of technical assistance; finally, a still more covert reason was that in the late 1950s the General Fund was accumulating substantial quantities of "difficult" currencies - i.e., voluntarily contributed, unconvertible funds tied to expenditures in the non-too-well stocked markets of the donors.²²⁶

At the recommendation of the Board in connection with the 1960 Budget²²⁷ the Third General Conference "Recognize[d] that it is essential to accumulate a reserve in the General Fund" and authorized the use of that (still uncreated fund) in 1960 for the first two of the above-mentioned purposes.²²⁸ With this support the Board thereupon adopted in January 1960 a new Financial Regulation 6.13 which foresaw the transfer, by the Board with the approval of the General Conference, of balances remaining in the General Fund at the end of a fiscal period, into a special reserve that might then be used for either of the purposes referred to by the General Conference.

All the preparations for the establishment of the reserve having thus been made, in the event no funds were ever transferred into it. Instead, for some years, all Agency organs apparently considered the year-end balances in the General Fund to constitute such a reserve, and by carefully not taking these balances into account when allocating operational funds, they were for a few years preserved largely intact.²²⁹

This anomalous condition persisted until 1962. During 1961 the Board had already raided the "reserve" for a small amount, to enable it to meet some extra construction costs of the Laboratory without cutting technical assistance allocations; however, the objection had been raised that if these funds were actually in the reserve in which everyone considered them to be, then they could not be used even by the Board without the approval of

the General Conference (as required by the new Financial Regulation 6.13). After a year of pondering this point, the Board decided to take a technical, legal view of the matter: this meant that as no funds had ever formally been transferred to the "reserve", the restrictions applicable to it were irrelevant, and the Board could therefore freely dispose of the "Balance in the General Fund" (subject to the usual Conference directives on the use of that Fund). To avoid misunderstandings, the Board informed the Conference of this conclusion (without, however, requesting ratification), and subsequently included recommendations in connection with the budget estimates for the next several years for the gradual consumption of the balance for the Operational Programme.²³⁰ It justified this retreat from its 1959 recommendation by pointing out that the original reasons for wishing to establish the reserve were no longer valid: temporary start-of-year deficiencies could always be covered from unobligated and unspent funds from the previous years, while the total annual short-falls in voluntary contributions were always too large to be covered from any reserve that could be accumulated. Two other reasons were again not mentioned: the fact that the Agency did not receive any further significant "windfalls" of unrestricted income; and the more agreeable circumstance that the "difficult" currencies, whose nominal total value had in the beginning been roughly equivalent to the total amount of the "reserve", had in the meantime slowly been used up.

25.2.5. The budgetary period

Article XIV.A of the Statute requires the preparation of "annual budget estimates". This is consistent with the general statutory pattern foreseeing annual sessions of the General Conference (e.g., Articles V.A and VI.C)²³¹ and in particular with certain provisions relating to the assessment of contributions in Articles XVIII.E and XIX.A.

Over the years, several proposals have been made for the Agency to adopt a biennial pattern of budgeting. The reasons advanced in favour of this change fall into two categories:

- (a) Improvement of the budgetary process: It has been suggested that the highly technical and relatively massive projects in the nuclear energy field cannot be planned intelligently and effectively on an annual basis; almost any significant undertaking must have an assured operating period of more than a year. This is illustrated by the Research Contracts Programme, where it has been found desirable to support almost every project for three years (and where the period for liquidating obligations for the standard one-year contracts had to be extended to 24 months after the fiscal year in which they were concluded).²³² In addition to achieving greater flexibility and stability from a two-year budget, such a period would permit closer administrative co-ordination with the two-year UNDP/TA budgetary cycle.²³³
- (b) Possibility of biennial General Conferences: For the reasons discussed in Section 7.3.2.1, a number of Members favour the convening of the General Conference only every second year – which would automatically result in biennial budgeting. As it is realized that such a change would require numerous and currently unattainable amendments to the Statute,

the alternative has been suggested of de-emphasizing every second Conference: in effect arranging that it should eschew all debate and merely ratify the formal decisions considered at the previous full Conference – in the financial field this would require passage of the appropriation resolutions.

Those who oppose a shift to biennial budgeting in general discount the arguments listed under (a), but they do so fundamentally because they prefer the pattern of annual Conferences and fear to weaken its *raison d'être* by confining the budget debate, which now provides the principal business for each Conference, to meetings taking place in alternate years.

One step towards biennial budgeting was taken in 1964, when the Board abandoned the direct linkage of the annual Programme to the annual Budget, and instead presented to the Conference a Programme for 1965-66 and a Budget for 1965 (including preliminary financial estimates on implementing the balance of the Programme during 1966). This pattern of biennial programming is now well established, and constitutes an essential module of the new 6-year programming cycle.²³⁴

At the Ninth General Conference proposals for a study of biennial budgeting were considered;²³⁵ without taking any decision (even to request a study), the Conference referred the record of its discussion to the Board.²³⁶ The latter discussed this matter and decided that while no substantial change could be made without amending the Statute, a limited degree of biennial budgeting might be achieved and should tentatively be introduced in connection with the 1967-1968 Programme; this was done by showing in the introductory table for the 1967 Budget "Tentative estimates for 1968" – but these were not explained or justified in the textual material following in relation to the 1967 figures.²³⁷

In the wake of the 1966 recommendation of the UN Ad hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies, that legislative bodies now meeting annually "should consider the possibility of biennial sessions",²³⁸ a proposal for major and minor sessions of the General Conference was introduced in the Board. In the budgetary field it would require only some additional steps in the direction already taken: in connection with the biennial Programme, the Board would present to the Conference in the second year of each biennium complete budgets for both of the following years, which the Conference would consider as usual – though it would only approve that for the first year; the next year the Board would merely up-date its estimates for the second year, and the Conference would pass the previously considered budget resolutions without new debate and without any Committee consideration. For the present, however, this proposal has not been accepted.²³⁹

25.3. ASSESSMENT OF CONTRIBUTIONS

The principal source of income for the Agency, and almost the exclusive source of money for the Regular Budget, are the contributions annually assessed by the Agency on its Members.

25.3.1. Scale of assessments

25.3.1.1. Rules

25.3.1.1.1. The Statute

The US Sketch of the Statute did not propose a mechanism for establishing a scale of contributions but merely suggested that agreement thereon might be reached by utilizing the general principles governing the scale of contributions of the United Nations.²⁴⁰ Interestingly, both the Negotiating Group and the Working Level Meeting drafts omitted this feature and merely provided that the General Conference should fix the scale of contributions – no guidelines of any type being stated. This hiatus was, however, considered undesirable by many representatives at the Conference on the Statute,²⁴¹ and a series of proposals for filling this gap were therefore advanced,²⁴² culminating in a formula which was proposed at the beginning of the debate on Article XIV²⁴³ and which was later adopted by a vote of 72:0:1. Consequently (as amended by the addition of its second sentence) Statute Article XIV.D now reads:

"The Board of Governors shall apportion the expenses referred to in sub-paragraph B-1 above, among members in accordance with a scale to be fixed by the General Conference. In fixing the scale the General Conference shall be guided by the principles adopted by the United Nations in assessing contributions of Member States to the regular budget of the United Nations."²⁴⁴

In expressing its reluctant support for the proposed amendment, the United States indicated its understanding that this formula did not (unlike the amendments first formulated) rigidly bind the General Conference to follow the UN scale, but was "sufficiently flexible ... to permit the General Conference ... to take into consideration the problems, conditions and needs of the Agency and of its members ...".²⁴⁵

25.3.1.1.2. Guiding Principles adopted by the General Conference

Under its charge to make recommendations to the First General Conference on subjects requiring immediate attention, including "the financing of the Agency", the Preparatory Commission submitted a report to the Conference on the Scale of Contributions of Members, in which it included both recommendations general in scope and such as related particularly to the scale for the initial year.²⁴⁶ The principal general proposition was that Article XIV.D should be implemented by making a mere mathematical adaptation of the UN scale to adjust for the difference in the membership of the two organizations, subject to the limitations that the rates of contribution of the largest contributor (i.e., the United States) and of all those States bearing the smallest assessment (0.04%) should be the same as in the UN scale, and that the per capita contribution of no State should exceed that of the largest contributor.²⁴⁷ The Conference accepted these general propositions with

reference to the Provisional Scale for 1958, but did not establish any general principles.²⁴⁸

At the Second General Conference, the Sub-Committee on the Scale of Member's Contributions, established by the Programme, Technical and Budget Committee, presented to the parent Committee a draft resolution entitled "Recommendation on Future Scales of Assessment",²⁴⁹ which the Conference itself subsequently adopted on the recommendation of the Committee²⁵⁰ (though only after it had fixed the final scale for 1958 and a provisional one for 1959).²⁵¹ This Resolution called for the discontinuance of the practice, followed for both the years 1958 and 1959, of establishing a provisional scale of contributions at the Conference before the fiscal year in question, and then adopting an adjusted final scale (taking into account the most recent UN scale and the increased membership of the Agency) at the next Conference;²⁵² instead, the scale for each year adopted by the Conference before the beginning of that year "should be based on the scale adopted by the United Nations for the preceding calendar year and should be final and not subject to any retroactive adjustment". Aside from this principle, the Resolution contained no formula for converting the UN scale for use by the Agency (though the implicit assumption evidently was that the formula proposed by the Preparatory Commission and used by the First Special and by the Second Conferences should continue to be used), nor did it request the Board or the Director General to propose any such formula.

At the Third General Conference a similar sequence of events resulted in the formulation by the Sub-Committee on Contributions of a draft resolution (again not based on any draft submitted by the Director General nor proposed formally by any representative),²⁵³ which was subsequently adopted by the Conference²⁵⁴ on the recommendation of its PT&B Committee.²⁵⁵ This resolution, entitled "Guiding Principles for the Assessment of Members' Contributions" incorporated the previous year's resolution and in addition set out certain (but by no means all) elements of the formula by which the UN scale was to be adapted by the Agency for its purposes; in particular it specified the method by which the contribution of the State bearing the highest rate of assessment should be established and periodically modified (especially as new States become contributing Members of the Agency) – and for this purpose relied on a 1957 Resolution of the UN General Assembly.²⁵⁶

Subsequent to its third regular session, the General Conference has not adopted any further general rules relating to the scale of assessments.

25.3.1.1.3. Method of establishing the scale

On the basis of the Conference-approved Guiding Principles, the following calculations are made to establish each year the scale of assessment of contributions to the Regular Budget:²⁵⁷

- (a) Each Member of the Agency assessed at the minimum rate (0.04%) by the United Nations is automatically assessed 0.04% by the Agency.
- (b) The assessment of the "Member bearing the highest rate of assessment" (i.e., the United States) is then determined. In the year following the

year in which the UN General Assembly adopts a new scale of assessments the American rate in the Agency is set at the same percentage; in the next two years this rate is reduced by subtracting from it a proportional part of the rate assessed to new Members of the Agency – in such a way that the percentage contribution of no other Member is increased by reason of these reductions.²⁵⁸

- (c) The rate of contributions of the Members not covered by (a) or (b) is then established by multiplying for each State its UN rate by a uniform coefficient determined by dividing the balance of the UN scale (i.e., 100% less the UN percentages of the group (a) and (b) States established for the previous year) by the balance of the IAEA scale (100% less the IAEA percentages of the group (a) and (b) States). Although the Agency has fewer Members than the United Nations, some Members of the former that are not also in the latter are relatively heavy contributors (particularly West Germany and Switzerland) and thus this coefficient has invariably been less than 1.000 – ranging from 0.972 for the proposed provisional 1959 scale to 0.900 for the 1968 scale. The cut-off date for including new Members in the scale is 31 August of the year preceding the one to which the scale is to apply – i.e., just about three weeks before the Conference is convened.
- (d) Finally a check is made on the group (c) States to see whether the per capita contribution of any of them exceeds that of the group (b) State; if it does so for any State, the latter's rate is reduced to achieve per capita equivalence with the United States, and the procedure described in paragraph (c) is repeated by computing a new coefficient for the remaining States. In practice this per capita limitation has been applied only once (to Switzerland in the provisional scale for 1958 – but by the time the final scale was computed, enough new States had joined so that the normal group (c) coefficient reduced Switzerland below the per capita limitation).²⁵⁹

25.3.2. Procedure for establishing the scale

The only organ to which the Statute assigns any function in establishing the scale of assessments is the General Conference.²⁶⁰ Indeed, this is one of the few functions that the Conference exercises entirely independently of the Board of Governors.

By the Guiding Principles, the General Conference has assigned to the Director General the task of preparing a draft scale, which he customarily does soon after the 31 August cut-off date (after which new Members are no longer taken into account in establishing next year's scale). He submits this scale to the Conference, together with his computations.²⁶¹

As has been pointed out, the Statute assigns no function whatsoever to the Board in this field. However, before presenting to the Second Conference his proposals regarding the final scale for 1958 and the provisional scale for 1959,²⁶² the Director General submitted these to the Board for comment. The Board thereupon proceeded to an inconclusive debate, having been warned by its Chairman that it had no function to perform except to advise the Director General at the latter's request. In later years, no attempt was made to consult with the Board.

In the Conference, the Director General's proposed scale is always referred to the Programme, Technical and Budget Committee. During the first special and the second and third regular sessions, that Committee established a sub-committee to which it referred both the current scales and the question of formulating any useful general principles.²⁶³ This procedure was not followed in later years, since the calculation of the scale has become so routine that the Director General's draft is usually accepted without any debate. It should be noted that the sub-committees convened in 1958, 1959 and 1960 in no way resembled the UN General Assembly's Committee on Contributions:²⁶⁴ the sub-committees were not composed of individually selected experts but of delegations and their task was not to make an independent evaluation of the financial ability of the Member States, but merely to decide how the UN's scale should be adapted to the needs of the Agency.

After the PTB Committee has formulated its recommendation (whether or not on the basis of a sub-committee report),²⁶⁵ the scale is finally adopted by the Plenary.²⁶⁶ Both the latter body as well as the Committee and any sub-committee are required to take their decisions on the scale by a two-thirds vote, as these are "financial questions" within the meaning of Statute Article XIV.H.

25.3.3. Problems in establishing the scale

25.3.3.1. General problems

25.3.3.1.1. New Members

The scale of assessment for a given year is always adopted by the General Conference in September/October of the previous year, taking into account the membership as of 31 August. Thus any State becoming a Member between 1 January and 31 August of year A would be omitted from the scale of that year; if membership starts between 1 September to 31 December of year A, the State is excluded from the scales of both years A and A+1.

The Statute gives no direct guidance, except that the exemption of a State from assessment for an entire year following the commencement of its membership would plainly be contrary to the intent of the first sentence of Article XIV.D. However, this question is covered by Financial Regulation 6.08 and by Procedural Rule 97 of the Conference, both of which provide that a new Member shall make a contribution to the budget of the Agency for the year in which it becomes a Member; Rule 97 specifies that the amount of such contribution is to be determined by the Conference "at the session during which the State's application for membership is approved". This latter proviso was evidently adopted in imitation of the practice of the United Nations, where the admission of a State by the General Assembly is immediately effective²⁶⁷ and can therefore be coupled with a decision as to the contribution it is to make as of that date. In the Agency, however, Conference approval does not result in immediate membership, for the State must first deposit an instrument of acceptance - which in practice rarely happens before the passage of several months, and sometimes even years;²⁶⁸

in addition, no account is taken of the fact that a new Member may well be an "initial member" that had merely delayed depositing its instrument of ratification.²⁶⁹

In practice the Conference has disregarded the precise wording of its own Procedural Rule and instead has, in each year since 1960, added a paragraph to its resolution on the scale of Members' contributions for the following year, as follows:

"... any State that becomes a Member of the Agency during the remainder of [the current year] or in [the next year] shall be assessed as appropriate ... for contributions to the Agency's Regular Budget for those years, by applying to its United Nations percentage the appropriate coefficient used to determine the scales of assessment of Members' contributions for [the current year and the next one]".²⁷⁰

This provision is actually somewhat imprecise, for it appears to call for the application of the coefficient even in relation to the States paying the minimum 0.04% contribution in the United Nations - which is neither intended nor in practice done.²⁷¹

Because of the uncertainty about when a new membership will actually become effective, the Conference has thus never made an attempt to apportion the rate of assessment for the initial year of membership in accordance with the date of such membership. A State joining on 31 December will be charged as much as if it had joined the previous 1 January. The contributions of new Members thus serve to increase the assessment income of the Agency above the budgeted total in at least one fiscal year, and often in two. This tends to result in slight surpluses, which are disposed of as explained in Section 25.3.4.3.

25.3.3.1.2. The initial years

The previous Section indicates the solutions adopted for the assessment of States that join the Agency after the scale for the year in question is approved. However, in the initial years of the Agency, and in particular at the time of the First Regular and Special General Conferences, the membership of the Agency was increasing so fast that a different approach was adopted.

Thus in 1957 the Conference merely adopted a "provisional" scale for 1958,²⁷² which it replaced by a "final" scale at the Second Conference in 1958;²⁷³ at that time it adopted a provisional scale for 1959,²⁷⁴ which it replaced at the Third Conference by a "revised" scale.²⁷⁵ The changes between the provisional and the final/revised scales were primarily meant to take account of the States that had joined (mainly by ratification) between 1 September of the year in which the provisional scale was set and 31 August of the year to which the scale applied. However, an additional change was introduced gratuitously: although the provisional scale for a given year was based on the previous year's UN scale (i.e., the scale in effect at the time the provisional scale was adopted), the final scale was adapted to the UN scale for the current year.²⁷⁶

Though these adjustments did not require an upward revision of the rate for any Member (which would have required a retroactive increase in assessments), the adoption of the final 1958 scale led to so many other difficulties that the Conference decided to discontinue in the following year (by which time the membership was expected to have stabilized) the practice of adopting provisional scales.²⁷⁷ This was indeed done, and since 1959 the scale of assessments for the following fiscal year is determined only once and definitively on the basis of the UN's scale for the previous year (i.e., the UN scale is the one that applies in the United Nations to the year in which the Conference's decision is made and previous to the year to which it is to apply in the Agency).

25.3.3.1.3. Lack of a definitive UN scale

Because of the Charter Article 19 dispute, the 19th UN General Assembly did not adopt in 1964 a scale of assessments for the years 1965-1967. This placed the Agency into something of a quandary, since in September 1965 the General Conference was scheduled to adopt the 1966 scale for the Agency on the basis of the 1965 UN scale.²⁷⁸ Several alternatives presented themselves: to adopt a 1966 Agency scale based on the approved 1964 UN scale, or to base it on the unapproved 1965 scale which the UN Committee on Contributions had recommended to the General Assembly;²⁷⁹ in either case such a scale might either be considered final (in accordance with the principle adopted in 1958 and reaffirmed in 1959) or be revised once the Assembly had acted on the 1965 scale.

The Conference decided to rely tentatively on the recommendations of the Committee on Contributions for 1965, but at the same time the Director General was requested to bring to the attention of the Conference during its 1966 session any changes that the General Assembly might make later²⁸⁰ – in which event the possibility of revising the 1966 scale would have been considered. Since the Assembly at its 20th session in 1965 retroactively approved the recommendations of its Committee on Contributions, the necessity of revising the Agency's scale did not arise.

25.3.3.2. Problems relating to particular States

25.3.3.2.1. United States

The years during which the Statute was being formulated coincided with those in which the United States made a major and ultimately partially successful effort to reduce the rate of its assessment in the United Nations. A parallel effort was made in the Agency – first to secure a more favourable initial position and, when that was unsuccessful, to make sure that the gradual reductions to be achieved in the United Nations would at least be appropriately reflected in the Agency. Several separate encounters can be identified – and while the particular arguments used in each of them are no longer of major interest, the method of resolving them deserves to be recalled.

A preliminary skirmish was fought at the Conference on the Statute, where the United States was notably unenthusiastic about explicitly tying

the Agency's scale firmly to that of the United Nations – and finally succeeded in weakening the new provision in Article XIV.D to require merely that the Conference "be guided by the principles" relating to the UN scale.²⁸¹

The first real battle on this issue is not reflected on the records of the Agency at all – having been fought in behind-the-scenes consultations in the Preparatory Commission. Finally, so as not to violate the unwritten unanimity rule of the Commission, the United States yielded,²⁸² and the Commission recommended that the Agency adopt the same maximum rate for the "largest contributor" as the United Nations (i.e., at that time 33.33% for the US)²⁸³ rather than applying the same adjusting coefficient (see Section 25.3.1.1.3(c)) to all States – as the Executive Secretary had proposed and the United States desired.²⁸⁴

At the First Special Session of the Conference, the provisional 1958 rate for the United States was therefore fixed at 33.33%. Moreover, the American representative agreed that this rate need not be adjusted in fixing the final scale, even though the rates for most other Members would be reduced as more States joined before the Second Conference.²⁸⁵

At the Second General Conference, the inclusion of the 33.33% rate in the final 1958 scale was consequently not at issue. However, the Director General revived the proposal of the Commission's Executive Secretary by recommending that in calculating the provisional scale for 1959, the same coefficient be applied to the UN rate of the United States as would be applied to those of the other States (thus reducing the US assessment from 32.51% to 31.60%).²⁸⁶ The strong, negative reactions to this suggestion led the American representative to agree reluctantly, in the Sub-Committee on Contributions, that not only would the United States accept the undiminished UN rate for the provisional 1959 scale, but that this rate could also be maintained for the final scale.²⁸⁷

The final battle was joined at the Third General Conference, to which the Director General had offered a recommendation favourable to the United States with respect to the 1960 scale: i.e., that it should be permitted to benefit proportionally from the contributions of the three new Members that had joined between the Second and the Third Conferences, insofar as the contribution of no other Member would be increased thereby in comparison with the provisional scale for 1959 (which would have reduced the 1960 US rate from 32.51% to 32.27%) – for otherwise the United States would be penalized even in 1960 for the gratuitous concession it had made with respect to the final 1959 scale.²⁸⁸ This position was vigorously attacked by the Soviet Union, which claimed that the comparison should be with the lower final scale for 1959.²⁸⁹ Although the Sub-Committee on Contributions accepted the Director General's recommendation by 9:2:1,²⁹⁰ the United States was once more prevailed upon to concede the point and in the Programme, Technical and Budget Committee it announced that it would accept for 1960 the same rate as it had at the previous Conference accepted for 1959.²⁹¹

Henceforth, without the complicating factor of the provisional scales, no further question about the American assessment has arisen.

25.3.3.2.2. China

In the Sub-Committee on Contributions and Initial Financing established at the First Special Session of the General Conference, the Republic of China

proposed that, without actually changing the rate that had been set for it (4.95%, based on the UN scale – which of course assumed dominion over the mainland and not only over Taiwan), the 1958 Chinese contribution be set at \$30 000 (approximately 0.73%), as a "temporary and extraordinary measure".²⁹² The Secretariat strongly opposed this move²⁹³ and the Sub-Committee voted it down.²⁹⁴ China repeated its request in the Programme, Technical and Budget Committee, this time suggesting a special rate of 1.00%;²⁹⁵ however the Committee was not willing to make this concession.²⁹⁶

No similar request was advanced at any subsequent Conference.

25.3.3.2.3. United Arab Republic

Early in 1958, Egypt and Syria united to form the United Arab Republic.²⁹⁷ Even though only Egypt had been a Member of the Agency (and thus included in the provisional 1958 scale), the Director General recommended that the final scale for 1958 take account of the combined Egyptian and Syrian UN rates.²⁹⁸ This was accepted without debate, and with no objection from the UAR.

The Syrian Arab Republic left the Union in 1961, just during the Fifth General Conference. No attempt was made to change the scale that the Secretariat had calculated for 1962 (on the basis of the 31 August cut-off with respect to membership changes). As a result, the diminished United Arab Republic was required to pay at the combined rate not only for the balance of 1961 (a result which could have been derived from Statute Article XVIII.E) but also for all of 1962; however it requested no relief. The 1963 rate was of course reduced to correspond to the lower rate which the United Nations had set for the UAR for 1962. Subsequently, during 1963, Syria joined the Agency as an "initial member" and consequently was assessed for all of that year.

25.3.3.2.4. Soviet Union

At the Sixth General Conference the Soviet Union introduced into the Agency, for the first time, its quarrel with the UN scale of contributions. In the Programme, Technical and Budget Committee it asserted that, since the rate of its contribution had been unfairly set by the General Assembly, the Agency should not use a scale based on that of the United Nations.²⁹⁹ The Committee rejected this challenge by 40:6:2;³⁰⁰ the Plenary confirmed this decision 45:6:0.³⁰¹

25.3.3.2.5. Czechoslovakia and Hungary

In December 1963 the UN General Assembly approved, with retroactive effect, reduced rates of contribution for the Czechoslovak Socialist Republic and for Hungary, for the years 1962 and 1963³⁰² – the years on which the Agency's scales for 1963 and 1964 had been based. The two Governments concerned thereupon proposed to the Eighth General Conference, which met in September 1964, that a corresponding change be made by the Agency in the assessments for 1963 and 1964.³⁰³ However, in order not to require a recalculation of all assessed contributions for those two years, they pro-

posed (after consultations with the Secretariat) that instead an amount equal to the total reductions due for those two years be credited to the two States from the current (1964) budget.

In the Programme, Technical and Budget Committee, which first considered this proposal, a heated debate developed.³⁰⁴ Those supporting the adjustment argued that the Agency was obliged to follow the UN scale - even if that required retroactive adjustment of the Agency's scale. The opponents cited the financial difficulties of the Agency, the undesirability of making such a complex adjustment, the danger of creating unfavourable precedents, and finally the two Resolutions that the Conference had passed in 1958 and 1959 to the effect that after 1960 the Conference would each year adopt a final scale "not subject to any retroactive adjustment".³⁰⁵ The Committee rejected (20:20:7) a compromise proposal that would have granted a conditional adjustment (if a sufficient surplus was available) for 1964 only and agreed to the request of the two Governments by 22:9:14.³⁰⁶ The Plenary affirmed, 39:0:18.³⁰⁷

25.3.4. Assessment procedures

25.3.4.1. General

Once the General Conference has adopted the resolutions approving the Regular Budget appropriations for the following year and fixing the scale of assessments for that year, the process of assessment can begin. In spite of the first sentence of Statute Article XIV.D, this entirely ministerial task is performed wholly by the Director General and not by the Board, whose sole function in this regard has consisted in the adoption of Financial Regulations 6.01-6.03.

The process of calculating the assessments is a relatively simple one. The basic assessment for each Member is calculated by multiplying that part of the Regular Budget that is to be financed from assessed contributions³⁰⁸ (i.e., all except the very small portion to be financed from miscellaneous sources) by the contribution rate determined for that State. Certain adjustments are then made to this figure in accordance with Financial Regulation 6.02; in particular, account is taken: of credits or debits resulting from the application of the new scale of contributions to the Working Capital Fund;³⁰⁹ of credits resulting from the refund of cash surpluses from previous years;³¹⁰ and of any debits due to assessments for supplementary appropriations.³¹¹ Since the Agency has only a nominal staff assessment system, no credits result from the distribution of staff assessment "income".³¹²

Each Government is informed of the amount of its adjusted assessment (and of any arrears), before the beginning of December of the year to which the assessment pertains. Pursuant to Financial Regulation 6.04, this amount is thereupon due and payable as of 1 January of the year in question.

When payments are made by a State, these are automatically credited in an order determined by Financial Regulation 6.06 - regardless of any specification by the State. First any obligation due the Working Capital Fund is satisfied, and then any arrears of previous years' contributions, in chronological order. This obligatory system is important in implementing Article XIX.A of the Statute, as described in Section 25.3.5.3.

25.3.4.2. Currency of contributions

Financial Regulation 6.05 provides that assessments shall ordinarily be paid in US dollars unless the Director General, in consultation with the Board, decides to accept certain other currencies.

At its first series of meetings, the Board initially decided to require that all advances to the Working Capital Fund and two-thirds of the contribution to the first year's budget be paid in dollars, but allowed up to one-third of the first year's contributions to be paid in Austrian Schillings. Later, when Canada and the United States undertook to pay their contributions entirely in dollars, the optional Schilling limit for other States was raised to and has remained at one-half.

25.3.4.3. Distribution of surpluses

A surplus may result in the Administrative Fund (through which the Regular Budget is administered) for any or all of the following reasons: expenditures lower than budgeted and especially the failure to use contingent appropriations; miscellaneous income higher than budgeted; and the contributions of new Members not taken into account at the time the scale of contributions was determined (i.e., those States that joined the Agency at any time between 1 September of the previous year to 31 December of the year in question, and thus were assessed for the budget of that year without being included in the scale).³¹³

At the end of each fiscal year a provisional cash surplus is determined, which takes into account any outstanding obligations for the year in question, but not any income due (such as assessed but unpaid contributions).³¹⁴ A year later this provisional surplus is adjusted by crediting it with: any unspent part of the funds that had been set aside a year earlier to liquidate ordinary (i.e., other than research contract) obligations for the year prior to the year in question; and any arrears for any prior year's assessed contributions paid during the past year. After the annual audit, this adjusted cash surplus is then allocated among the Member States in accordance with the scale of contributions that had related to the year in question.³¹⁵ Those States that had paid their contributions in full for that year are credited with their allocation (which in effect reduces the payments currently due from them), while the amounts due to delinquent States are set aside until they pay their arrearages for the year in question.³¹⁶

25.3.4.4. Assessments for supplementary appropriations

Whenever the Board proposes and the General Conference approves a supplementary appropriation (in September of the year to which the appropriation pertains),³¹⁷ it is necessary that an additional source of income be specified - which generally requires an additional assessment of the membership.

The first time such a supplementary appropriation was required (in 1962), the Board proposed and the Conference agreed that the resulting supplementary assessment should be allocated not in accordance with the scale for the current year (to which the appropriation pertained), but in

accordance with the scale the Conference was about to adopt for the following year (1963).³¹⁸ In this the Agency felt it was following the example of other organizations in the UN family.

The next time this necessity arose (in 1965), a different plan was adopted. The Director General was instructed to withdraw the funds from the Working Capital Fund, and the Board was charged with providing for the replenishment of that Fund in the Budget for the next following year (1967).³¹⁹ In fact, the additional appropriation was not used, so that the 1967 budget was not burdened - which would otherwise have resulted in the distribution of 1965 expenses in accordance with the scale for 1967.

A year later, still another formula was adopted. The Director General was charged with withdrawing supplementary funds needed in 1966 from the Working Capital Fund and to replenish it by charging Member States in 1968, but according to the scale of contributions for 1966 (the year in which the funds were spent).³²⁰ It would appear that this third approach is the most logical one, since it assigns the supplementary burden for a given year in the same way in which it would have been divided had the original estimates been more correct.

25.3.4.5. Obligation of Ex-members

Statute Article XVIII.E provides that the "withdrawal of a member from the Agency shall not affect . . . its budgetary obligations for the year in which it withdraws". In spite of this apparently restrictive language, it is evident that all outstanding obligations for contributions assessed for previous years are equally unaffected and thus remain due and payable.

When Honduras withdrew from the Agency in 1967, largely for financial reasons,³²¹ it entered into negotiations with the Secretariat for the gradual amortization, by payment, of its outstanding obligations for assessed contributions dating back to 1962.

25.3.5. Penalty for non-payment

25.3.5.1. Statutory provisions

The first sentence of Article XX of the Negotiating Group draft of the Statute read as follows:

"A Member of the Agency which is in arrears for more than two years in its financial contributions to the Agency may be suspended from the exercise of the privileges and rights of membership by the Board of Governors. "

The Working Level Meeting decided to change this provision to bring it into conformity with Article 19 of the UN Charter. The draft it adopted is identical with Article XIX.A of the final Statute. At the Conference on the Statute only Israel commented on this provision: it pointed out that since the draft provision referred to "vote in the Agency" (unlike UN Charter Article 19, which only refers to "vote in the General Assembly"), the loss of voting rights would also apply in the Board and in subsidiary organs;

secondly it suggested that the suspension of the franchise would not be automatic, but would require a positive vote of the General Conference.³²² No other delegation commented as to these interpretations.

25.3.5.2. The Financial Regulations

The Financial Regulations contain no provision referring directly to Statute Article XIX. A, and no indication is given of the mechanism through which it is to be enforced. However, three of the Regulations are directly relevant:

- (a) Regulation 6.04 specifies that properly notified assessed contributions are due on 1 January of the year to which they relate, and if unpaid by 1 January of the following year they shall be considered one year in arrears. This has been interpreted to mean, as has the similar UN Regulation, that the contributions due for the current year are not considered to be in arrears – which in effect adds another year of grace before the statutory penalty is applied. Nevertheless, when the Board was considering the general revision of the Regulations,³²³ it was this provision which came under heavy attack by States wishing to establish a still more liberal definition of arrearage.
- (b) Regulation 6.06 specifies the order in which payments received from Member States are credited – thus precluding any manipulations that might obscure whether or not they are in arrears for the preceding two years.
- (c) Regulation 6.07 requires the Director General to submit to the Conference, through the Board, a report on the collection of contributions. Though the date of this report is not specified, it has traditionally been submitted on the first day of each regular session, showing the situation as of the close of the previous day.³²⁴ Thus this report, which incidentally is not actually cleared with the Board, serves as a convenient vehicle for informing the Conference of any States that are subject to the Article XIX. A penalty. Since the Rules of Procedure of the Conference do not contain any provision assigning responsibility for this determination to any particular body (as Procedural Rule 161 of the UN General Assembly names the Committee on Contributions for this purpose), this report by the Director General is the only notification submitted to the Conference on this point.

25.3.5.3. Deprivation of franchise in the General Conference

Some time before each regular session of the General Conference, the Director General informs all States that are so far in arrears in the payment of their contribution as to make them subject to the Article XIX. A penalty, calling this to their attention.³²⁵ This is done without consultation of the Board, though that organ is kept reasonably up to date on the payment of contributions through the Director General's periodic reports.³²⁶

On the opening day of the Conference the Director General submits to it the report required by Financial Regulation 6.07 (see Section 25.3.5.2(c)). In that document he explicitly indicates which States are subject to loss of franchise (showing the computations involved) and calls attention to Article XIX. A.³²⁷ No other statement is normally made to or in the Conference on this matter.

Meanwhile the Secretariat informs the representatives of the delinquent States of the loss of their voting rights. They are informed that they should not attempt to vote, either in the Plenary or in any Committee, and that if they should do so, their votes will not be counted. The appropriate Secretariat officials are instructed not to count their votes on shows of hands and not to distribute any ballot papers to them (for elections), and the Secretary omits them from roll-call votes. No delegation has ever challenged this procedure, and none has attempted to break the voting ban — though some have participated in the Conference otherwise.³²⁸

Delegations of delinquent Members are also informed of the minimum payments they must make to regain their franchise. Such payments have sometimes been made during the Conference — and thereupon the voting rights have been restored by the Secretariat, without any announcement to the Conference.

The procedure of restoring a State's right to vote through a decision of the Conference has been used only once. At the fourth regular session, the first at which any State could be far enough in arrears to incur the Article XIX. A penalty, Venezuela moved in the Plenary that Cuba's right to vote be restored; no reason was given, and no attempt was made to prove that the failure to pay was beyond Cuba's control.³²⁹ Instead a vote was immediately taken (Cuba not participating), and the proposal was passed 27:0:27.³³⁰

The proposition that the loss of franchise in the Conference is automatic has never been challenged. The fact that the Conference agreed to restore Cuba's right to vote at its fourth session, without having previously taken any action to deprive it of the vote, indicates that the principle of automaticity is accepted by that organ.

25.3.5.4. Deprivation of franchise in other organs

As Israel had pointed out at the Conference on the Statute, Article XIX. A refers to "vote in the Agency", and this appears to cover all organs.³³¹ This point has never been fully clarified.

The only organ, other than the General Conference, in which this might routinely become an issue is the Board. However, in that body the question did not arise for many years, originally because its members were less likely to be financially delinquent and more recently because of the extreme infrequency of formal votes. Finally, in June 1963 one member of the Board that was clearly delinquent participated in several votes, as the Secretariat had been negligent in issuing a caution to the Chairman of the Board and to the delegation concerned; no other delegation appears to have noticed this irregularity. Though the question was not raised formally, the Secretariat thereupon decided (without publicity) that the proper attitude to take was that

while the loss of vote is automatic, the penalty should not be applied to a member of the Board until after the General Conference had met and failed to restore the member's right to vote; the rationale for this approach was that otherwise the delicate voting balance in the Board would be upset and could not be restored without convening a special session of the Conference to consider whether to implement the dispensation foreseen by the final sentence of Article XIX. A.

No question about the Article XIX. A penalty has arisen in any other "organ" of the Agency, principally because in none of them do "Members of the Agency" (as distinguished from nationally nominated experts, etc.) have a right to vote. At the Vienna Conference on Civil Liability no delegation was deprived of its vote (though several were delinquent in the Agency) - but the Conference cannot properly be considered to have been an organ of the Agency.³³²

25.4. THE WORKING CAPITAL FUND

25.4.1. Establishment

The Working Capital Fund is (unlike the General Fund) not provided for in the Statute. Its establishment was proposed by the Preparatory Commission, which relied on this point on the experience of other organizations.³³³ The resolution prepared by the Commission was amended slightly by the Board³³⁴ and then passed by the General Conference at its First Special Session,³³⁵ at the same time the Board adopted the Commission's draft of the Financial Regulations, which also foresaw the establishment and operation of such a Fund.³³⁶

Formally, the Working Capital Fund was established by the Resolution passed by the General Conference at its First Special Session. That Resolution also fixed its initial size, provided for the method of receiving resources for it and defined the purposes for which it might be used until the end of 1958.

A supplementary, or perhaps alternative, legal basis for the Fund is Financial Regulation 7.03, which calls for the establishment of the Fund "in an amount and for purposes to be determined from time to time by the Board of Governors, with the approval of the General Conference". Regulations 6.03 - 6.08 specify how the Fund is to be financed, and Regulations 6.01 and 7.04 - 7.06 indicate how it shall be used.

Since the Financial Regulations and the original "establishment" Resolution of the General Conference respectively require that the Conference approve or annually define the purposes for which the Fund may be used, the resolutions by which the Conference does so constitute an important part of the legal structure of the Fund. These annual authorizing resolutions are drafted by the Director General as part of the budget estimates, and are proposed by the Board to the Conference in the package of fiscal resolutions the first two of which relate to the Regular Budget appropriations and the Operational Budget allocations.³³⁷ This annual "Use of the Working Capital Fund in 19. ." resolution³³⁸ has over the years become almost standar-

dized, and could probably be replaced by a standing provision if the requirement in the original "establishment" Resolution calling for annual Conference action were changed.

25.4.2. Legal status

The exact legal status of the Fund presents several puzzles, which will probably not be solved except in the unlikely event of an issue arising which requires such resolution.

The first question is whether the Fund was established by the Conference through its Resolution, or by the Board through the adoption of the Financial Regulations two days later. This question is not entirely academic, since (even though both instruments originated in the Preparatory Commission, and both passed through the Board) the powers and functions of the Conference are significantly larger (and those of the Board correspondingly smaller) in the Resolution adopted by the Conference.

The second question relates to the source of the Conference's power, if it indeed was the establishing authority. Since the principal purpose of the Fund is to facilitate the financing of Regular Budget expenses before the contributions assessed pursuant to Statute Article XIV. D are received, one might seek to derive the Conference's authority from its solitary functions under that Article.³³⁹ On the other hand, the operations of the Fund are closely related to the administration of the budget, and thus the Conference's authority might be found in the functions it shares with the Board under Statute Articles V. E. 5 and XIV. A; this is rendered especially plausible by the fact that both the "establishment" (and the annual "use") Resolutions were and are proposed by the Board in connection with the approval of the budget. Finally, it might be argued that the Conference was here taking a decision on a matter specifically referred to it by the Board pursuant to Statute Article V. F. 1.³⁴⁰

The third question is whether the Conference has any independent power of disposition over the Fund — as suggested by its own Resolution but denied by Financial Regulation 7.03. But even if the Conference does not have such power, it might be asked whether it is obliged to pass the annual "use" resolution as an inseparable part of the "budget", or whether it could change or defeat the draft proposed by the Board without having to return the entire budget to the Board pursuant to Statute Articles V. E. 5 and XIV. A.³⁴¹

25.4.3. Size and source of financing

The size of the Working Capital Fund was fixed at \$2000 000 in the Conference's "establishment" Resolution. Since then the Conference has annually, in its "use" resolutions, reaffirmed that amount.

The \$2000 000 figure had been recommended by the Preparatory Commission, as equalling approximately half of the initial Administrative (Regular) Budget — the 50% ratio being based on the experience of other organizations.³⁴² Following the logic of this recommendation, the Director General in the early years several times recommended that the Fund be increased proportionally as the Regular Budget grew. He made two types of

suggestions: that the 50% ratio be consciously maintained through periodic increases in the Fund financed by assessing Member States for additional advances; or that the Fund be regularly credited with any annual cash surplus in the Administrative Budget (instead of refunding this to Member States) and thus be permitted to increase slowly and irregularly, but automatically. Neither of these proposals found favour with the Board, which felt that no increase in absolute size was necessary since the speed of payments of assessed contributions by Member States had improved sufficiently so that the temporary financing function of the Fund has become less significant.³⁴³

The Fund is financed by assessments levied on all Member States. These levies are, however, referred to as "advances" and not as "contributions", and are carried as credits for the Member concerned (to which it is entitled if it should leave the Agency). These assessments are based on the same scale of contributions fixed by the General Conference to cover Regular Budget expenditures.³⁴⁴ As the scale is revised annually, the Members' obligations to the Fund are changed correspondingly — and States are either credited if a reduction in the rate makes their previous payments now appear excessive (this is the usual situation, as most rates are reduced due to the increase in membership), or debited if their rates should have increased. The advances to the Fund constitute the first charges on the payments made by any State to the Agency, and thus this one-time obligation to the Fund is always automatically satisfied before any credits are entered for annual contributions.³⁴⁵

Since generally no part of the Fund is spent (as noted below, usually only temporary advances may be made from it), provision for replenishing it needs to be made only most infrequently. As a matter of fact, the only occasion up to now has been when the Tenth Conference authorized the Director General to invade the Fund to cover underbudgeted staff expenditures in 1966, and to replenish it from advances assessed during 1968.³⁴⁶

Though the primary purpose of the Fund is to serve as a temporary source of financing approved "administrative" expenditures before the corresponding contributions are received, in the very beginning, as the Fund was being established, it itself needed temporary financing. The Conference consequently authorized the Board to obtain special advances from States "Members of the Agency and/or the United Nations", to enable the Fund to fulfill its initial functions even before it received a sufficient portion of the regular, assessed advances.³⁴⁷

25.4.4. Uses

25.4.4.1. Authorized and actual

The primary purpose of the Working Capital Fund is to provide each year a source of temporary financing for Regular Budget expenditures before sufficient assessed contributions are collected (the assessments first becoming due on 1 January of the fiscal year in which the expenditures must be incurred).³⁴⁸ This purpose was stated for the initial period by the "establishment" Resolution and is set forth in Financial Regulation 6.01, which in turn is annually incorporated by reference into the "use" reso-

lutions.³⁴⁹ This function has always been the primary one of the Fund, but is never reflected in the annual accounts, since by the end of each fiscal year enough assessed contributions have been received to enable a repayment of any moneys drawn from the Fund earlier in the year.

A somewhat related function is the occasional use of the Fund to finance supplementary appropriations until Member States can be assessed for them. In such event the authority to use the Fund for this purpose generally does not come from the annual "use" resolution but from the resolution approving the supplementary budget.³⁵⁰ In 1961, however, the "use" resolution served as the vehicle for a tentative appropriation (of unspecified amount) designed to enable the Board to meet during 1962: possibly higher staff costs if it should be required to conform to raises that the UN General Assembly was expected to approve; and the expenses of a possibly longer General Conference session if it should decide to review the Statute.³⁵¹

An initial function of the Fund, specified in the "establishment" Resolution, was to enable the Agency to repay to the United Nations the funds the latter had advanced to the Preparatory Commission.³⁵²

In 1958 the General Conference retroactively amended the "use" part of the "establishment" Resolution, to permit the Fund to be used during 1958 "to make advances not to exceed US \$25 000. . . to provide temporary financing for projects or activities of a strictly self-liquidating character";³⁵³ this authority has since been repeated in every "use" resolution.³⁵⁴ It has been exercised to make advances to the Commissary and the Restaurant to permit them to acquire their initial furnishings (to be amortized from operating income);³⁵⁵ a short-term advance was also made in connection with the Agency's assumption of the Hofzeile housing project for rental to its staff members.³⁵⁶

Since the Fourth General Conference, it has annually authorized the Director General (acting, if possible, with the prior approval of the Board) to use up to \$50 000 from the Fund for each instance in which the Agency incurs costs in organizing or rendering emergency assistance to a Member State in connection with a radiation accident.³⁵⁷ Fortunately, there has not yet been occasion to exercise this authority.

25.4.4.2. Proposed

In 1957 the Acting Director General suggested that the Working Capital Fund might also be used to finance temporarily the Operational Budget of the Agency, until voluntary contributions pledged for this purpose were actually received. Though the Director General later supported this proposal in a study prepared at the request of the Board, the latter disagreed and the idea died. Later, but only abortively, a "Reserve in the General Fund" was established for this purpose by Financial Regulation 6.13.³⁵⁸

In 1960 the Director General proposed that his authority to make advances to self-liquidating projects be raised from \$25 000 to \$100 000, to enable him to establish a low interest loan fund for the use of staff members wishing to purchase houses or apartments. On the recommendation of its Administrative and Budgetary Committee, the Board vetoed this proposal.

In 1961, when it appeared that the United States might abolish its tax exemption applicable to overseas citizens,³⁵⁹ the Board's Administrative and Budgetary Committee proposed that any resulting sudden increase in the Agency's tax reimbursement liability be temporarily financed from the Working Capital Fund. The Board considered the contingency too speculative and controversial and declined to refer this proposal to the Conference.

25.5. VOLUNTARY CONTRIBUTIONS

25.5.1. Legal instruments

25.5.1.1. The Statute

The Negotiating Group did not include any provision regarding voluntary contributions in its draft of the Statute. On the proposal of the Soviet Union, the Working Level Meeting added a noncommittal reference to such donations in the new draft Article XIV. F.³⁶⁰ Sensing the potential operational importance of this financial device, the Conference on the Statute fleshed out this initial reference with several other provisions in Articles V. E. 8, XIV. E and G.³⁶¹

In spite of these multiple provisions in the Statute, that instrument hardly gives any sense of the role that voluntary contributions might, and at present actually do, play in the operations of the Agency. Two of the provisions merely assign to the General Conference power to establish rules regulating the acceptance of voluntary contributions by the Board -- a somewhat negative indication of the potential importance of this type of financing. Only one expected use of such donations is specified: possible reductions in the scale of charges that the Board must impose to balance out the Agency's operational income against the related expenditures.³⁶² However, no obstacle is placed to the use of these contributions for other purposes: the acquisition or establishment of facilities by the Agency by this means was clearly foreseen in the debate at the Conference on the Statute; the financing of technical assistance is also not mentioned explicitly, but has in fact become the principal use of these contributions; finally, nothing seems to preclude the use of these contributions to finance "administrative" expenditures³⁶³ (and thus reduce the need for assessed contributions), though such use was not explicitly contemplated and has in fact never taken place.

25.5.1.2. Rules on voluntary contributions

Statute Articles V. E. 8 and XIV. G require the General Conference to approve rules governing the acceptance by the Board of voluntary contributions made to the Agency.³⁶⁴

At its first special session, the Conference requested the Board to submit to it next year recommendations concerning such rules.³⁶⁵ After attempting to formulate such recommendations during its first year, the Board reported to the Conference that the "complexity" (i. e., the politically controversial nature) of the problem precluded a timely resolution.³⁶⁶ The

Conference at its second session thereupon repeated its request.³⁶⁷ The second Board thereupon immediately established an ad hoc committee to which it referred both the rules on voluntary contributions of money to the General Fund (to which the Conference request related) and those on the contributions in kind of services, equipment and facilities;³⁶⁸ the assumption behind this dual assignment was that the term "voluntary contributions", as used in the Statute, referred only to money donated under Statute Article XIV. F and not to the contributions in kind that might be made by Members pursuant to Articles X and XIII – but that the essential problems relating to both types of contributions were similar. Acting in the first place on the basis of texts prepared by the Director General, the Ad hoc Committee on Rules Regarding the Acceptance of Voluntary Contributions to the General Fund and the Acceptance of Services, Equipment and Facilities presented two separate drafts to the Board, which amended them slightly (to bring them into closer conformity). The Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities, as to which no provisions or formal requirements were established by the Statute, were then adopted by the Board with immediate effect;³⁶⁹ those Regarding the Acceptance of Voluntary Contributions of Money to the Agency could merely be recommended to the General Conference.³⁷⁰ After consideration by its Administrative and Legal Committee,³⁷¹ the Conference approved the latter draft in the form submitted by the Board.³⁷² No changes have been made in either set of Rules since their adoption.

The principal political issues in formulating both sets of Rules were:

- (a) Limitations on the types of donors: should the Agency accept gifts from any State, whether or not a Member, and from any organization or person, regardless of possible political embarrassment?³⁷³ If any restrictions were to be applied, should these be absolute or subject to the discretion of some organ?
- (b) Acceptability of restricted contributions; should the Agency accept gifts in money or kind to be used only for a particular purpose (the fulfilment of which might tend to distort the Agency's programme from that preferred by the responsible political organs) or gifts of unconvertible currencies (which might increase the apparent resources of the Agency without actually enabling it to fulfil any of its established programmes)?

The resolution of these controversies followed closely similar lines in both sets of Rules:

- (A) In each set, the potential donors are classified into four categories; Members; other States members of the United Nations or of any specialized agency;³⁷⁴ organizations with which a relationship agreement has been concluded;³⁷⁵ non-governmental sources (e. g. , NGOs, private persons). Subject to the restrictions referred to below, the Director General is authorized to accept any types of gifts from donors in the first three categories, and to accept up to US \$1000 per year cash (but no services, equipment or facilities) from any donor in the fourth category;³⁷⁶ the Board itself may accept donations of any sort

from any of the four listed types of sources. However, not even the Board may accept gifts from any sources not so listed (e. g. , a State not a member of any UN-related organization, such as the People's Republic of China); of course, the Board itself could suspend or cancel this self-adopted restriction with respect to gifts in kind, but as to gifts of money only the General Conference can lift the ban.

(B) With respect to the several restrictions that donors might place on their gifts, various compromise solutions were adopted:

- (1) No absolute ban was placed on the acceptance by the Director General of unconvertible currencies, but the pious hope was expressed that donations of money will be in "currency readily usable by the Agency consistent with the need for efficiency and economy of its operations" or be readily exchangeable; the Director General is charged with reporting to the Board on the deleterious effects of any restrictions;³⁷⁷
- (2) The Director General may not, but the Board may accept any contribution of money offered with a limitation as to its use;³⁷⁸
- (3) The Director General may only accept such gifts in kind as "can readily be incorporated into a project, programme or activity which he has already been given authority to execute"; the Board may accept any other gift in kind.³⁷⁹

Under both sets of Rules it is clear that the Director General is never required to accept a gift; he may always refer it to the Board. That organ, in turn is empowered to exercise its discretion "bearing in mind the provisions of the Statute and the interests of the Agency".³⁸⁰

25.5.2. Solicitation

Though the Agency relies to some extent on the receipt of all kinds of gifts from different types of donors, the only general, systematic solicitation it engages in is for contributions of money from its Members to be used to support the Operational Programme (principally technical assistance).³⁸¹ This solicitation involves several steps.

First comes the annual establishment of a target. This is done by the General Conference (in its resolution relating to the Operational Budget), on the recommendation of the Board. At the first special session it was set at \$250 000; at subsequent sessions it was raised to \$1 500 000, to \$1 800 000 and since fiscal year 1962 the target has been \$2 000 000.³⁸²

Related to the establishment of a target is the request that Members make contributions to meet it. A request to that effect is routinely included in the Conference's Operational Budget resolution;³⁸³ in addition, the Director General follows up by addressing periodic reminders to each Member. To increase the traditionally insipid response to this perennial appeal, the UN General Assembly in 1960 invited the economically developed States "to increase their voluntary contributions to the Operational Fund of the Agency".³⁸⁴ Consequent on this rare Assembly Resolution addressed specifically to the concerns of the Agency, the General Conference in 1961 requested the developed Members:

"to make voluntary contributions . . . in amounts that are at least the same percentages of the target for each year as are their assessed contributions to the Regular Budget;"

Other States, unable to comply with this suggested scale, were requested to make at least token contributions.³⁸⁵

Finally steps are taken to solicit pledges. At the first special session of the Conference, no particular provision was made for this purpose. At the second regular session a "Special Committee on Pledges of Voluntary Contributions to the General Fund" was established,³⁸⁶ which, acting as a pledging conference, met once during the Conference session and then reported to the Plenary;³⁸⁷ of course States unprepared to pledge at that time were invited to do so later, directly to the Director General.³⁸⁸ At the third regular session this procedure was regularized by the appointment of a plenary "Committee for Pledges of Voluntary Contributions to the General Fund", which functioned in the same way as the previous "Special Committee" and was automatically re-established each year until the Seventh Conference. Before the eighth session the Board proposed a different approach,³⁹⁰ which the Conference subsequently followed: before the Conference was convened, the Director General informed each Member of the target being proposed by the Board to the Conference, and requested that pledges be communicated directly to him; these were then reported to the Conference in a document,³⁹¹ though opportunity was also given for States to announce or explain their pledges in the Plenary.³⁹² This procedure, which enabled the Conference to eliminate one of its plenary committees, has been followed ever since.

Regardless of the target set, the percentage response has been in the order of only 60-80% each year — requiring a corresponding reduction in each year's Operational Programme (and a greater than proportional reduction in the elastic technical assistance component thereof).³⁹³ The response has tended to improve somewhat lately, as more and more States comply with the Conference's request to pledge proportionally at least as much as they are required to contribute to the Regular Budget.

25.5.3. Receipt

The voluntary contributions received in response to the annual appeal for funds to benefit the Operational Programme generally do not cause any problems under the relevant Rules. Since they are offered by Member States, in the form of cash, and generally free of limitations, the Director General can and does accept them without referring them to the Board. However, since the Rules were only approved by the Conference in 1959, but according to Statute Article XIV. G constitute a prerequisite before any contributions could be accepted, special solutions had to be found for the first two years: at its first special session the Conference gave the Board blanket authority to accept contributions "made in accordance with the Statute";³⁹⁴ the Second Conference gave the Board ad hoc authority to accept contributions in accordance with the Rules the Board was to draft, but before they had been approved by the Conference.³⁹⁵

Each year the major pledge has been made by the United States; however, instead of merely announcing a particular figure, the American Government has always chosen to offer to match by a certain percentage (ranging from 100% from 1958 through 1963, and then being reduced gradually to just below 50% by 1968 - to increase again in 1970),³⁹⁶ subject to various minima and maxima. In the early years, the United States agreed to match in effect any cash contributions, restricted or bound,³⁹⁷ later it required that these be made without restriction as to use, and be paid within a certain time limit lest the matching US grant be forfeited.³⁹⁸ While the formulation of these successive offers has occasionally required interpretation, such questions basically do not relate to the law of the Agency but rather to that of the United States, since it has never been suggested that a voluntary offer by a Member State creates an international legal obligation (indeed, from time to time, various States have entirely failed to honour their pledges).³⁹⁹ However, it should be noted that the particular form of an American offer sometimes had ancillary effects, in that other States wishing to contribute to the Agency might formulate their offers in such a manner as to qualify it for a matching US contribution.⁴⁰⁰

In the event and in spite of their controversial origins, the two sets of Rules relating to contributions have relatively rarely led to difficulties or controversies. In part this is due to certain flexibilities in their implementation. Thus if an offer of equipment is received from a non-governmental source, a Member Government may be found to sponsor it and thus enable the Director General to accept it without reference to the Board; an offer of money restricted as to use can sometimes be transformed into an offer of equipment or facilities for an established project, thus again avoiding a reference to the Board; in some cases a limitation on the use of funds can be interpreted as merely a permissible though undesirable limitation as to convertibility and transferability. On the other hand, this very flexibility has occasionally led to differentiations difficult to justify: thus a 1959 offer by the Soviet Union of 500 000 (old) rubles "to purchase materials and equipment in the Soviet Union" was accepted as a restricted contribution of money (which at that time the United States matched), while a 1961 offer of 40 000 (new) rubles "to be spent on fellowships [in the Soviet Union]" was only accepted as a gift in kind (not matched by the United States). Finally, over the years certain States have received standing authorizations from the Board to make tied contributions to particular projects of interest to them: thus Monaco contributes annually to the Marine Laboratory established by the Agency in that country,⁴⁰¹ and Italy contributes to the Trieste Centre;⁴⁰² it should be noted that even though an obligation to make such payments is sometimes expressed in an agreement, the contribution is still considered "voluntary" within the meaning of the Statute.⁴⁰³

It should finally be noted that while voluntary contributions of cash, whether tied or free, are included in the financial statements of the Agency, voluntary contributions in kind are not so accounted for. However, since 1963, the annual report on the previous year's Accounts contains a separate schedule listing all the "Resources Available to the Agency" during the past year, including an estimated value of gifts in kind.⁴⁰⁴

25.6. LOANS

25.6.1. Legal provisions

The Negotiating Group draft of the Statute would have authorized the Board, with the (apparently ad hoc) approval of the General Conference, to incur indebtedness "for the purpose of securing ... plants, facilities and equipment",⁴⁰⁵ After substantial opposition to this provision was expressed, it was modified by the Working Level Meeting so as merely to authorize the Board to borrow funds subject to rules and limitations approved by the General Conference.⁴⁰⁶ The Conference on the Statute, at which the entire borrowing power was again strongly attacked, finally modified it only by adding a "limited liability" clause shielding the Members,⁴⁰⁷ it also added the Annex relating to the Preparatory Commission and its power to incur debts.

The Statute has the following provisions relating to loans:

- (a) Articles V. E. 8 and XIV. G both provide that the Board's power to incur debts on behalf of the Agency may only be exercised subject to rules and limitations approved by the General Conference – but without requiring its ad hoc approval.
- (b) Article XIV. G also provides that the exercise of the Agency's borrowing power may not impose on the Members "any liability in respect of loans entered into" – i. e., the Agency's "corporate veil" may not be pierced to reach the membership directly.
- (c) Neither of these provisions, nor any other in the Statute, specifies the purpose for which loans might be incurred; however the debates at the Conference on the Statute made it clear that the original purpose stated in the Negotiating Group draft was still the dominant one: i. e., the acquisition by the Agency of facilities, whose cost would later be amortized from the income earned by the Agency from charges imposed for their use – thus enabling the loan to be paid off gradually.
- (d) Paragraph B of Annex I authorized the Preparatory Commission to meet its expenses by borrowing money from the United Nations, and if necessary from Governments.

Neither the Board nor the General Conference have yet undertaken the consideration of any rules relating to the borrowing power of the Agency. Such loans as were incurred up to now were subject to special authorization granted by the Conference to the Board.

25.6.2. Loans incurred

Pursuant to the authority granted to it by the Annex to the Statute, the Preparatory Commission initially applied to the United Nations for a loan of \$200 000 to be made from the latter's Working Capital Fund – and this was granted under the authority available to the Secretary-General.⁴⁰⁸ Later further requests were made and granted until the total indebtedness of the Commission reached \$624 000 – the last \$124 000 of which had to be especially approved by ACABQ. The Agency automatically assumed liability for

this entire loan when the Commission went out of existence.⁴⁰⁹ The General Conference (acting on the recommendation of the Commission and the Board)⁴¹⁰ provided for repayment by including in the "Administrative Budget" for the first (extended) fiscal year an appropriation equal to the amount of the loan (which would thus be assessed to the Members in accordance with the initial scale of contributions),⁴¹¹ and additionally authorized the use of the Working Capital Fund to enable this obligation to be met even before sufficient assessed contributions had been received.⁴¹² Even so, the Board was obliged to request the United Nations to allow a short postponement in the repayment deadline that had been agreed to by the Commission.

The only loan incurred by the Agency itself was not for the purpose of acquiring any facility, but merely to allow a more rapid initial build-up of the Working Capital Fund (from which repayment of the UN loan was to be covered temporarily) than could be anticipated from the regular flow of assessed advances. For this purpose, the General Conference authorized the Board to obtain special advances from any Member of the Agency or of the United Nations.⁴¹³ The only loan actually incurred under this authority was one from the host Government, Austria, for the equivalent of \$1 000 000, all of which was repaid within the first fiscal year.⁴¹⁴

25.7. OTHER RESOURCES AND EXTRA-BUDGETARY ACTIVITIES

Aside from the two principal sources of income: assessed contributions to cover the bulk of the Regular Budget and voluntary ones to finance most of the Operational one, the Agency also has several subsidiary sources which are used in part to supplement and extend the programmes carried out under the two main parts of the Budget, and also to finance some entirely extra-budgetary activities.⁴¹⁵

25.7.1. UN Development Programme

When the Agency administers projects under either branch of UNDP (EPTA or the Special Fund) it acts, in effect, only as a trustee of the funds it receives to implement these projects.⁴¹⁶ Moreover, the Agency's political organs have no direct influence over the size of these programmes. Consequently, neither the payments by UNDP for its projects, nor the related expenditures, are estimated or otherwise included in the Agency's budget. However, the annual accounts do reflect the transactions actually carried out during the previous year.⁴¹⁷

Though the bulk of the UNDP activities are thus "extra-budgetary", the UNDP/TA programme has in recent years had an indirect effect on the Regular Budget, since payments made to cover overhead costs (AOS) have since 1963 been credited to the Administrative Fund.⁴¹⁸ As the amount of these payments is reasonably predictable, they are taken into account in formulating the Regular Budget⁴¹⁹ — in effect, this type of income serves to reduce the amount for which the Members are assessed. For reasons deriving from the UNDP administration rather than from the Agency's financial practices, the similar EOAC payments made with respect to Special

Fund projects are not so credited, but are instead used to expand technical assistance administrative activities beyond the amounts included for this purpose in the Regular Budget (e. g. , to pay for extra personnel or travel).⁴²⁰

25.7.2. Charges for furnishing services or materials

According to the scheme foreseen in Statute Articles XIV. B. 2 and XIV. E, the major source of income for the Operational Programme should be the charges imposed by the Agency for furnishing materials, services, equipment and facilities to its Members. In practice, however, only a trickle of revenues has come from this source.

The Board has not yet taken any action to establish the "scale of charges" required by Statute Article XIV. E — the scale that was to be one of the major devices through which the Agency would impose itself on the market for nuclear items. This neglect has evidently been principally due to the direction taken by the Agency's activities⁴²¹ — i. e. , the failure to fix charges is the result and not the cause of the very small income from this source. Only in two minor instances has any move been made towards the establishment of these scales:

- (a) When in 1959 the Board was considering the terms under which it would resell to Japan the uranium donated to the Agency for this purpose by Canada, it set the ad hoc price by a procedure which it hoped would not be inconsistent with the later establishment of a scale of charges.⁴²²
- (b) The Board has implicitly tolerated the setting by the Director General of charges for certain services performed and materials distributed by the Laboratory; these services and materials are generally not furnished to Member States (as foreseen by Statute Articles XI and XIV. E), but largely to individuals and organizations in such Members.⁴²³ The income earned by the Laboratory is, to the extent it can reasonably be estimated, used to reduce the amount of General Fund resources that must be allocated to the Laboratory in the Operational Budget; in addition the General Conference has, at each session since its fourth, included in the Operational Budget resolution a paragraph authorizing the Director General to employ extra-budgetary staff for the Laboratory, to the extent this can be done from "revenues arising out of work performed in the laboratory facilities . . .".⁴²⁴

Finally, note should be taken here of the financial transactions relating to Agency reactor projects, as these are now carried out. As explained in Section 16.5, the Agency's role as an intermediary in these transactions is more formal and artificial than real: instead of acting as a significant economic factor (as it would be if it were to resell according to a uniform scale nuclear materials it acquired at various prices from different sources), the Agency is really only a political broker in these transactions. Even though the United States insists for domestic legal reasons that the payments for nuclear materials it transfers through the Agency should pass from the Receiving State to the Agency and from the Agency to the USAEC, the Supply Agreements negotiated by the Agency effectively insulate it from any finan-

cial effect: thus the payments that the Agency demands are always required to be identical to those it must make, and are so timed that the Agency's obligation always matures somewhat later than that of the Receiving State. For all these reasons, these transactions are not only not included in the Budget, but are not even reflected in the accounts.

25.7.3. Sale of publications

The Agency now gains a not inconsiderable income from the sale of its publications⁴²⁵ and from certain related activities (e. g., the licensing of copyrights and the sale of copies of microfiches).⁴²⁶ Of course, because of the large number of free publications distributed by the Agency (either as a service to its Members or for their publicity value to the Agency), the publications programme has never yet broken entirely even and must thus always be financed in part from the Regular Budget.⁴²⁷

During its first two years, the Agency's initially minor publication revenues were merely credited to miscellaneous income, and had no effect on the publications programme. The Third General Conference, at the recommendation of the Board,⁴²⁸ established a "Publications Revolving Fund", to be administered in accordance with a set of Rules annexed to the Conference Resolution.⁴²⁹ The purpose of this device was to enable any revenues gained from the sale of publications to be used to further the publications programme (e. g., by increasing the number of copies printed, by meeting the costs of reprints, and by financing wider publicity for the Agency's publications); profits not so used were, in accordance with a specified formula, to be credited to the Administrative Fund as miscellaneous income. The Tenth Conference, again acting on the advice of the Board,⁴³⁰ abolished the Revolving Fund as an unnecessary complication,⁴³¹ and instead provided that the publication programme might be increased beyond that permitted by the Regular Budget to the extent such increase can be financed from the proceeds of the sale of publications.⁴³² Thus this procedural step did not change the amount of financing available for this programme, but it did remove some of the narrow restrictions on permissible expenditures that had been included in the Rules of the Fund.

25.7.4. Member State support for particular programmes

25.7.4.1. American support of research contracts

Under the 1960 "Master Contract Establishing a Joint Research Contract Programme" between the Agency and the USAEC,⁴³³ the latter has financed a number of research projects of interest to both organizations, by granting research contracts to the Agency on the understanding that the Agency will sub-contract them to research organizations according to arrangements substantially similar to those applying to the Agency's normal research contracts.⁴³⁴

While these contractual payments received from the United States are thus in effect used to extend the Agency's research contracts programme, no budgetary provision is made for them. They are, however, reflected in the accounts.⁴³⁵

Though in a sense the payments by the United States might be considered as a form of voluntary contribution restricted as to use, the American offer was not accepted pursuant to the Rules relating to monetary contributions,⁴³⁶ but was treated by the Secretariat and the Board as a sui generis offer (since then occasionally imitated by other Governments). From a formal and fiscal point of view, the Agency is merely performing a service for a Member (the United States), by enabling it to have research carried out throughout the world under Agency supervision.

25.7.4.2. Swedish support for technical assistance

In September 1969 the Board approved an agreement with the Government of Sweden, for the provision by the latter of resources, in the form of "funds-in-trust", for financing projects of technical assistance in other Member States, that are selected by the Agency following its normal procedures and standards and are thereupon accepted by the Swedish International Development Authority.⁴³⁷ The Agency's interests are fully protected in these arrangements, for its obligations to the assisted States will be explicitly contingent on receiving the necessary contributions from the Government,⁴³⁸ and Sweden adds a percentage supplement to the direct project costs to cover the technical and administrative costs incurred by the Secretariat.⁴³⁹

During the Board debate it was indicated by the Secretariat that these contributions would not be considered as normal voluntary contributions by Sweden⁴⁴⁰ (which, of course, are also mostly used for technical assistance), since Sweden retained the right to veto projects.

25.7.5. Investment income

Financial Regulation 9.01 enables the Director General to make "short-term investments" of moneys not immediately needed, provided he informs the Board at the first opportunity; this authority has been redelegated to the Deputy Director General for Administration. Pursuant to Regulation 9.02, the Director General may also, but only with the approval of the Board, make long-term investments.

The Regulations do not define "short" or "long-term". However, according to the Secretariat's current interpretation, time deposits in banks and readily marketable securities (regardless of maturities) are not considered as requiring Board approval. The established practice is for the Director General merely to list any bond holdings (but not the bank deposits) in his periodic reports to the Board.⁴⁴¹ The annual accounts also indicate the year-end status of all investments, including deposits.⁴⁴²

Pursuant to Regulation 9.03, the income gained from these investments is credited to the Fund whose resources were used. Thus the Administrative Fund, the (former) Publications Revolving Fund and the General Fund each benefit from the investment of their excess moneys, and the Administrative Fund also receives the income from the investments of the Working Capital Fund.

25.8. FINANCIAL CONTROLS

25.8.1. Internal Auditor

25.8.1.1. Legal basis

The Agency's internal audit system is based on Financial Regulation 10.01(d), which instructs the Director General to "maintain an internal financial control" for the purpose of assuring financial "regularity", "conformity with ... financial provisions voted by the General Conference" and "the economic use of the resources of the Agency." The term "internal audit" is not used in the Regulations, except in authorizing the External Auditors to "affirm... the reliability of the internal audit".⁴⁴³

No Financial Rule or any other published administrative directive specifies the authority or functions of the Internal Auditor. Indeed, the only source of information about the work of his Office is contained in the early Programmes and Budgets, in which the "functions and responsibilities" of each unit of the Secretariat were detailed.⁴⁴⁴

25.8.1.2. Functions and operations

By an early decision of the Board of Governors, the Office of Internal Audit was attached directly to the Office of the Director General, thus assuring it the maximum possible independence of action within the Secretariat – and in particular freeing it from possible supervision by the Deputy Director General of any of the Departments whose affairs the Auditor might be required to examine. In 1968 this Office was combined with the Management Unit and attached to the Office of the DDG for Administration, but the Officer in Charge, in his capacity as Internal Auditor, still reports to the Director General.⁴⁴⁵

Neither the assignments of nor the operations of the Office are publicized within the Agency. The tasks are presumably set in part by the Director General himself or by his direct assistants, but largely appear to originate with and depend on the initiative of the Internal Auditor himself; an annual Audit Programme is prepared by him and approved by the Director General. Depending on the preferences of the incumbent, he may concentrate more on "conformity" and "regularity" (questions involving relatively little discretion but often requiring legal analysis) or on "economic use of resources" (which frequently concerns questions of policy and business judgement, extending beyond the activities of the Division of Budget and Finance to the method by which other units of the Secretariat carry out their assigned tasks). The Internal Auditor also participates in annual informal meetings of European based internal auditors.

The reports of the Internal Auditor are considered entirely internal and confidential. They are submitted only to the Director General and to officials specified by him on the basis of the subject matter. In particular, the reports are not submitted to the Board of Governors. However, the External Auditor has access to them, and occasionally comments on his review of this material.

25.8.2. External Auditor

25.8.2.1. Legal basis

The requirement that the Agency submit itself to an external audit by the Auditor-General of a Member State is stated in Article XII of the Financial Regulations. The modalities of this audit, and the authority of as well as the restrictions on the External Auditor are set out in the "Principles to Govern the Audit Procedures of the International Atomic Energy Agency", which are annexed to the Financial Regulations and were drafted and adopted along with them.

The Financial Regulations relating to the External Audit have been amended twice: In 1959 the number of Auditors, which had originally been set at three in exuberant imitation of the United Nations, was reduced to one on the recommendation of ACABQ,⁴⁴⁶ which cited the example of the specialized agencies (some much larger than the Agency). In 1965 the absolute requirement that the Auditor attend every meeting of the Board or General Conference at which his report is under consideration was deleted, in anticipation of the Conference session in Tokyo (since otherwise the Agency would have had to pay the transportation of the Auditor himself and of some of his assistants).⁴⁴⁷

25.8.2.2. Appointment

In accordance with Financial Regulation 12.01, the External Auditor is appointed by the General Conference. Since its authority to do so is derived solely from this Board-adopted Regulation, this must be considered one of the few, clear examples of an extension of the Conference's authority pursuant to Statute Article V. F. 1.⁴⁴⁸ The Board and the Director General play no overt role in the selection process.

According to the Regulations, the appointment must be made from among the Auditors-General of the Member States. It is made by specifying a particular State and not an official *ad personam*;⁴⁴⁹ when the incumbent Auditor-General who is serving as IAEA External Auditor is replaced in his country, the replacement automatically applies in the Agency.⁴⁵⁰ The selection is made by the Conference Plenary on the proposal of its President, without prior committee consideration;⁴⁵¹ this proposal has never been treated as a nomination for an election, though presumably this might be done should alternative proposals be made by representatives and the post be thus contested.⁴⁵²

The term of office of the External Auditor is not specified in the Financial Regulations, and thus depends on the decision taken by the Conference. The appointments have usually been made for two⁴⁵³ or three⁴⁵⁴-year terms. Reappointment is permitted, and indeed the Auditor-General of the Federal Republic of Germany served as External Auditor during the entire first decade.⁴⁵⁵ Before the reduction in the number of Auditors became effective he was joined in the first two years by his Yugoslav colleague and during the first year also by the Norwegian Auditor-General.⁴⁵⁶ At the Eleventh Conference this office was shifted to Czechoslovakia.⁴⁵⁷

It is of course understood that the External Auditor does not become a member of the staff or any other type of employee of the Agency, but is merely reimbursed for his expenses. Indeed, most of the work on the audit is carried out by officials assigned by the External Auditor from his office, though traditionally he himself familiarizes himself with the work and personally presents his report to the Board of Governors and the General Conference.

25.8.2.3. Functions

The functions of the External Auditor are largely specified in the Annex to the Financial Regulations. They may be classified into three main categories:

- (a) To certify the correctness of the accounts prepared by the Director General;
- (b) To advise the Secretariat with respect to transactions as to which it entertains doubts, and thus to help co-ordinate the fiscal practices of the Agency with those of the other organizations in the UN family (with which the External Auditor becomes familiar through his participation in the UN Joint Panel of Auditors⁴⁵⁸);
- (c) To submit comments to the political organs, i. e., primarily to the Board of Governors.

Of these three types of activities, the one whose impact can most easily be observed is the third, since the Auditor's comments are included in public documents ("The Agency's Accounts for 19. ."), since they generally propose some specific action and since the response (by the Board) is often explicitly stated in the same document or is obvious from a subsequent decision to change or not to change a particular Financial Regulation or fiscal practice.⁴⁵⁹ Following are some of the subjects to which External Auditors have addressed themselves:

- (i) The limits of the scope of the external audit (e. g., after the Board initially excluded the Auditor from considering the accounts of the Commissary and Restaurant, it finally reversed its ruling after repeated criticism from that official);⁴⁶⁰
- (ii) Proposals to amend the Financial Regulations, or to express a particular interpretation of an existing doubtful Regulation;⁴⁶¹
- (iii) Proposals to implement certain neglected Regulations (e. g., that the Board set limits for ex gratia payments, as foreseen in Financial Regulation 10.04 – a suggestion the Board has not yet followed);⁴⁶²
- (iv) Proposals that the Secretariat take certain actions – which in effect force the Director General to state whether or not he will comply and permits the Board to issue appropriate directives;⁴⁶³
- (v) Criticisms of certain Secretariat practices (e. g., the permission granted to staff members to finance the travel of their spouses on official missions by converting their own transportation to a cheaper class)⁴⁶⁴ – however, such criticism may be included in the report only after the Secretariat has had an opportunity of explaining the matter to the Auditor;⁴⁶⁵

- (vi) Criticism of certain decisions of the Board (e. g., the requirement – later modified as a result of these comments – that the Commissary and Restaurant reimburse the Agency fully for all the initial furnishings purchased for them from budgeted funds);⁴⁶⁶
- (vii) Certain business decisions (e. g., the acquisition and proposed uses of a computer).⁴⁶⁷

In April 1969, the Administrative and Budgetary Committee of the Board asked the External Auditor whether he could make "observations on administration and management". He undertook to consider this possibility.

In addition to these principal, routine functions, certain special tasks are occasionally assigned to the External Auditor. Thus when the Japanese Government agreed to cover, within stated limits, the extra expenditures incurred by the Agency by holding the Ninth General Conference in Tokyo,⁴⁶⁸ the basis of the final settlement was a certified statement of the External Auditor as to the excess actually incurred.⁴⁶⁹

From time to time attempts have been made to solicit the impartial, technical advice of the External Auditor on certain political controversies in the Agency – for example, under Statute Article XIV. B, certain expenditures should be included in the Regular or in the Operational Budget.⁴⁷⁰ However, yielding to the counsel of those representatives who felt that the interpretation of the Statute is in the first instance the task of the political organs, the Auditor has avoided entanglement in these issues and has prudently declined to answer such questions.

25. 8. 2. 4. Reporting practice

The written report of the External Auditor is attached to the annual accounts to which it relates and is at all stages considered along with those statements. This consideration proceeds in four stages:

- (a) The Administrative and Budgetary Committee of the Board of Governors;
- (b) The Board of Governors – which in the early years adopted the practice of responding explicitly to each comment of the Auditor and of transmitting these responses to the General Conference along with the accounts;⁴⁷¹ later fewer responses were issued and in recent years none at all.⁴⁷²
- (c) The Administrative and Legal Committee of the General Conference;⁴⁷³
- (d) The Conference Plenary – where, however, the consideration has invariably been a mere formality without any debate.⁴⁷⁴

Financial Regulation 12.04 originally required the presence of the External Auditor at each of these stages. In practice, however, he participated actively only in the Board Committee, and sometimes in the Board itself. As a consequence (and to save the Agency the expenses of such participation) the Regulation was amended in 1965 to require participation in only the first consideration by the Board or by a subordinate organ thereof (i. e., the Administrative and Budgetary Committee); at subsequent stages the Auditor need be present only if he himself, or any Member State, or the Director General so decides.

25. 8. 2. 5. Joint Panel of Auditors

In ACABQ's first report to the UN General Assembly on the budget of the Agency, it expressed the hope that the External Auditors of the Agency would participate in the UN Joint Panel of Auditors "with a view to the application of uniform principles and practices in the audit".⁴⁷⁵ The Auditors have complied with this recommendation, though no explicit decision authorizing them to do so was taken by any Agency organ.

The General Assembly's Ad hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies suggested, inter alia, that arrangements be made among all UN family organizations for the establishment of a common panel of auditors, responsible for auditing, on a rotating basis, the accounts of all these organizations.⁴⁷⁶ The Agency has taken this recommendation under advisement.

25. 8. 3. Joint Inspection Unit

The Ad hoc Committee referred to in the previous paragraph also recommended the establishment of a small joint Inspection Unit within the UN family, to make on the spot inquiries and investigations into any of the services of the different organizations with a view to promoting the efficient use of resources. Though the Secretariat's initial reaction was unenthusiastic, the Board in June 1967 explicitly requested the Director General to participate in the consultations relating to the establishment and operation of the Unit.⁴⁷⁷

The Unit was established by a decision of the 22nd General Assembly,⁴⁷⁸ and started its work in 1968. However, the extent to which certain confidential information should be made available by the Agency to the Inspectors was not immediately resolved, since the Agency had taken care to limit, in its UN Relationship Agreement, its obligation to provide such data to the United Nations.⁴⁷⁹

25. 8. 4. Other control devices

In addition to or in connection with the accounts and their external audit, certain special devices or statements have been introduced by the Agency to control particular activities or expenditures:

25. 8. 4. 1. Competitive bidding

Financial Regulation 10.06 requires that, with limited exceptions, tenders be invited for equipment, supplies and other requirements of the Agency, in accordance with rules to be established by the Director General. These appear in Article III of the Interim Financial Rules and specify the method of obtaining such tenders and the particular circumstances under which no competitive bids need be solicited.⁴⁸⁰

In order to evaluate any tenders received, the Director General has established the inter-departmental Contract Review Committee, whose composition and terms of reference are now specified in the Administrative Manual.⁴⁸¹

25.8.4.2. Travel

In order to make certain that all official travel by staff members is carried out for a justifiable purpose, in the most economic manner, and is properly co-ordinated with other travel and activities, the Director General has established the inter-departmental Travel Co-ordination Committee, whose composition and terms of reference are set forth in the Administrative Manual.⁴⁸²

Though the Board has expressed its confidence in this Secretariat Committee, it has also required the Director General to submit annually a statement on all staff travel during the past year, which it considers along with the accounts.

25.8.4.3. Miscellaneous statements

Financial Regulation 10.04, which authorizes the Director General to make *ex gratia* payments, also requires him to attach a statement of such payments to the annual accounts.⁴⁸³

The Board has requested the Director General to provide its Administrative and Budgetary Committee with annual statements on filled and vacant posts in each office and division of the Secretariat. These are submitted and considered along with the draft budget for the following year. Similarly an annual report on the employment of consultants during the previous year is required.

In connection with the implementation of Financial Regulation 5.03, the Board has requested the Director General to furnish it with a list of all obligations outstanding in the Administrative Fund at the end of the previous fiscal year.⁴⁸⁴ This statement is examined both by the External Auditor and by the Board (or its Administrative and Budgetary Committee), to determine whether the obligations carried over against the expired Regular Budget are in conformity with the Regulations, as interpreted in the light of guidelines furnished to the Agency by ACABQ.⁴⁸⁵

NOTES

- 1 Note No. 8 of 19 March 1954 (reproduced in UN doc. A/2738, *op. cit.* Chapter 2, note 7), Part II, E(i).
- 2 *Idem*, Part II, E(ii).
- 3 Section 16.2.1.
- 4 *Op. cit.* *supra* note 1, Parts III, A(i) and (ii), and B(ii).
- 5 WLM Doc. 2, Articles XV and XVI.
- 6 Sections 25.1.1.2.2 and 25.2.1.
- 7 Section 25.5.1.1.
- 8 Sections 7.3.6 and 8.4.3.
- 9 Section 10.1.
- 10 Section 21.9.1.
- 11 Section 25.3.1.1.1.
- 12 Section 25.2.1.
- 13 Section 25.6.1.
- 14 It was predicted that the Agency's Operational Budget would soon reach \$100 million (IAEA/PC/OR, 32, p. 2).

- 15 Section 18, 1. 1. 1.
- 16 Section 18, 2. 1.
- 17 GC(V)/RES/100; Sections 25. 5. 2-3.
- 18 GOV/INF/78. This originally restricted document, as well as the others cited below, were referred to and in part reproduced in unrestricted document GC(VII)/236/Add. 1.
- 19 GC(VI)/190, Annotation 21. The text of the proposal appears in GC(VI)/205, Annex I.
- 20 GC(VI)/205, Annex II.
- 21 GC(VI)/221.
- 22 GC(VI)/RES/123.
- 23 GOV/861.
- 24 GOV/848 and /Add. 1 and 2.
- 25 GOV/OR. 307, paras. 65-66.
- 26 GOV/912.
- 27 GOV/904/Rev. 2 and /Add. 1; GOV/OR. 323, paras. 49-57.
- 28 GC(VII)/236, Appendix A, Annex I.
- 29 GC(VII)/236, Appendix A, Annex II, and Appendix B.
- 30 GC(VII)/236.
- 31 GC(VII)/257.
- 32 GC(VII)/RES/143.
- 33 GC(VIII)/270, para. 6.
- 34 Statute Article XIV, H; Section 8, 4. 3. In formulating the Statute repeated attempts were made to increase this to three-fourths. WLM Doc. 2 (Add. 16-USSR), para. 2 and WLM Doc. 31, Annex IV, para. 2 (f); IAEA/CS/Art. XIV/Amend. 1 and /Amend. 4, para. 5.
- 35 Statute Articles V, C and XIV, H; Section 7. 3. 6.
- 36 Section 25. 2. 1.
- 37 Section 25. 3.
- 38 Section 21. 9. 1.
- 39 Section 21. 9. 1.
- 40 Section 25. 5.
- 41 Section 25. 6.
- 42 Section 25. 7. 2.
- 43 Sections 25. 2. 1(ii) and 25. 7. 2.
- 44 Sections 16. 2. 1 and 16. 2. 2. 5.
- 45 Sections 16. 2. 2. 5, 17. 6 and 25. 7. 2.
- 46 Section 17. 6.
- 47 Section 18. 2. 2.
- 48 Section 18. 2. 1.
- 49 Sections 18. 2. 3-4.
- 50 Sections 19. 2. 2. 1 and 25. 2. 1(i).
- 51 Sections 19. 2. 2. 2, 25. 5. 1. 2, 25. 7. 2 and 25. 7. 4. 1.
- 52 IAEA/PC/5.
- 53 IAEA/PC/W. 40(S).
- 54 The Agency recently recalled, in a report to the United Nations, that its Regulations "were largely based on those of the United Nations and UNESCO" (UN doc. A/7124, Annex XII, Recommendation 24).
- 55 IAEA/PC/OR. 35 and 36.
- 56 IAEA/PC/W. 40(S)/Rev. 1.
- 57 IAEA/PC/OR. 47.
- 58 GOV/2 — GC. 1/INF/2.
- 59 Section 21. 9. 1.
- 60 SEC/INS/20.
- 61 INFCIRC/8. The Regulations now also appear in the Administrative Manual, AM. V/2.
- 62 Financial Regulation 15. 01.
- 63 Section 25. 3. 5. 2.
- 64 INFCIRC/8/Rev. 1.
- 65 Statute Articles V, E, 8 and XIV, G; Sections 25. 1. 4. 1-3.
- 66 Sections 8. 3. 1. and 8. 3. 3.

- 67 When the question of the possible necessity of referring the draft Regulations to the General Conference was raised in the Preparatory Commission, the Executive Secretary pointed out that the Regulations only needed the approval of the Board, except as specified in Statute Article V, E, 8 (IAEA/PC/OR, 47, pp. 18-19). The possibility of referring the Regulations to the Conference for a decision pursuant to Article V, F, 1 (as was done in respect of the Headquarters Agreement) was evidently never considered (Section 7.2.2(d)).
- 68 Sections 9.3.2.2 and 9.3.3.
- 69 Financial Regulation 15.01.
- 70 Section 25.2.3.
- 71 GC(VII)/INF/60.
- 72 Section 7.2.2(d).
- 73 Section 25.8.2.2.
- 74 Section 25.8.2.3.
- 75 INFCIRC/11, Part I, A.
- 76 Indeed it has recently formally undertaken to do so, in response to the UN General Assembly's request for information on the extent of compliance with the recommendations of its Ad hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies (UN doc. A/7124, Annex XII, Recommendation 24).
- 77 For example, in respect to Regulation 5.03; Section 25.2.4.1.1.
- 78 Section 25.8.2.5.
- 79 Preparatory Commission "Administrative Instruction No.1". Section 3.2.3.2.
- 80 Provisionally PM/Pt. 5/1, pp.20-27; now AM. V/3.
- 81 Section 24.1.5.
- 82 Section 25.8.4.1.
- 83 Financial Rule 7.01.
- 84 Financial Regulation 10.01(a).
- 85 AM, V/4.
- 86 GC(VII)/INF/60, Rule 67; GOV/INF/60, Rule 34.
- 87 GC(VII)/INF/60, Rule 69(a) and (d); GOV/INF/60, Rule 36(a) and (d).
- 88 GC(VII)/INF/60, Rule 97; Section 25.3.3.1.1.
- 89 INFCIRC/11, Part I, A.
- 90 For example, the Relationship Agreement with UNESCO, INFCIRC/20, Part I, A, Article IX.
- 91 For example, UNIDO's "Administrative and research activities" and "Operational activities", under UNGA/RES/2152(XXI), Part II, paras.20-22.
- 92 Statute Article XIV, B, 1 and 2.
- 93 WLM Doc.2(Add.16), 6 March 1956.
- 94 However, the Soviet Union was still not satisfied that these provisions afforded sufficient protection to Member States against assessment for the capital cost of facilities (WLM Doc. 31, Annex IV, para.4(e)).
- 95 LAEA/CS/OR. 31, pp.4-87; /OR. 32; /OR. 33, pp.2-26; /OR. 36, pp.13-26 (all passim).
- 96 Section 25.5.1.1.
- 97 It has recently been decided, on the advice of the External Auditor, that the relatively minor installations that the Agency has established (i.e., its laboratories at Seibersdorf, Vienna and Monaco, and the Theoretical Physics Centre at Trieste, Sections 19.1.1-3) are not "facilities" within the meaning of Statute Article XIV, B, 2, and therefore need not be financed entirely from the Operational Budget (GC(XII)/385, paras. 630(c) and 677).
- 98 Section 19.1.1.5.
- 99 Sections 18.2.1, 18.2.3-4.
- 100 Section 25.1.1.1.2. The defeat of even the modest final proposal was due to the opposition of four groups of States: developed States that would not benefit from an expansion of the technical assistance programme and did not wish to be required to pay for it; Eastern European States that did not wish to create any precedents for a wide assessment power for an international organization; under-developed States that would benefit from assistance but wished to do so without any increase in assessed contributions (hoping the richer States could be shamed into increasing their donations); and under-developed States fearing that the restrictive definition of technical assistance proposed for the purpose of the amendment would be used to limit the programme itself.
- 101 In one of its early reports to the UN General Assembly, ACABQ pointed out that the "demarcation line between administrative and operational expenses is not rigidly defined and that the Statute may be a little

- unclear on this point, leaving the decision in some measure to the General Conference" (UN doc. A/5007, Section XI.J, para. 100).
- 102 For example, even Canada, the inventor of the 2-budget system, suggested at the Conference on the Statute, that fellowships (Section 18.3.4) might fall under the Administrative Budget (IAEA/CS/OR.36, p. 18). This anomalous term has also introduced difficulties into the continuing efforts to standardize the budgetary forms and nomenclatures of the UN related organizations.
- 103 This change was made by the Board in the 1960 Budget (GC(III)/75, para. 21), after repeated recommendations by ACABQ (UN docs. A/4016, paras. 6-8; A/4135, fn. 11) and after receiving an opinion from the Agency's Legal Adviser that such a change in nomenclature would not violate the Statute.
- 104 Sections 21.1.1 and 22.1.1.3.
- 105 Section 21.9.1(d).
- 106 Section 19.2.2.1.
- 107 GC(II)/36, paras. 274-276; GC(III)/75, para. 497.
- 108 GC(III)/75, paras. 704-707.
- 109 GC(V)/155, para. 344. This approach was not, however, universally accepted; see, e.g., one of the Soviet interventions (GC(VIII)/COM.1/OR.60, para. 84).
- 110 GC(X)/333, paras. 7-8. The expert report presented by the UN Secretary-General to the General Assembly, on "Contributions of Nuclear Technology to the Economic and Scientific Advancement of the Developing Countries" took a more realistic view, and noting that research contracts are in effect a type of technical assistance that does not constitute a charge on voluntary contributions, called for an increase in this programme (UN doc. A/7568, para. 243).
- 111 GC(IV)/116, paras. 37, 403(e), 420.
- 112 GC(V)/155, para. 357.
- 113 GC(VI)/200, para. 46.
- 114 GC(VI)/200, paras. 41-54.
- 115 For example, GC(X)/333, para. 42.
- 116 GC(XII)/385, para. 239.
- 117 GC(XIII)/405, para. 88. This transfer constituted about 6% of the costs of the Laboratory, leaving only about 19% to be borne by the Operational Budget.
- 118 Sections 18.2.5.2 and 18.3.7.
- 119 GC(II)/36, para. 233.
- 120 GC(II)/COM.1/13; GC(II)/66, paras. 14, 16, 19; GC(II)/67; GC(II)/OR.23, para. 3.
- 121 GC(II)/RES/25, Part A, para. 3.
- 122 GC(III)/75, paras. 27, 437-444.
- 123 Section 13.3.1.
- 124 Belatedly changed, in the 1969 Budget (GC(XII)/385, para. 670), to "Duty Travel and Missions".
- 125 GC(VIII)/INF/72, para. 47.
- 126 Sections 18.2.5.1 and 25.7.1.
- 127 GC(IV)/119, para. 5.
- 128 GC(IV)/RES/81; however, there had been objections to this course (GC(IV)/COM.1/OR.25, paras. 8, 14, 19; GC(IV)/132).
- 129 GC(VI)/200, para. 278.
- 130 For example, GC(IX)/COM.2/OR.39, paras. 2 and 3.
- 131 Section 25.2.3.
- 132 UN doc. A/4016 (30th report of ACABQ to the 13th General Assembly), para. 6.
- 133 Supra note 103.
- 134 Section 25.8.2.3.
- 135 The original process was outlined by ACABQ in its report on "Administrative and Budgetary Coordination between the United Nations and the IAEA" (UN doc. A/4135 (2nd report of ACABQ to the 14th General Assembly), paras. 34-35, 65-71). A more recent account is given by the Agency (op. cit. supra note 76, Recommendation 2).
- 136 Statute Article XIV. A.
- 137 AM. I/7, Appendix D.
- 138 Section 13.2.1.4.
- 139 This point was established by a Chairman's ruling at the 207th meeting of the Board.
- 140 Statute Article XIV. H; Procedural Rule 36(a).

- 141 Pursuant to Financial Regulations 3.01 and 3.03, the Director General must submit his draft budget to the Board at least 10 weeks before the opening of the regular session of the General Conference, and the Board must transmit its budget to all Member States at least 6 weeks before such date. The Board has, however, by its Procedural Rule 18, lengthened the 4-week period it has under the Regulations to consider the draft budget to at least 45 days.
- 142 UN doc. A/6343 (reproduced in UNGA Off. Rec. (21st Sess.) Annexes, agenda item 80), para. 26; reproduced as Recommendation 1 in A/7124, Annex I.
- 143 UN doc. A/7124, Annex XII, Recommendation 1.
- 144 Sections 7.3.3, 4 and 7.3.5.2.
- 145 Section 8.4.5.1.
- 146 Statute Articles V, E, 5 and XIV, A; Section 25.2.2.4.
- 147 For example, GC(II)/RES/25, Part A, paras. 2 and 3, and Part B, paras. 3 and 4, which were added to the texts proposed by the Board in GC(II)/36, Annex V; GC(III)/RES/51, Part B, para. 3, added to the text proposed in GC(III)/75, Annex IV.
- 147A Section 10.1.
- 148 Statute Article XIV, H; Procedural Rule 36(a).
- 149 Statute Articles V, C and XIV, H; Procedural Rule 69(a).
- 150 Statute Articles V, E, 5 and XIV, A; Financial Regulation 3.02.
- 151 It is possible that in this area, which is at best uncertainly regulated by the Statute, clarification and relief might be obtained through properly designed procedural rules. Thus it might be provided that a decision to return the budget to the Board and to formulate the accompanying recommendations should require only a majority vote. It might even be decided that any failure to adopt the proposed budget resolutions automatically results in their return to the Board, which is to consider the Conference debate as a whole as a "recommendation".
- 152 One possibility for resolving such an impasse would be for the Conference to adjourn its regular session and convene a special one to consider the budget; such an adjournment would automatically terminate the terms of office of the old Board members and install a certain number of new ones (Statute Article VI, C and D) — and thus possibly accomplish a slight shift in voting patterns (but see Section 8.2.3).
- 153 Section 25.2.1.
- 154 Statute Articles V, E, 5, and XIV, A and B.
- 155 For example, GC(X)/RES/210 and /211.
- 156 For example, GC(X)/350, para. 2(a) and (b).
- 157 For example, GC(X)/OR.110, paras. 22 and 23.
- 158 Section 25.2.4.1.1.
- 159 INFCIRC/11, Part I, A.
- 160 Section 12.2.1.1(iii). Article 17(3) of the UN Charter permits the Assembly to examine and make recommendations with respect to the "administrative budgets" of the specialized agencies. The Agency's difficulty in accommodating itself to this pattern arose not from its special status (Section 12.1) but from the unusual statutory meaning of "administrative expenses" and from its already complicated budgetary process involving both political organs.
- 161 GC(II)/36, para. 24; GC(III)/75, paras. 32-34.
- 162 UN docs. A/BUR/148, para. 5; A/3926, para. 4.
- 163 See, however, UNGA/RES/2150(XXI) endorsing the recommendations of its Ad hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies. See also UNGA/RES/1336, B(XIII) relating to ACABQ's first report on the Agency's budget (A/4016).
- 164 UN doc. A/4135 (2nd Report of ACABQ to 14th General Assembly).
- 165 For example, GC(X)/333.
- 166 GC(XII)/385, Part III, B, II, C.
- 167 However, the expenditures for the "Policy-making organs" (i.e., the General Conference and the Board of Governors), have always appeared in a separate Appropriation Section.
- 168 GC(XIII)/405, paras. 6-7. As to safeguards, this change is explained in terms of the special interest in and the uncertainties surrounding this subject; for the rest, reference is made to the trend towards programme budgeting throughout the UN family, and to the recommendations of UNGA's Ad hoc Committee of Experts (supra note 163).
- 169 Section 25.2.5.
- 170 For example, GC(IX)/300, para. 4.

- 171 For example, GC(XII)/385, para. 31.
- 172 For example, GC(XII)/RES/242.
- 173 For example, GC(XII)/RES/243.
- 174 See, e.g., the footnote on page 8 of the "Guide for the Organization of IAEA Scientific Conferences, Symposia and Seminars" (op. cit. Chapter 20, note 7). On the other hand, the Director General argued at the 174th meeting of the Board that the text of the budget document was only explanatory of the estimates and "did not involve an absolute legal obligation of the Board and the Secretariat".
- 175 Section 25.3.
- 176 Section 25.5.
- 177 Financial Regulations 5.01 and 5.02. The latter Regulation was amended in the indicated sense in June 1963, after the Director General had requested and the External Auditor had supported the grant of that additional authority (GC(VII)/231, Part III, paras. 39-41; Part II, para. 7).
- 178 Financial Regulation 5.03.
- 179 For example, GC(IV)/117, Part II, para. VII; GC(VI)/199, Part II, paras. 4-7; GC(VII)/231, Part II, paras. 5 and 6; GC(XII)/384, Part II, paras. 7-8.
- 180 This impotence has made it necessary to adopt complicated devices regarding the financing of joint long-term operations. For instance, while the agreement for establishing the Monaco Laboratory originally had a 3-year term, the Agency's support obligation for the second and third years was only stated conditionally and it was even provided that if the level of support for those years would have fallen below that specified for the first, then the Agency's partners would have had a right to terminate the project (INFCIRC/27, paras. 3 and 6; Section 19.1.2.3); even in the new Agreement regarding the Laboratory the Agency undertook no more than a moral obligation to provide sufficient resources to maintain operations (INFCIRC/129, Article 3(d)). In agreeing with UNESCO on the joint operation of the Trieste Centre (Section 19.1.3.3), both organizations made their undertaking for each to provide for 5 years at least \$150 000 annually, "subject to the budgetary appropriation of that amount by their competent organs" (INFCIRC/132, Section 11). With respect to Research Contracts, it had been necessary to amend Financial Regulations 5.03 and 5.04 to provide a 24-month period to liquidate obligations (Section 19.2.2.1). In other cases, such as the construction of a new Board room, the Board has been obliged to waive the application of Regulation 5.03.
- 181 Financial Regulation 6.04.
- 182 Financial Regulation 7.02.
- 183 For example, GC(X)/RES/210, para. 1.
- 184 GC(IX)/COM.2/OR.39, para. 2.
- 185 UN doc. A/7124, Annex XII, Recommendation 9.
- 186 UN doc. A/6343 (supra note 142), para. 34; A/7124, Annex I, Recommendation 8.
- 187 UN doc. A/7124, Annex XII, Recommendation 8; GC(XII)/384, Part V.
- 188 GC(IV)/116, para. 423; GC(V)/155, para. 360; GC(VI)/200, paras. 229-230.
- 189 However, a special authority to combine several junior posts into a senior one, or vice versa, was included in the Budget for 1965 (GC(VIII)/276, para. 41).
- 190 GC(V)/156, Part II, paras. 11-14; the Board in effect endorsed these comments (ibid., Part I, para. 5).
- 191 For example, GC(X)/RES/210, para. 3(b).
- 192 GC(III)/81, Part II, para. IV.
- 193 Ibid., Part I, para. 4.
- 194 GC(III)/75, Annex IV, draft Resolution A, Part I, para. 3.
- 195 GC(III)/COM.1/OR.20, paras. 30-33; GC(III)/COM.2/OR.14, para. 43.
- 196 GC(III)/COM.1/33.
- 197 GC(III)/102, para. 4.
- 198 GC(VII)/231, Part II, para. 4.
- 199 For example, GC(X)/331, Part II, paras. 5-7.
- 200 For example, GC(XII)/384, Part III, para. 3. UN doc. A/7124, Annex XII, Recommendation 11.
- 201 GC(VI)/191; GC(IX)/296 (which, though granted, did not have to be used); and GC(X)/328.
- 202 Sections 24.2.3 and 24.4.1.1.1.
- 203 Section 24.4.1.2.1.
- 204 See also Section 25.3.4.4.
- 205 For example, GC(X)/348.
- 206 GC(X)/RES/209.

- 207 Section 24.4.1.1.1.
- 208 Section 24.2.
- 209 Section 7.3.2.2.
- 210 UN doc. A/6343 (supra note 142), paras.39-46; A/7124, Part I, Recommendations 13-19.
- 211 GC(XI)/360, paras.4, 74-75, and Annex VII, draft Resolution A, paras.1(13), 3-4; GC(XI)/RES/226. UN doc. A/7124, Part XII, Recommendation 15.
- 212 Sections 25.7.2 and 25.7.5.
- 213 Section 25.5.
- 214 For example, GC(X)/RES/211.
- 215 Section 18.2.1. GC(XII)/INF/100, Annex I, Table 2.
- 216 Sections 25.5.3 and 25.7.5.
- 217 Sections 18.2.3, 18.2.4 and 18.2.6.
- 218 Sections 16.5.2 and 17.6.
- 219 Section 18.2.6.
- 220 Section 18.2.1.
- 221 Financial Regulation 7.08.
- 222 GC(VIII)/INF/72, para.26.
- 223 GC(VIII)/277, para.9.
- 224 Section 25.4.
- 225 The United Kingdom had proposed in the Preparatory Commission that the Financial Regulations specify how frequently profits should be transferred to the General Fund (IAEA/PC/OR.35, paras.9 and 10), but this was not done.
- 226 Section 25.5.3.
- 227 GC(III)/75, paras.24, 622, 629 and Annex IV, draft Resolution A, Part II, paras.3 and 4.
- 228 GC(III)/RES/51, Part B, paras.3 and 4.
- 229 GC(IV)/116, para.539; GC(V)/155, para.478.
- 230 GC(VI)/INF/49; GC(VI)/200, Table 23. However, Financial Regulation 6.13 was not repealed, so that the framework for truly establishing the reserve remains against the time when it is finally decided to transfer funds into it.
- 231 Section 7.3.2.1.
- 232 Financial Regulation 5.03; Section 19.2.2.1.
- 233 Section 18.2.2.
- 234 Sections 15.3.1.4 and 15.3.2.3.
- 235 GC(IX)/COM.1/93 and /96; GC(IX)/323, paras.2(a), (c), 4-8, and Annex I.
- 236 GC(IX)/RES/196.
- 237 GC(X)/333, paras.2 and 3; also GC(X)/330, para.19 and GC(X)/332, para.3 and Table 1.
- 238 UN doc. A/6343 (supra note 142), para.56(a), reproduced in A/7124, Annex I, Recommendation 25(a).
- 239 UN doc. A/7124, Annex XII, Recommendation 25.
- 240 Supra note 1.
- 241 Whose concern had apparently been aroused by a provision of the Rules of Procedure of that Conference, according to which the expenses of the Conference were divided equally among all participants (IAEA/CS/2, Rule 38; IAEA/CS/OR.31, p.7), Section 2.8.2.
- 242 Starting with IAEA/CS/Art.XIV/Amend.3: "such scale to be as close as possible to the scale of contributions of Member States to the annual budget of the United Nations", and /Amend.5: "similar to that laid down for assessing the contributions of member States to the United Nations".
- 243 IAEA/CS/OR.31, p.5.
- 244 It would seem that this statutory provision automatically leads to compliance with the 1968 recommendation of the UN General Assembly, that the specialized agencies bring their scales of contributions into harmony with those of the United Nations at the earliest possible time, taking into account differences in membership and other factors (UNGA/RES/2474(XXIII), para.A.1).
- 245 IAEA/CS/OR.31, p.27.
- 246 GC.1/11, The Preparatory Commission's consideration of this matter can be found in IAEA/PC/OR.36, p.9; IAEA/PC/W.66(S); IAEA/PC/OR.62, pp.3-6.
- 247 In proposing these several limitations, the Commission departed from the recommendations of its Executive Secretary, who had proposed that the same adjusting factor be applied to all States (IAEA/PC/W.66(S); IAEA/PC/OR.62, pp.3-6).

- 248 GC.1(S)/RES/3.
- 249 GC(II)/COM.1/25, draft Resolution C.
- 250 GC(II)/69, paras.18-22 and draft Resolution C.
- 251 GC(II)/RES/33.
- 252 Section 25.3.3.1.2.
- 253 GC(III)/COM.1/35, para.14 and Annex I, draft Resolution C.
- 254 GC(III)/RES/50.
- 255 GC(III)/101, Annex, draft Resolution C.
- 256 UNGA/RES/1137(XII).
- 257 For example, GC(XI)/363, Annex, Part B.
- 258 For example, GC(XIII)/412, Annex, para.2(a). See, however, Section 25.3.3.2.1.
- 259 GC(II)/52, Annex I, Part C; the Director General's proposals for the provisional 1959 scale (GC(II)/53, Annex, Part B, para.2(b)), which was not accepted by the Conference (Section 25.3.3.2.1) would have applied the limitation to Canada, New Zealand and Luxembourg. Even though the Guiding Principles (GC(III)/RES/50, para.(c)) appear to require that the per capita rule be applied to all States (except, of course, the highest contributor), it evidently is not applied to the States paying the minimum contribution — else the rate for the Holy See would have to be reduced to a vanishingly low figure since the population of the Vatican City obviously does not exceed 300,000 persons (i.e., 0.04/30.00 the population of the United States).
- 260 Statute Article XIV. D. Probably through an oversight, this function is not referred to in the schedule in Article V. E.
- 261 For example, GC(XI)/363.
- 262 GC(II)/52 and /53.
- 263 For example, GC.1(S)/COM.1/OR.2, paras.11-13. Section 7.3.3.6.
- 264 UNGA Rules of Procedure 160 and 161.
- 265 For example, GC(XI)/373.
- 266 For example, GC(XI)/RES/229.
- 267 UNGA Rule of Procedure 139.
- 268 Section 6.1.3.
- 269 Sections 6.1.2 and 6.1.4.
- 270 For example, GC(XI)/RES/229, para.2.
- 271 Section 25.3.1.1.3(a) and (c).
- 272 GC.1(S)/RES/3.
- 273 GC(II)/RES/31.
- 274 GC(II)/RES/32.
- 275 GC(III)/RES/48.
- 276 For example, GC(II)/52, para.7.
- 277 GC(II)/RES/33; reaffirmed in GC(III)/RES/50, para.(a).
- 278 GC(IX)/306, paras.2 and 3.
- 279 UN doc. A/5810.
- 280 GC(IX)/RES/195, para.3.
- 281 Section 25.3.1.1.1.
- 282 See, however, the Report to the President of the US Representative to the Preparatory Commission.
- 283 GC.1/11, para.2(a).
- 284 IAEA/PC/W.66(S), paras.6 and 7; IAEA/PC/OR.62, pp.3-6.
- 285 GC.1(S)/OR.11, para.8.
- 286 GC(II)/53, para.5.
- 287 GC(II)/COM.1/25, para.6.
- 288 GC(III)/84, paras.7-9.
- 289 GC(III)/COM.1/SUB.3/OR.1, paras.17-18, 20, 24, 29; GC(III)/COM.1/35, para.10; GC(III)/COM.1/OR.22, paras.46, 49, 53.
- 290 GC(III)/COM.1/35, para.13.
- 291 GC(III)/COM.1/OR.22, para.55; GC(III)/101, para.3.
- 292 GC.1(S)/COM.1/SUB.1/3, para.1.
- 293 Idem., paras.3-6.
- 294 GC.1(S)/COM.1/6, para.5.

- 295 GC.1(S)/COM.1/OR.5, paras.33-34.
- 296 GC.1(S)/26, para.2.
- 297 Section 6.2.3.1.
- 298 GC(II)/52, para.6(a).
- 299 GC(VI)/COM.1/OR.48, paras.62-68.
- 300 GC(VI)/COM.1/OR.48, para.75; GC(VI)/217, para.2.
- 301 GC(VI)/OR.70, para.67. At later Conferences the Soviet Union raised this point again in debate, but not formally (GC(VII)/COM.1/OR.55, paras.51-55; GC(VIII)/COM.1/OR.61, paras.73-76).
- 302 UNGA/RES/1927(XVIII).
- 303 GC(VIII)/278.
- 304 GC(VIII)/COM.1/OR.61, paras.79-94; /OR.62, paras.1-17.
- 305 GC(II)/33; GC(III)/50, para.(a).
- 306 GC(VIII)/287.
- 307 GC(VIII)/RES/169.
- 308 This includes any amount appropriated on a contingent basis (Section 25.2.4.1.3); e.g., GC(XII)/RES/242, para.2(c).
- 309 Section 25.4.3.
- 310 Section 25.3.4.3.
- 311 Section 25.3.4.4.
- 312 Section 24.4.2.
- 313 Section 25.3.3.1.1.
- 314 Financial Regulation 7.02 (first paragraph).
- 315 Idem, second paragraph.
- 316 Idem, second and third paragraphs; Regulation 6.02(d).
- 317 Section 25.2.4.1.3.
- 318 GC(VI)/RES/116, para.2.
- 319 GC(IX)/RES/191, paras.2 and 3.
- 320 GC(X)/RES/209, paras.2 and 3.
- 321 Section 6.3.2.
- 322 IAEA/CS/OR.35, pp.63-65.
- 323 Section 25.1.2.1.
- 324 For example, GC(XII)/389, Annex B.
- 325 For example, GC(IV)/126, Annex A.
- 326 Section 32.1.1.
- 327 For example, GC(XIII)/416, para.2 and p.2, showing 9 States subject to the penalty. However, of these, 7 were not represented at the Conference (GC(XIII)/426, para.11) and thus only the Bolivian and Ecuadorian delegates were directly affected.
- 328 This procedure was described in a "Memorandum of Law" (White Paper) on "Article 19 of the Charter of the United Nations" issued by the US Department of State in February 1964; see Appendix III, para.44.
- 329 GC(IV)/OR.44, paras.1-5.
- 330 GC(IV)/DEC/10.
- 331 IAEA/CS/OR.35, pp.63-65.
- 332 Sections 11.3.1 and 23.1.4.
- 333 GC.1/1, paras.177-179 and Annex I, Draft Resolution B. The Preparatory Commission may also have been favourably influenced by the fact that its own operations had been entirely financed by a series of loans from the UN Working Capital Fund (Section 3.2.3.3).
- 334 GC.1/20.
- 335 GC.1(S)/RES/7.
- 336 GOV/2-GC.1/INF/2, Regulations 6.01, 6.03-08, 7.01-05.
- 337 For example, GC(XII)/385, Annex III.
- 338 For example, GC(XII)/RES/244.
- 339 Section 25.3.2.
- 340 Section 7.2.2(d).
- 341 Sections 25.2.2.3-4.
- 342 GC.1/1, para.177.

- 343 GC(VI)/200, para. 55. In effect the Board anticipated the recommendations of UNGA's Ad hoc Committee of Experts, UN doc. A/6343 (supra note 142), paras. 48-50; reproduced as Recommendations 21-22 in A/7124, Annex I.
- 344 Financial Regulation 7.03.
- 345 Financial Regulation 6.06.
- 346 GC(X)/RES/209, paras. 2 and 3; a similar authorization was given by the Ninth Conference (GC(IX)/RES/191, paras. 2(b) and 3, but was not used). Section 25.3.4.4.
- 347 GC.1(S)/RES/7, para. 3 and Appendix II. Section 25.6.2.
- 348 Financial Regulation 6.04.
- 349 For example, GC(XII)/RES/244, para. 1(b).
- 350 Section 25.3.4.4.
- 351 GC(V)/RES/104, para. 2(c).
- 352 GC.1(S)/RES/7, Appendix I, para. 7. Sections 3.2.3.3 and 3.2.3.5.
- 353 GC(II)/RES/30.
- 354 For example, GC(XII)/RES/244, para. 2(a).
- 355 Sections 24.13.1-2.
- 356 Section 24.13.7(b).
- 357 For example, GC(XII)/RES/244, para. 2(c); GC(IV)/116, paras. 44-45 and Annex III, draft Resolution B, para. 3. Section 23.4.
- 358 Section 25.2.4.2.4.
- 359 Chapter 24, notes 139 and 156.
- 360 WLM Doc. 2(Add. 16-USSR), para. 4; WLM Doc. 15(Rev. 1), first part, para. 2.E.
- 361 IAEA/CS/Art. V/Amend. 4; IAEA/CS/Art. XIV/Amend. 2, para. 2; and /Amend. 4, para. 1, which, though defeated (IAEA/CS/OR. 36, p. 2), was in effect partially accepted in the modified form first proposed in IAEA/CS/OR. 33, p. 21 and later in IAEA/CS/OR. 36, pp. 21-22.
- 362 Sections 25.1.1.2.2(d) and (e); 25.7.2.
- 363 Section 25.2.1.
- 364 An abortive proposal for the adoption of provisional rules on voluntary contributions was advanced at the Conference on the Statute in order to enable the Agency to start its operations promptly (IAEA/CS/OR. 23, pp. 36-40; IAEA/CS/COORD/2, para. 4; IAEA/CS/10, para. 4).
- 365 GC.1(S)/RES/6. This Resolution followed a recommendation of the Preparatory Commission (GC.1/1, Annex I, draft Resolution C).
- 366 GC(II)/37.
- 367 GC(II)/64; GC(II)/RES/23.
- 368 Section 16.8.
- 369 INFCIRC/13, Part I; AM. V/8, part I.
- 370 GC(III)/80.
- 371 GC(III)/COM. 2/OR. 14, paras. 10-40; GC(III)/96.
- 372 GC(III)/RES/42; INFCIRC/13, Part II; AM. V/8, part II.
- 373 Section 6.1.1.
- 374 Sections 13.3 and 13.3.3.
- 375 Sections 12.2.1, 12.3.2 and 12.5.2. This does not include non-governmental organizations (NGOs) to which merely consultative status has been granted (Section 12.6.2).
- 376 Before this limited authority was granted, the Board in December 1957 had to take a special decision to accept a contribution of \$2.01 from a group of American schoolchildren.
- 377 INFCIRC/13, Part II, para. 4.
- 378 Idem, paras. 2(a) and 3.
- 379 INFCIRC/13, Part I, paras. 2 and 3.
- 380 INFCIRC/13, Part I, para. 3, and Part II, para. 3.
- 381 Section 25.2.4.2.
- 382 For example, GC(XII)/385, Annex III, draft Resolution B, para. 1; GC(XII)/RES/243, para. 1. In the spring of 1970 an increase in the target for 1971 was under consideration.
- 383 For example, GC(XII)/RES/243, para. 2.
- 384 UNGA/RES/1531(XV).
- 385 GC(V)/RES/100.
- 386 GC(II)/RES/18; Section 7.3.3.5.

- 387 GC(II)/70/Rev. 1.
- 388 GC(II)/RES/36, paras. 4 and 5.
- 389 GC(III)/RES/37; Section 7.3.3.5.
- 390 GC(VIII)/268, Annotation 20.
- 391 GC(VIII)/281 and /Rev. 1-3.
- 392 GC(VIII)/OR. 89, paras. 78-93.
- 393 GC(VIII)/INF/72, Annex I, Table 2; GC(XII)/INF/100, Annex I, Table 2.
- 394 GC. 1(S)/RES/6, para. 3.
- 395 GC(II)/RES/23, para. 2.
- 396 GC(VIII)/OR. 89, paras. 86 and 88; GC(XII)/388/Rev. 4, fn.(f). While even the reduced matching ratio would result in an American contribution at least equal to its proportionate share of the target (in accordance with GC(V)/RES/100) if all other Members came up to their "quotas", in practice many of these States do not and thus the American matching grant is held correspondingly down below its quota. In the early years this effect had been obviated by the higher matching ratio and by a minimum assured contribution of \$500 000, but the former was reduced and the latter eliminated under Congressional pressure. Though during 1969 efforts were made to liberalize the American formula to assure payment of at least the "quota" amount, these had not yet borne fruit by the Thirteenth General Conference, so that the US representative was, for the first time, unable to announce to the Conference, what the formula would be for the next year, 1970 (GC(XIII)/OR. 128, para. 13); this announcement was finally made in February 1970, and specified that the United States would follow the GC(IV)/RES/100 formula, but would not pay more than 40% of all contributions (i.e., 66 2/3% matching)(PR 70/10).
- 397 For example, GC(II)/COM. 3/OR. 1, para. 45.
- 398 For example, GC(XII)/384, Part IV, Schedule B. 2, fn. a.
- 399 For example, see the September 1968 report on unpaid pledges for the years 1965 and 1966 (GC(XII)/389, Annex D).
- 400 It was for this reason that the Monegasque monetary contribution to the Agency's Marine Radioactivity Laboratory pursuant to the Monaco Laboratory Agreement (INF/CIRC/27, para. 4(d)) was expressed as a voluntary contribution to the General Fund (Section 19.1.2.3) — a somewhat awkward device, but one which, for some years, led to an increase in the unrestricted funds contributed by the United States.
- 401 Section 19.1.2.3.
- 402 Section 19.1.3.3.
- 403 See also Sections 25.7.4.1-2. The amounts contributed under these schemes, though "voluntary", are not considered as constituting part of the donated funds that count toward the annual target of voluntary contributions; this was explicitly discussed by the Board in approving the Swedish agreement (Section 25.7.4.2).
- 404 For example, GC(XII)/384, Part IV, Schedule G.
- 405 WLM Doc. 2, Article XVI. F.
- 406 IAEA/CS/3, Article XIV. G.
- 407 Proposed, IAEA/CS/OR. 32, p. 17.
- 408 Section 3.2.3.3. IAEA/PC/W.1; IAEA/PC/OR. 2, pp.5-7; IAEA/PC/4; IAEA/PC/W.35(S); IAEA/PC/OR. 25, p. 3; IAEA/PC/W.25(S), Annex I; IAEA/PC/OR. 51, p. 6.
- 409 Section 3.2.3.5.
- 410 GC. 1/1, paras. 175(a) and 181.
- 411 GC. 1(S)/RES/4, para. 1. A.
- 412 GC. 1(S)/RES/7, Appendix I, para. 7.
- 413 GC. 1(S)/RES/7, para. 3 and Appendix II.
- 414 GC(II)/39, paras. 96-97.
- 415 A complete statement of the "Funds and other resources at the disposal of the Agency in 1967" appears in GC(XII)/380, Table 20.
- 416 Sections 18.2.3-4.
- 417 For example, GC(XII)/384, Part IV, Statements IX and X. Funds-in-trust payments for technical assistance services (Section 18.2.6) are treated similarly: excluded from the budget but included in the accounts (id., Statements V and VIII).
- 418 Section 18.2.5.1 and 25.2.1(iv).
- 419 For example, GC(XII)/RES/242, para. 2(b).
- 420 GC(X)/331, Part II, paras. 14-16.

- 421 Section 15.2.1.
- 422 Sections 17.2.2.1 and 17.6.
- 423 Sections 19.1.1.4-5. In the Programme and Budget for 1963, the Board indicated that the scales for Laboratory charges are to be established in consultation with SAC (GC(VI)/200, para.257). The one standard established by the Board in this connection is Financial Regulation 3.07(b), which states the "understanding that the Agency is not a profit making organization" and that any charges for the use of its facilities should therefore be "reasonable" and "moderate".
- 424 For example, GC(XII)/RES/243, para. 4. This provision was the subject of considerable debate and opposition at the Fifth General Conference, GC(V)/COM.1/59; GC(V)/COM.1/OR.39, paras.5-41; GC(V)/186, paras.7-13.
- 425 See, e.g., GC(XII)/385, Table 44, showing 1967 revenues of \$154438, and 1969 estimated revenues of \$185000.
- 426 GC(XI)/360, Annex III, para.19. Recently the IAEA Bulletin has started to accept advertisements (IAEA Bulletin 11 6 (1969) 23).
- 427 Section 20.2.4.
- 428 GC(III)/75, paras.23 and 619, and Annex IV, draft Resolution C.
- 429 GC(III)/RES/53.
- 430 GC(X)/333, para.6, and Annex IV, draft Resolution D.
- 431 GC(X)/RES/213.
- 432 GC(X)/RES/210, para.3(a).
- 433 INFCIRC/89.
- 434 Section 19.2.2.2.
- 435 For example, GC(XII)/384, Part IV, Schedule VI.
- 436 INFCIRC/13, Part II, para.3.
- 437 Section 18.2.7.
- 438 INFCIRC/138, Section 7.
- 439 Idem, Section 8.
- 440 Section 25.5.2.
- 441 Section 32.1.1. Only most infrequently has there been anything to list under this heading.
- 442 For example, GC(XII)/384, Part IV, Schedule A.
- 443 Financial Regulations, Annex, para.3.
- 444 In particular GC(III)/75, paras.84-88.
- 445 SEC/NOT/147, para.3; GC(XII)/385, para.9, fn.2.
- 446 UN doc. A/4135, paras.75-76.
- 447 Financial Regulation 12.04; Section 25.8.2.4.
- 448 Section 7.2.2(d).
- 449 For example, GC(VII)/DEC/8.
- 450 GC(VII)/COM.2/OR.32, para.1.
- 451 For example, GC(VII)/OR.80, paras.10-12.
- 452 General Conference Procedural Rules (GC(VII)/INF/60) 79-80.
- 453 For example, GC(XI)/DEC/9.
- 454 For example, GC(VII)/DEC/8.
- 455 GC(VII)/OR.80, para.11.
- 456 GC(II)/DEC/12. The latter had also audited the accounts of the Preparatory Commission (Section 3.2.3.6).
- 457 GC(XI)/DEC/9; reappointed GC(XIII)/DEC/8.
- 458 Section 25.8.2.5.
- 459 For example, GC(IX)/300, para.15, relating to the method of crediting the reimbursement of turnover taxes (Section 28.2.4.3).
- 460 Section 24.13.1. GC(V)/156, Part I, para.7, Part II, paras.26-27; GC(VI)/199, Part II, para.8; GC(VII)/231, Part II, para.9.
- 461 For example, GC(III)/81, para.4, and Annex I, Section IV.
- 462 GC(IV)/117, Part I, para.5, and Part II, Section IX.
- 463 For example, GC(IV)/117, Part I, para.2, and Part II, Sections IV, V and X.
- 464 GC(III)/81, Annex I, Section VII.
- 465 Financial Regulations, Annex, para.6.
- 466 Section 24.13.1. GC(IV)/117, Part I, para.4, and Part II, Section XII; GC(VII)/231, Part II, para.10.

- 467 For example, GC(X)/331, Part II, paras.24-29.
- 468 Section 7.3.2.3.
- 469 GC(X)/331, Part II, paras.18-23.
- 470 Section 25.2.1(i)-(iv). E.g., questions relating to research contract financing were parried at the 271st meeting of Board.
- 471 For example, GC(III)/81, paras.1-6.
- 472 For example, GC(XII)/384, Part I, para.2.
- 473 For example, GC(XII)/COM.2/OR.46, paras.11-12; GC(XII)/392.
- 474 For example, GC(XII)/OR.125, paras.45-46.
- 475 UN doc. A/4016, para.23.
- 476 UN doc. A/6343 (supra note 142), para.67; reproduced as Recommendation 27(b) in A/7124, Annex I.
- 477 UN doc. A/6343 (supra note 142), para.67.B; reproduced as Recommendation 28 in A/7124, Annex I; A/7124, Annex XII, Recommendation 28; GC(XII)/385, para.669.
- 478 UNGA/RES/2360(XXII), para. A.2. UN doc. E/4337, paras.129-135.
- 479 INFCIRC/11, Part I, A, Article II, a provision that is based on the UN/IBRD Relationship Agreement (16 U. N. T. S. 346, Article I, 3) and was included in the Agency's Agreement because of the confidential information that might be obtained by its safeguards inspectors (Section 21.9.2.2). With respect to the Agency's own External Auditor a special procedure is specified in para.4 of the Annex to the Financial Regulations according to which he and his staff, all of whom must subscribe to a special oath, can have access to all records "required... for the purposes of the audit".
- 480 AM. V/3; these Rules are elaborated in AM. VI/1.
- 481 AM. I/7, Appendix B; Section 9.4.4.1(b).
- 482 AM. I/7, Appendix H; Section 9.4.4.1(h).
- 483 For example, GC(VI)/199, Part III, Section X.
- 484 For example, GC(XII)/384, Part III, paras.13-14, and Part IV, Schedule F.6.
- 485 For example, GC(XII)/384, Part II, paras.7-8; Section 25.2.4.1.1.

PART F.
LEGAL MATTERS

CHAPTER 26. AGREEMENTS

PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Articles XI.F, XV.C, XVI and XXII.B, but also Articles III.D, V.E.6 and 7, IX.A, XII.A.6 and C, XIII, XIV.B and C, XIX.B and Annex I, paras. C.6 and 7
UN Relationship Agreement (INFCIRC/11, Part I.A), Articles XX, XXI, XXII, XXIV
Regulations for the Registration of Agreements (INFCIRC/12)
Rules for the Registration of Agreements (promulgated by the Director General in 1958)
Agreements Registered with the IAEA (Legal Series No. 3)
Administrative Instruction on Agency Agreements and Contracts (AM.V/6)

The Statute is an instrument establishing singularly few absolute rights or obligations for the Members of the Agency. Instead, it creates a framework to support the network of agreements through which the organization is to carry out its activities.¹ For the most part these instruments, whether designated: "agreements", "conventions" or "contracts", are true international treaties concluded between parties having full international personality and relating to matters of public concern, and a general description of the formal aspects of all these types of instruments constitutes the principal subject of this Chapter. However, there is no clear (and certainly no explicitly defined) dividing line between the truly international instruments and those having merely private law character, and thus some of the latter are also mentioned here peripherally to complete the presentation. No reference is made to personnel contracts, which are dealt with in Section 24.9.

26.1. STATUTORY PROVISIONS

The Statute contains no general authority for the Agency to conclude either international or private law agreements. However, specific authority is granted to conclude certain particular types of agreements and the nature of the activities prescribed for the Agency implies the power to conclude others. The particular instruments and the passages in which they are referred to are:

- (a) Relationship Agreement with the United Nations: Articles V.E.6, 7; XVI.A, B; Annex I, paragraph C.7(a).
- (b) Relationship agreements with other organizations: Articles V.E.7; XVI.A; Annex I, paragraph C.7(b).
- (c) Project Agreements: Articles XI.F; XII.A.6; XII.C; XIV.B.2.
- (d) Other types of safeguards agreements (i.e., those relating to bilateral or multilateral arrangements or to unilateral submissions): Articles XII.A.6; XIV.C.²
- (e) Supply Agreements: Articles IX.A, B; XIII.

- (f) Privileges and Immunities Agreements: Article XV.C.
- (g) Headquarters Agreement: Annex I, paragraph C.6.

In addition, it is assumed in several other statutory provisions that the Agency is to enter into international agreements. Thus Article III.D speaks of "agreements concluded between a State or group of States and the Agency which shall be in accordance with the provisions of the Statute"; Article XIX.B speaks of "any agreement entered into by [a member] pursuant to this Statute"; and Article XXII.B requires the registration of "agreements between the Agency and any member or members, agreements between the Agency and any other organization or organizations, and agreements between members subject to the approval of the Agency". While the agreements primarily referred to in these passages are undoubtedly those to which specific reference is made in other Articles of the Statute, one need not conclude that "agreements in accordance with/pursuant to the Statute" are only the instruments specifically mentioned; rather, these passages should be read to cover any agreement that furthers the Agency's statutory purposes and is not contrary to the terms of the Statute. In any event, the types of instruments specifically referred to are sufficiently comprehensive to cover almost all the arrangements that the Agency has as yet had occasion to conclude.

No reference is made in the Statute to agreements between the Agency and individuals. But if the Agency is to carry out its activities, in fact if it is to function at all, it must maintain extensive contacts with private persons and to regulate these contacts, as is customary, through contractual and other types of instruments. As a matter of fact, no objection has ever been raised against the agreements that the Agency has entered into *jure gestionis* (assuming this distinction from acts *jure imperii* is at all relevant to international organizations). However, in connection with the arrangements for supplying materials and other items or services to the Agency under Statute Articles IX and X, the objection was raised that the Agency does not have authority to deal with private persons "not bound by the Statute"; as pointed out in Section 16.4.7, this restrictive interpretation was not accepted by the Board.

26.2. TYPES OF AGREEMENTS

Most of the agreements concluded by the Agency can be classified into a limited number of categories:

26.2.1. With States

26.2.1.1. Privileges and immunities

The Agency has entered into two agreements principally concerned with its privileges and immunities: the multilateral Agreement on the Privileges and Immunities of the International Atomic Energy Agency³ and the bilateral Headquarters Agreement (with its several Supplements).⁴ In addition, many other agreements dealing principally with other subjects (e.g., safeguards)⁵ also have clauses concerning privileges and immunities.

26.2.1.2. Host

Somewhat resembling a headquarters agreement are the instruments by which a Government undertakes the function of host to a particular Agency activity, such as the International Marine Radioactivity Laboratory at Monaco⁶ or the International Centre for Theoretical Physics in Trieste.⁷ More distantly related are the standardized agreements for hosting temporary Agency activities, such as meetings, panels, symposia, conferences or training courses.⁸

26.2.1.3. Nuclear materials supply

The Agency has concluded two types of agreements for the supply to it of nuclear materials. The first include the general supply or co-operation agreements concluded with the Soviet Union, the United Kingdom and the United States;⁹ these do not relate to any particular transaction, but establish the framework under which further supply arrangements (which may, but need not, involve transfers to the Agency itself) can be concluded. Another instrument of this type is the Master Contract for Sales of Research Quantities of Special Nuclear Materials concluded with the United States.¹⁰

The second type of supply agreements relates to a particular transaction, and is usually concluded pursuant to a general agreement of the first type. They may be instruments complete in themselves or they may be merely supplements to a master contract. They may provide for gift, sale or lease, and may be concluded bilaterally with the Supplying State only or in a trilateral form to which the Receiving State also is a party.¹¹

26.2.1.4. Grants to or for use of the Agency

Though the Agency can accept gifts without necessarily concluding a formal agreement, sometimes the donor State requires an instrument to record the conditions of the grant. Such instruments include the Master Contract for U.S. Financing of Agency Research¹² and that relating to the free loan of a number of films from the US Information Service.^{12A}

The agreement concluded with Sweden for the funding of technical assistance projects in Member States relates to a series of proposed grants to be made, in effect, through the Agency.¹³

26.2.1.5. Projects

Grants of Agency assistance must always be based on an agreement with the Receiving State(s).¹⁴ The following are the principal types: reactor Project Agreements;¹⁵ agreements relating to the supply of "small" quantities of nuclear materials¹⁶ - these may take the form of a master agreement for assistance by the Agency in furthering projects by the supply of materials, implemented by supplementary agreements relating to particular transfers; and agreements for the transfer of medical or scientific equipment made available to the Agency by another State.¹⁷ A special type of Project Agreement relates to the performance of certain services by the Agency, such as the evaluation of a hazards report or participation in a national power

survey;¹⁸ if the costs of such a project are not borne by the State concerned, the related agreement can most properly be classified as a technical assistance agreement.

26.2.1.6. Technical assistance

Closely related to, or indeed constituting a particular type of Project Agreement are those relating to the grant of technical assistance. Typically two agreements with the assisted State relate to each grant: the first is usually the EPTA Standard Agreement to which the State and, inter alia, the Agency are parties; the second is a supplementary instrument referring to that Standard Agreement and setting forth the additional conditions relevant to assistance received from or through the Agency as well as either specifying the particular assistance to be supplied or permitting the Agency to do so by dispatching separate letters for each grant.¹⁹ At the termination of a technical assistance project another agreement may be concluded, by means of a separate exchange of letters, by which title to any equipment used is transferred to the State.²⁰

A few types of technical assistance projects are not subject to EPTA Standard Agreements: the arrangements for the use of a Mobile Radio-isotope Laboratory,²¹ and Special Fund projects in relation to each of which a trilateral "Plan of Operations" is concluded with the State and UNDP.²²

Something of a sport in this area are the Standard Agreements on Operational Assistance,²³ which are concluded routinely with under-developed States by UNDP acting in the name of the Agency as well as of all the other participating organizations,²⁴ even though the Agency has not yet participated in the granting of assistance under any of these instruments.

26.2.1.7. Safeguards

Agency safeguards (including health and safety measures) can only be carried out in a State on the basis of an agreement to which, at least, both that State and the Agency are parties.²⁵ The reactor Project Agreements mentioned under Section 26.2.1.5 are a special type of such safeguards agreements. Other types are those that relate to unilateral submissions of national activities, or to bilateral or multilateral "arrangements"; this latter type can again be sub-divided into several categories depending on whether the arrangement in question already provides for safeguards (the responsibility for which is to be "transferred" to the Agency) or foresees their ab initio imposition by the Agency.²⁶

26.2.1.8. Joint programmes and activities

One category of Agency agreements consists of a number of sui generis arrangements relating to joint programmes or special activities undertaken with one or more States. Included are instruments such as the NPY Agreement Concerning Co-operative Research in Reactor Physics,²⁷ the IPA Agreement for Conducting a Regional Joint Training and Research Programme Using a Neutron Crystal Spectrometer²⁸ and the Agreement for

the Establishment in Cairo of a Middle Eastern Regional Radioisotope Centre for the Arab Countries (which creates an international organization in its own right).²⁹ Some of the other "host" agreements referred to under Section 26.2.1.2 might also be classified into this category. Finally, the Nordic Mutual Emergency Assistance Agreement should be mentioned.³⁰

26.2.2. With intergovernmental organizations

26.2.2.1. Relationship and co-operation

The most important agreements with intergovernmental organizations are the relationship agreements that the Agency has concluded with the United Nations³¹ and with seven specialized agencies,³² as well as the similar co-operation agreements concluded with three regional organizations.³³ A special type of relationship agreement was concluded with the UN Special Fund, specifying the conditions under which the Agency could act as an "executing agency" for Fund projects.³⁴

26.2.2.2. Administrative

Each relationship agreement establishes a general framework for co-operation within which particular arrangements can be made - some of which are specifically foreseen in the main agreement while others arise due to later circumstances.

Three such particular agreements have been concluded with the United Nations, relating respectively to the use by Agency officials of the UN Laissez-Passer,³⁵ to the entry of the Agency into the UN Joint Staff Pension Fund³⁶ and to the submission of disputes arising out of the UNJSPF Regulations to the UN Administrative Tribunal.³⁷ Through each of these arrangements the Agency benefits from a "service" primarily established by the United Nations for its own officials but also made available to the staffs of organizations affiliated with it.

A particularly interesting agreement of this type is that with UNESCO for the joint operation of the Trieste Centre.³⁸ Though of considerable substantive significance, its "administrative" nature can be deduced from the fact that it was concluded by the Director General without specific authorization from the Board, presumably pursuant to Article X of the IAEA/UNESCO Relationship Agreement.³⁹ Pursuant to the new agreement "Procedural Arrangements" regarding staff matters have been concluded.^{39A}

A number of less formal arrangements have been concluded by the Director General on the authority granted him by the several relationship and co-operation agreements. Some of these merely provide in general terms for the implementation of that agreement, for example by the establishment of inter-secretariat working groups charged with solving current problems in co-ordination as soon as any arise.⁴⁰ Others relate to specific projects, such as the agreement with FAO for the establishment of the Joint Division,⁴¹ the agreement with UNESCO and the University of Trieste for conducting an Advanced School for Theoretical Physics in conjunction with the Trieste Centre,⁴² and the agreement with ENEA and the Austrian SGAE for Collaboration in an International Programme on Irradiation of Fruit and

Fruit Juices.⁴³ A trivial example of such administrative arrangements are the protocols on the entry into force of the relationship agreements, recording the circumstances of their negotiation and approval.⁴⁴

26.2.3. With non-governmental organizations

As recalled in Section 12.6.2, it was decided that the grant of consultative status to a non-governmental organization, pursuant to the Rules on the Consultative Status of NGOs,⁴⁵ does not constitute the conclusion of a relationship agreement within the meaning of Statute Article XVI. A. However, paragraph 8 of the Rules authorizes the Director General to "request a non-governmental organization to undertake specific studies or investigations or to prepare specific papers". Pursuant to this authority the Director General has entered into several lump-sum "technical contracts" with ICRP and ICRU for the conduct of special studies.⁴⁶

26.2.4. With individuals and institutions

26.2.4.1. Research contracts

Under its research contracts programme the Agency enters into numerous research contracts with institutions in Member States (and sometimes with non-governmental organizations).⁴⁷ Though these contracts are in principle not concluded with individuals, the institutions with which the formal arrangements are made are not international persons (though they frequently are quasi-governmental or otherwise publicly financed).

26.2.4.2. Commercial contracts

In carrying out its normal business the Agency enters into a multitude of contracts with private persons and organizations that supply it with materials, equipment and services;⁴⁸ normally, unless the supplier requires a special form of agreement (e. g., an insurance contract), the only instrument used is an Agency Purchase Order. A special standardized form of contract is concluded with certain distributors of Agency publications.⁴⁹

26.2.4.3. Federation Agreements

The Trieste Centre, acting for the Agency, has entered into standardized Federation Agreements or Arrangements with a number of universities and other scientific institutions, providing for the exchange of scientists between these and the Centre.⁵⁰

26.2.5. Concluded under the Agency's auspices

Though usually the Agency becomes a party to the arrangements it formulates or evaluates, there are several types of agreements to which it does not become a party though they are concluded under its auspices⁵¹ or subject to its approval.

26.2.5.1. Conventions

Although the Statute makes no explicit provision for the Agency to sponsor international conventions, certain of its functions can most conveniently be implemented in that way. Thus in the civil liability field the Agency already has two such treaties to its credit: the Vienna Convention on Civil Liability for Nuclear Damage⁵² for which it is solely responsible, and the Brussels Convention on the Liability of Operators of Nuclear Ships⁵³ the honours for which it shares with the Belgian Government. Though in formulating both these instruments consideration was given to direct participation by the Agency and other international organizations that might operate nuclear facilities in their own names, finally both were, conventionally, restricted to States;⁵⁴ nor was it considered necessary for the Agency to sign them, even though both, and in particular the Vienna Convention, assign certain administrative functions to the organization, which it is in fact carrying out.⁵⁵

As described in Chapter 23, other fields for which such agreements might be designed include waste disposal into the sea, transportation and emergency assistance.

26.2.5.2. Supply arrangements

Whenever the Agency merely acts as a broker between two Member States, neither of which desires the former to become an active party to the arrangement, then the supply agreement can be concluded bilaterally between the Supplying and the Receiving States.⁵⁶ This is foreseen in the final clause of Statute Article XI, F. 3, which requires that in such cases the Project Agreement between the Agency and the Receiving State set forth the terms and conditions on which any materials, services, equipment, and facilities are to be provided by the Supplying Member.

26.2.5.3. Between Members subject to approval by the Agency

Statute Article XXII, B provides for the registration of "agreements between members subject to approval of the Agency". The Statute does not indicate under what circumstances Member States must or might seek such approval – but such a procedure would seem appropriate if a Supplying State agrees to transfer certain nuclear items on the condition that the Receiving State submit them to safeguards or to health and safety controls by the Agency; the Agency's approval of the bilateral agreement would then signify its agreement to assume these control functions (or perhaps its conclusion that no controls need be applied to the particular transaction⁵⁷).

Up to now, no use has yet been made of this approval procedure. Nor has it been determined which organ of the Agency would issue the approval, though presumably it would be the Board (under Statute Article VI, F) or the Director General by delegation from the Board.

26.3. SPECIAL FORMS OF AGREEMENTS

Though most of the Agency's agreements are bilateral and also otherwise conventional in form, several special variants have been developed for many of the significant instruments. These forms have been evolved as required. The following listing does not attempt to divide these adaptations into mutually exclusive categories, for certain agreements simultaneously use several of the indicated mutations.

26.3.1. Trilateral

Since the Agency cannot supply from its own resources most of the significant assistance for which requests are addressed to it, its principal role is usually as middleman or broker between the actual supplier of the assistance and the receiver. This special role has stimulated the development of several types of trilateral agreements.

(a) Supply arrangements

When the Agency is acting as a true broker (i. e., when primarily engaged in bringing the Supplying and Receiving States together rather than in interposing itself between them) but finds the States reluctant to conclude a direct bilateral agreement under its auspices, the Agency generally prefers to include both States in a single trilateral agreement rather than to enter into separate bilateral agreements with each.⁵⁸ In trilateral agreements of this type, the Agency attempts to be as self-effacing as possible, by arranging that every obligation it undertakes with respect to one State is automatically balanced by a corresponding right against the other: thus it accepts title or possession only if it can instantaneously and automatically pass these on; and it makes sure that if a dispute should arise then the Agency can either stay out of the settlement procedure entirely or can require both States to participate in the same proceeding.⁵⁹

(b) Safeguards transfers

Even if the Agency's intervention is not required as a broker, i. e., if the Supplying and Receiving States are willing to enter into a direct bilateral agreement regulating all essential commercial terms of the assistance between themselves, they may wish the Agency to perform certain related political functions, such as the administration of safeguards or of health and safety controls.⁶⁰ In this situation too a trilateral form of agreement has often been used⁶¹ - in part at the Agency's desire to regulate in one instrument all the relevant bilateral relations among the parties; the agreement between the two States as to what to submit to the Agency's control; the agreement between the Agency and the Receiving State as to the modalities of the control; the agreement between the Agency and the Supplying State for the exchange of notifications, possibly for the reimbursement of some of the Agency's safeguards costs and for action in case of non-compliance by the Receiving State - and in part at the desire of the Supplying State to

make sure that the control function it "transfers" or "assigns" to the Agency will indeed be exercised properly.⁶² In these agreements the Agency does not attempt to be self-effacing but rather to assure itself of sufficient independence of action to be able to carry out its statutory functions without interference from either or both States.

(c) Special Fund "Plans of Operation"

Since the Agency's financial resources are also severely limited, it can only assist Member States with the financing of major projects by making arrangements for tapping outside sources of funds. One such source is the UNDP's Special Fund, whose projects are carried out pursuant (on the one hand) to the Executing Agency Agreement between the Agency and the Special Fund⁶³ and (on the other) to a master agreement between the State and the Fund;⁶⁴ however, the actual details of each separate project are set forth in a Plan of Operation to which the Fund (the source of the non-local finances), the Agency (the principal contractor of the work to be performed) and the Receiving State are all parties.⁶⁵

(d) Joint studies

Aside from acting as a broker and from performing services, the Agency can also play a role as catalyst or as an arbiter for projects basically carried out jointly by two Member States. One such arrangement is that carried out pursuant to an agreement concluded with Mexico and the United States For a Preliminary Study of a Nuclear Electric Power and Desalting Plant.⁶⁶

26.3.2. Multilateral

Often the Agency's functions as an intermediary or catalyst are not limited to a transaction between just two Members, but encompass the establishment of programmes in which a number of countries can join. These programmes may be embodied in agreements to which the Agency and some or all of the States concerned become parties.

- (a) In some agreements, such as that relating to the NPY project, the States to become parties are listed in the text and entry into force requires that all these must first join;⁶⁷ this is provided if each State has a specific role to play or contribution to make.
- (b) In some agreements the Agency and one or more States are named as necessary parties while others are merely invited to join. Thus for the IPA project India and the Philippines were named as necessary parties while "Any Member State of the Agency in the areas 'South Asia', 'South East Asia and the Pacific', or the 'Far East'" may also join;⁶⁸ in the agreement for establishing the Middle Eastern Radioisotope Centre, the United Arab Republic, as host State, was named as a necessary party while at least three other "Arab States" had to join for the agreement to enter into force.⁶⁹
- (c) Some agreements are so formulated that, besides the Agency, any Member State can become a party. This of course is true of the Privileges

and Immunities Agreement, which required the acceptance of only a single State in order to enter into force.⁷⁰ It also appears to be true of the Nordic Emergency Assistance Agreement, the membership of which is, in spite of its restrictive title, not formally limited to States from the indicated area; entry into force required the unconditional signature or the signature and ratification of at least two States and the Agency.⁷¹

Depending on the nature of the programme and the provisions of the agreement, the Agency's role may be unique or may instead be largely on parity with that of some or all of the participating States. Thus in the NPY project the type of contribution that the Agency is to make differs from that offered by the three Governments and in the Joint Programme Committee the Agency originally had two seats out of five.⁷² On the other hand in the Nordic Emergency Assistance Agreement, the Agency, though it can never be a "Requesting State" and though Article II assigns certain "special functions" to it, is in the role of an "Assisting Party" largely assimilated to the contracting States.

26.3.3. Master agreements

Because of the complex statutory and other requirements relating to certain Agency transactions, particularly those for the transfers of nuclear materials, as well as of the sometimes detailed requirements of the national laws of the States involved in these transactions, the instruments relating to even minor projects may assume a length and involutedness entirely out of proportion to the cost of the item involved, to its value to the receiver and to its potential hazard from either the military or the health and safety point of view.⁷³ Therefore, if transactions involving the same parties are expected to be of a repetitive nature, it may be convenient to conclude a single "master" agreement setting out all the formal terms and providing for particular transactions to take place by means of individual subsidiary instruments in which only the variable elements (e.g., quantity and price) are set forth. The use of such master agreements makes it possible to shorten drastically the delays encountered in completing the formalities of a given transaction, since no time need be wasted in the repetitive negotiation (sometimes over thousands of miles and in several languages) of lengthy formal clauses; in addition, once the master agreement has been approved at an appropriately high level of authority (i.e., sometimes the Board for the Agency, and the Cabinet or even the Parliament for a Member State) the individual subsidiary arrangements can be completed at appropriately lower levels. Indeed sometimes particular transactions can be accomplished without any proper subsidiary agreement but merely by a unilateral notification conforming to the terms of the master instrument and subject to challenge by the other party.

The Agency has entered into the following master agreements or classes of such agreements:

- (a) The EPTA Standard Agreement, concluded by all the organizations participating in UNDP/TA with each beneficiary State, is a type of master

agreement that had evolved before the Agency was created; as used by the Agency in connection with assistance granted either from its own resources or from UNDP/TA, it must be complemented either by a detailed supplementary agreement for every grant of assistance or more recently by a supplementary "umbrella" agreement concluded once with each Government concerned, setting forth those general terms peculiar to the Agency's legislation and enabling the Agency to grant assistance by means of unilateral letters describing each project and the special conditions relating thereto.⁷⁴

- (b) The master Agreement for Assistance by the Agency in Furthering Projects by the Supply of Materials is designed principally for use in supplying minor quantities of nuclear materials to Member States, by means of short supplementary agreements.⁷⁵
- (c) The Master Contract for Sales of Research Quantities of Special Nuclear Materials enables the Agency to purchase such materials from the USAEC by means of simple supplemental contracts.⁷⁶
- (d) The Master Contract for U.S. Financing of Agency Research provides the framework under which the USAEC can contractually supply to the Agency funds for individual research projects of interest to both of them, which the latter sub-contracts under its research contracts programme.⁷⁷

The three general supply or co-operation agreements concluded with the Soviet Union, the United Kingdom and the United States are not genuine master agreements, since for the most part they do not include terms that automatically apply to particular supply arrangements, but rather only create the legal basis for the conclusion of such arrangements.⁷⁸ Thus the agreements by which individual supply transactions are arranged are not subsidiary to the general agreements, though they usually refer to them.

26.3.4. Umbrella agreements

Closely related and somewhat similar in purpose to the master agreements are the "umbrella agreements" (somewhat more clearly described in French as "l'accords cadre"), which set out all the essential provisions relating to a particular operation without directly specifying the actual items to which the operation is to apply; instead the agreement establishes a procedure by which such items are identified and brought within its terms. For example, the trilateral Safeguards Transfer Agreements apply to all items that the two Governments from time to time notify to the Agency and the latter accepts (after settling any necessary operational details by means of subsidiary arrangements with the State concerned).⁷⁹ These umbrella agreements differ from master agreements in that the latter provide for a series of distinct transactions each covered by a separate supplementary agreement, while the former deal with only a single operation whose subject matter may be redefined (i. e., expanded or contracted) from time to time. Deriving from this difference is another: master agreements by themselves do not create any rights or obligations, since these, though foreseen in and incorporated from the senior instruments, are only created by the several supplementary agreements; in contrast, umbrella agreements by themselves create rights

and obligations, some of which are absolute (e. g., the duty to notify under a Safeguards Transfer Agreement all transfers of nuclear items from the Supplying to the Receiving State), while most are conditional (e. g., the controls to be applied to any items notified pursuant to a Safeguards Transfer Agreement).

Up to now, umbrella agreements have been concluded practically only in respect of transfers of safeguards under bilateral arrangements, but the same technique can also be used in connection with any "open"⁸⁰ safeguards arrangements (e. g., unilateral submissions⁸¹) or other activities (e. g., Agency projects). Indeed, some Project Agreements (such as that relating to the JRR-3 reactor⁸²) already foresee the possibility of further fuel supplies being arranged under them; even where no such extension provision has been included, it may be possible (as was done with respect to the Argentine RAEP reactor⁸³) to provide additional assistance without direct amendment of the original Project Agreement.

26.3.5. EPTA Standard

The EPTA Standard Agreement and its several variations (e. g., that relating to the OPEX programme) were largely evolved without the participation of the Agency.⁸⁴ From its point of view these instruments present several peculiarities, while the use it makes of them also differs somewhat from that of the other participating organizations:

- (a) The EPTA Standard Agreements are practically the only instruments binding the Agency to which the signature on its behalf is not affixed by the Director General or an authorized staff member, but by a UNDP official⁸⁵— which incidentally often results in the Agency remaining ignorant for months of the conclusion of an agreement to which it is a party.
- (b) In the Agency's practice, the EPTA Agreement is used both for assistance granted from UNDP/TA resources and from the Agency's own.⁸⁶
- (c) Though some organizations use the EPTA agreement as an "umbrella-type" instrument by granting assistance without any further supplementary agreements, the Agency treats it merely as a "master agreement" which must be supplemented by special terms agreed with respect to each grant of assistance or with respect to all such grants.⁸⁶
- (d) Though in form each EPTA Agreement is multilateral (i. e., a State and all the participating organizations are parties), in fact no rights or obligations are created as between the organizations and thus the Agreement actually consists of a series of parallel bilaterals between each one of the organizations and the State. Nevertheless, in its registration practice the Agency treats these agreements as at least quasi-multilateral for it also registers those agreements concluded with Non-member States — a practice that can only be justified under the Regulations for the Registration of Agreements if the other organizations are considered as parties to the agreement with the Agency.⁸⁷

26.3.6. Model agreements

Though the term "model agreement" is frequently used within the Agency, this is a misnomer for these models are not really agreements but merely devices for the simplified conclusion of such instruments.

One major purpose of devising and using a model is to speed the approval process for the actual instruments. Thus if an agreement requires Board approval this can be secured more smoothly and quickly if it can be stated that the draft text presented in a given case is identical to (or differs only in certain specified points from) a previously approved agreement that now serves as a "model". With respect to some instruments the Board has been content to approve an abstract model text, leaving to the Director General its adaptation to particular transactions.⁸⁸

The second major purpose is to secure uniformity among agreements of a similar type concluded with several States or organizations. Such uniformity is an administrative convenience for the Agency, which would otherwise have to administer a series of instruments with similar terms but expressed in different forms, or, even more confusingly, having radically different forms but basically the same provisions. Even more important than this element of convenience is the need to avoid discrimination among Member States with regard to basically similar arrangements, which can best be achieved by the use of models and a known, impartial resistance to proposals to depart from their terms.⁸⁹

Up to now, the Agency has evolved model agreements of the following types (though in some instances that term has not been used and it might thus be better to speak of "patterns"): reactor Project Agreements; equipment Project Agreements; trilateral nuclear materials Supply Agreements to which the United States is a party; Safeguards Transfer Agreements; supplementary agreements to the EPTA Standard Agreement; Federation Agreements entered into by the Trieste Centre; conference "host" agreements; relationship agreements with specialized agencies; co-operation agreements with regional intergovernmental organizations; research contracts. A special effort is being made to develop model Safeguards Submission Agreements in relation to the Non-Proliferation Treaty, and OPANAL has invited a similar effort with respect to the Tlatelolco Treaty.⁸⁹

26.4. PARTICULAR PROVISIONS AND DEVICES

In addition to the various special forms of agreements evolved or adapted by the Agency, some particular provisions or devices (not necessarily originated by or peculiar to the Agency) are used in all or at least in several types of Agency agreements.

26.4.1. Preambles

Many Agency agreements, especially those whose texts are submitted to the Board, contain more or less elaborate preambles presenting in a logical or chronological order the background of the transaction or programme in question and citing the general authority or the specific decision pursuant

to which the Agency is acting. The preamble is also frequently used to introduce certain definitions (e. g., of the parties) and sometimes to refer to certain additional instruments of relevance to the agreement.⁹⁰

26.4.2. Incorporation by reference

The device of incorporation by reference is used extensively in the formulation of agreements. Though this device may make it necessary to consult several documents in order to understand a single instrument, incorporation has become a convenience and sometimes even a necessity because:

- (a) The extensive and precise specifications required for the application of safeguards or of health and safety controls, frequently make it practically impossible to set out all the necessary provisions in full;
- (b) Even if a full recitation of all relevant provisions is not impractical, it may be inconvenient or politically awkward to try to establish exactly which provisions may be relevant to a given arrangement under various hypothetical contingencies. Incorporating the entire body of the relevant regulations (which of course must include standards or procedures for specifying those that are applicable to a given situation) may avoid the embarrassment of having to make an a priori and therefore in the event a possibly unnecessary determination.⁹¹
- (c) The lengthy formal clauses required for some types of agreements (e. g., for the transfer of nuclear materials from the United States) that may relate to most unlikely contingencies (e. g., an American Congressman seeking to profit from a supply agreement to the Agency) simply invite incorporation by reference in order to shorten the subsequent similar agreements entered into between the same parties.

The instruments that are most frequently incorporated into agreements by reference are:

- (i) Statute Articles XII. A (safeguards procedures) and XII. C (sanctions): into all safeguards agreements;⁹²
- (ii) The Safeguards Document: into all safeguards agreements;⁹³
- (iii) The Health and Safety Document: into all types of Project Agreements;⁹⁴
- (iv) The Inspectors Document: into all Project and other safeguards agreements;⁹⁵
- (v) The Privileges and Immunities Agreement (especially if the State in question is not a party thereto): into practically all agreements requiring the Agency to send personnel or property or to invite persons to a place outside the Headquarters State;⁹⁶
- (vi) The Agency's Health and Safety Standards: into all types of Project and joint programme agreements and into all research contracts;⁹⁷
- (vii) The EPTA model Standard Agreement: into all technical assistance agreements with States that are not already party to a standard agreement including the Agency;⁹⁸
- (viii) Disputes clauses: into concurrent or later agreements among the same parties (e. g., the arbitration provisions from a trilateral supply agree-

- ment are usually incorporated by reference into the related bilateral Project Agreement);⁹⁹
- (ix) Supply agreements: into the related Project Agreements (principally in order to meet the formal requirements of Statute Article XI, F. 3);¹⁰⁰
 - (x) Master agreements: into their supplementary agreements;¹⁰¹
 - (xi) National legislation, for example:
 - (A) The US International Organizations Immunities Act: into safeguards agreements with the United States;¹⁰²
 - (B) Domestic health and safety laws: into project and joint programme agreements with States not desiring to apply the Agency's Standards.¹⁰³

26.4.3. Designation of applicable law

It has always been implicitly assumed that, unless specifically provided otherwise, the Agency's agreements with States and with international organizations are governed by international law, even if the instrument relates to a primarily commercial transaction (such as the sale of nuclear materials). However, this is almost never stated explicitly in an agreement. One of the very few exceptions is Article XV of the Supplemental Agreement (to the Headquarters Agreement) on the Temporary Headquarters Seat:¹⁰⁴

"The legal relations between the IAEA and the Republic of Austria... in so far as they are not covered by this agreement are exclusively governed by the [Headquarters Agreement] and by public international law."

In a few instances national law in general or a specific law in particular is referred to. Thus the privileges and immunities of safeguards inspectors within the United States are granted by the International Organizations Immunities Act,¹⁰⁵ certain aspects of the arrangements for the supply of nuclear materials by the United States are by agreement governed by specified American legal provisions¹⁰⁶ and the application of particular domestic health and safety legislation is stipulated in several Project or joint programme agreements.¹⁰⁷ A general reference to domestic law is made in paragraph 8 of the Inspectors Document, which is incorporated into most agreements providing for the carrying out of safeguards or health and safety controls;¹⁰⁸ in recent safeguards agreements reference is also made to the domestically applicable system of protection against third-party liability, which often depends on national legislation.¹⁰⁹ These incorporations of specific legislation are not, however, intended to make the relevant national legal system the "applicable law" of the treaty.

The law applicable to research contracts entered into with private or public institutions in Member States¹¹⁰ is by no means as clear as that applicable to the agreements with these States themselves. The Agency prefers that general international law be applicable for otherwise the contracts would either all be subject to different national laws, or perhaps for the most part to the law of Austria since almost all these contracts are formally concluded (i. e., the last signature is affixed) at Headquarters.¹¹¹ However, early experience taught the Secretariat that a clause explicitly specifying the appli-

cation of international law causes difficulty for many contractors, and consequently no such provision has been included in the standard contracts. Since no dispute has ever been litigated under such an instrument, no formal decision on this point has been recorded.

The Agency's "Purchase Order" form, used for the bulk of its private contracts, contains no choice of law clause - nor even one specifying a forum for litigation (from which such a choice might be deduced).

26.4.4. Liability, disputes and authentic languages

Almost all agreements contain a disputes clause and many also have a liability clause. These are discussed in Chapters 27 and 29 respectively.

The bases for selecting the authentic language(s) of agreements are discussed in Section 33.4.

26.4.5. Parties

Regardless of its form, in every agreement entered into by or on behalf of the Agency, the Agency itself is named as the party rather than any organ, department or official.¹¹²

Though the Statute (as well as instruments such as the Safeguards Document), in referring to various types of agreements, always states that these are to be concluded with States or with "members" (i. e., with States that are Members of the Agency), almost all Agency agreements are in form concluded with Governments.¹¹³ This does not appear to be based on any deliberate consideration, and in reports and other documents agreements with Governments are indiscriminately referred to as if they were to be or had been concluded with States.¹¹⁴ Probably the principal reason for this practice are the precedents established in the UN family, and the reluctance of Governments to take the elaborate steps sometimes necessary under domestic law for the conclusion of agreements on the State level.¹¹⁵

Statute Article XI. F refers to agreements with a "group of members". This phrase, which also appears in Articles IX. D and XI. A, B, D, F. 2-3 and was introduced at the Working Level Meeting, is not clarified by reference to the drafting history. In practice the Agency has entered into certain agreements with several Members, each acting for itself and constituting a "group" only within the context of the agreement itself.¹¹⁶ No situation has yet arisen in which the Agency was approached by a single representative acting formally for a group of States. Nor has it yet been necessary to decide whether an international organization would qualify as a "group of members", and whether it would still so qualify if some of its members were not also Members of the Agency.

As pointed out in Section 13.3.4, the Agency has entered into several agreements with Non-member States.

The Agency has also entered into agreements where some of the other parties had international personality while others did not. Thus the agreement relating to the Monaco Laboratory was concluded with the Government of the Principality of Monaco (a Member State) and with the "Oceanographic Institute Fondation Prince Albert I^e de Monaco";¹¹⁷ the agreement relating

to the irradiation of fruit and fruit juices was concluded with OECD (acting for ENEA) and the "Österreichische Studiengesellschaft für Atomenergie G.m.b.H.",¹¹⁸ the agreement for the establishment of the Advanced School for Theoretical Physics was concluded with UNESCO and the University of Trieste.¹¹⁹

26.5. FORMALITIES RELATING TO AGREEMENTS

26.5.1. Source of Agency's authority to conclude

Most Agency agreements are concluded by authority of the Board, which derives its power from the general grant in Statute Article VI. F¹²⁰ or under specific ones in Articles XIII and XV. C. The Board frequently delegates to the Director General the right to conclude certain agreements after it has approved them in principle, or even to enter into certain categories of agreements without specific approval.

All relationship agreements with international organizations require, pursuant to Statute Articles V. E. 7 and XVI. A, the approval of the General Conference.¹²¹ In addition the Board may, as provided in Article V. F. 1, refer decisions to the General Conference; acting presumably under this provision, the Board referred the Headquarters Agreement to the Conference for approval.¹²²

The Statute does not specifically grant to the Director General any function in connection with the conclusion of agreements, other than those relating to privileges and immunities.¹²³ In practice, however, all agreements are concluded on behalf of the Agency by the Director General or his representative, except for those relationship agreements that come into force automatically on approval by the principal legislative organs of two organizations. The Director General's authority is derived by delegation from the Board, which is sometimes direct and explicit, sometimes implied (by the approval of a general course of action proposed by the Director General¹²⁴ or by the tolerance of a known and established practice) and sometimes set forth in another agreement (e. g., the Director General's authority to conclude administrative arrangements for implementing relationship agreements is explicitly recited in these agreements¹²⁵). In connection with those agreements that are approved by the General Conference, the Director General has been given authority to make "such editorial changes as may be necessary" (in the Headquarters Agreement)¹²⁶ or to "make any purely formal modifications that may seem necessary to the texts" (of relationship agreements);¹²⁷ since both the Board and the General Conference must concur in the texts of these agreements, the delegation of this authority to make changes must also be approved by both these organs.¹²⁸

26.5.2. Form of conclusion and entry into force

26.5.2.1. Concurrent approval

Most of the Agency's relationship agreements with international organizations are so formulated as to enter into force automatically on receiving the ap-

proval of the General Conference and of some appropriate organ of the other organization.¹²⁹ This method has the disadvantage that at the time of entry into force of the agreement (the date on which the second approving action is taken) no single authentic text thereof exists. Rather, the text is contained in the respective official documents on which the two approving bodies acted; experience shows that almost invariably some differences exist between the texts in the same language as reproduced in the documents of the two organizations, and also that the organizations often use different languages as their official ones.

In order to secure, for purposes of registration (with the Agency and the United Nations) and for later implementation, an authentic text in one or more agreed languages, the device of a protocol signed by the executive heads of the two organizations has been adopted.¹³⁰ The Director General's authority to conclude such protocols stems in part from the specific delegation to agree to formal modifications in the text of the relationship agreement, and in part from the provision in each such agreement authorizing him to enter into administrative arrangements for their implementation. Technically these protocols therefore constitute separate, subsidiary agreements (generally registered separately by the Agency, though not by the United Nations),¹³¹ not constituting part of the main instrument and having no constitutive effect with regard to its entry into force; their purposes are:

- (a) To establish the authentic language(s) of the main agreement;¹³²
- (b) To establish an authentic text in each of these languages;¹³³
- (c) To record the method and date of entry into force of the main agreement; and
- (d) In some cases (e. g., the Protocol to the UN Relationship Agreement), to record certain interpretative understandings relating to the main agreement.¹³⁴

26.5.2.2. Signature

Most Agency agreements enter into force upon signature, and this in fact is usually specified in the final clauses of those agreements whose texts are submitted to the Board. Though for administrative neatness and more frequently for purposes of publicity simultaneous signature in one location is usually aimed at for most important agreements, neither of these desiderata can always be achieved. If simultaneous signature is not feasible, the Agency usually endeavours to obtain first the signatures on behalf of the other parties,¹³⁵ so that the agreement will enter into force on signature on behalf of the Agency—thus avoiding the possibility of the Agency being ignorantly bound by an agreement until notified of the affixing of the final signature. This practice also makes it possible to assure that certain agreements enter into force simultaneously (e. g., a Supply Agreement and the related Project Agreement) without having to specify so in their texts.¹³⁶

26.5.2.2.1. For the Agency

Except in relation to EPTA Standard Agreements, the signature on behalf of the Agency is always affixed by the Director General or by a Secretariat

official acting on his behalf. Such an official might act on the basis of his temporary role as Acting Director General, or under a restricted standing delegation relating to a certain field, or sometimes on a specific instruction relating to a particular agreement.¹³⁷

No "full powers" are issued for the Director General to sign an agreement — indeed only he himself could issue such powers; his authority to sign derives from the relevant Board or General Conference decision, which may but need not be recited in the preamble to the agreement or in its final clauses.¹³⁸ When some other official signs for the Director General, full powers or a certificate of authorization or delegation could presumably be issued; however, none has ever been demanded by the other parties.

EPTA Standard Agreements (as well as similar instruments such as the Standard Agreement on Operational Assistance) are signed on behalf of the Agency, as well as on behalf of all other participating organizations, by a UNDP official — whether by one of the central Secretariat or by a resident or regional representative. The delegation on which this procedure is founded stems implicitly from the Agency's decision to participate in the UNDP/TA (formerly EPTA) programme.¹³⁹

26.5.2.2.2. For a State

By established practice, not based on any explicit decision, the Agency does not require any full powers for the signature of any agreement, whether bilateral or multilateral and whether to enter into force on signature or subject to ratification, from any person currently accredited as Governor or as Resident Representative to the Agency.¹⁴⁰ This uniform but slightly irregular practice was adopted pragmatically after experience showed that it would be difficult to obtain full powers from some Governments for the signature of certain types of agreements, such as supply contracts, that appear to be commercial from the point of view of the Supplying State but international from the point of view of the Agency. Of course, in relation to a multilateral agreement the representative of one of the other parties could well require full powers from his co-signatories, even if the Agency does not require them; in practice this has never yet occurred.

Accreditation as a delegate to the General Conference or as an observer to an organ of the Agency is not accepted as a substitute for full powers for signing any type of agreement.

With respect to the Vienna Convention on Civil Liability for Nuclear Damage and its Optional Protocol,¹⁴¹ to which the Agency is not a party but for which the Director General is the depositary, formal full powers have been required for all signatures.

26.5.2.3. Signature subject to ratification

The Agency does not have, properly speaking, any ratification procedure — for no agreement is signed on its behalf until after the Board has given any approval that may be necessary. Consequently the Agency usually avoids any formulation requiring one of its agreements to enter into force upon signature by all parties followed by ratification.¹⁴²

Instead, if one or more States that are prospective parties to an agreement require parliamentary or other approval, then it may be provided for the agreement to enter into force after each such State has certified that it has complied with all the necessary procedures enabling it to become a party to the agreement.¹⁴³ Though the Agency and other States becoming parties to the same agreement may not be subject to such a legal requirement, they may prefer that provision be made for a similar certificate to be filed by all States, and perhaps also by the Agency,¹⁴⁴ in order to preserve formal parity among all parties.

Thus two types of formulae have evolved:

- (a) In connection with bilateral agreements between the Agency and a State, each party may be required to certify to the other compliance with its constitutional or statutory requirements; on the part of the Agency, compliance with this formal requirement never necessitates any further action by the Board or the General Conference.
- (b) Certificates may be required only from States and not from the Agency, or only from the States that had made such a reservation; if the agreement is multilateral, the certificates are not exchanged among all the parties but are merely filed with the Agency (which thus acts as a depositary for this purpose).¹⁴⁵

Though at the time an agreement is formulated it may not be foreseen that ratification (or a certificate of constitutional compliance) will be required, and therefore entry into force directly on signature is provided for, the Agency may still agree that the signature on behalf of a State's representative include a reservation as to ratification.¹⁴⁶

26.5.2.4. Signature followed by further arrangements

For political reasons it seemed desirable to sign certain Safeguards Transfer Agreements as soon as possible after their approval by the Board; entry into force had to be delayed until the two States had agreed on the exact list of items to be submitted to safeguards and the Agency had made the necessary "subsidiary arrangements"¹⁴⁷ with each State regarding the items to be safeguarded within its territory. In these agreements it was therefore provided that entry into force should occur after signature, and after the Agency had formally accepted the joint notification of the two States of the items they were submitting to safeguards.¹⁴⁸ Such acceptance, which presupposed the prior negotiation and simultaneous conclusion of any necessary subsidiary arrangements, was announced by the Agency in formal letters dispatched on the same day to both States.

This procedure, though practical in the light of the situation it was designed to meet, was later abandoned principally because of the long delays it encouraged before the three pairs of parties had, without time pressure, reached agreement on all subsidiary points.

26.5.2.5. Adoption by Board followed by acceptance by States

Certain agreements, particularly those that may potentially have a large number of parties, are not signed at all. Instead, after the Board has ap-

proved the text, the Director General dispatches certified copies to all the States in the area(s) or group(s) comprising the potential parties, and the agreement enters into force when a specified number of them, or certain specified States, have deposited instruments of acceptance. The Agency itself takes no further action to signify its adherence to the agreement (which is implied by the Board's approval).

This method was adopted, following the example of the Convention on the Privileges and Immunities of the United Nations, in respect of the corresponding Agency P & I Agreement — which entered into force as soon as the first State had deposited its instrument of acceptance.¹⁴⁹ The use of this device reflected the fact that the text of the agreement was not negotiated, but was adopted on the basis of debates in a legislative body (the Board). However, in the case of the IPA Joint Programme¹⁵⁰ and the Middle Eastern Radioisotope Centre Agreements,¹⁵¹ the texts were negotiated with the States principally concerned (respectively India and the Philippines, and the United Arab Republic) and these States were named as necessary parties to these instruments; no negotiations were conducted with the numerous other States that were invited to become parties to these agreements — though previous to the Board's approval it had been ascertained that there was regional interest in these projects.

26.5.2.6. Exchanges of letters

Many of the Agency's more temporary and therefore less formal agreements are concluded by means of exchanges of letters. This is particularly true of most agreements for Agency meetings and courses,¹⁵² and of subsidiary technical assistance agreements.¹⁵³

These exchanges are, however, frequently not of the neat formal type in which the first communication sets forth the proposed terms (previously agreed to) and the response (often on the same date) recites these terms identically or by unambiguous reference and unconditionally accepts them. Many of the actual agreements are rather contained only in the correspondence through which they were negotiated, since after full accord is achieved it is too late or inconvenient to record the results formally in a new exchange of letters. From a practical point of view there usually is no difficulty in implementing the understanding reached — but from a formal one it is frequently awkward if not impossible to isolate those several pieces of correspondence that contain the entire agreement, without leaving any open ends either backwards (reference to previous correspondence) or forwards (additional proposals or reservations proposed in the final communication of the series and accepted by the other party in a still later letter or perhaps only orally or by silence).¹⁵⁴

26.5.3. Depositary practice

Up to now the Agency has been the depositary of only very few agreements, since most instruments with which it is concerned involve only two or three parties, for which the use of a depositary arrangement would be unusual and unnecessarily cumbersome. Agreements for which the Agency acts as depositary are:

- (a) The Agreement on Privileges and Immunities; ¹⁵⁵
- (b) The Nordic Emergency Assistance Agreement; ¹⁵⁶
- (c) The IPA Project Agreement; ¹⁵⁷
- (d) The Vienna Convention on Civil Liability for Nuclear Damage and the related Optional Protocol — two agreements drawn up under Agency auspices, though the organization is not and cannot become a party to them. ¹⁵⁸

It should also be noted that the Agency is not a depositary for:

- (i) Its own Statute or the amendments to it, since this function is performed by the Government of the United States; ¹⁵⁹ the only quasi-depositary function of the Director General is the dispatch to all Members of certified copies of amendments adopted by the General Conference; ¹⁶⁰
- (ii) The Agreement for establishing the Middle Eastern Radioisotope Centre, for which the Government of the United Arab Republic (the Host State) performs this function; ¹⁶¹
- (iii) The Brussels Convention on the Liability of the Operators of Nuclear Ships, for which this function is performed by the Belgian Government, the senior co-sponsor of the Conference at which that instrument was drawn up. ¹⁶²

On the basis of this narrow experience it is not possible to derive any significant rules as to the Agency's depositary practices. The practical implementation of the Agency's functions in this field is of course carried out by the Legal Division under its Director; it is he who signs the certificates authenticating the true copies of any agreements or of approved statutory amendments dispatched to Member States. Protocols of the deposit of an instrument of ratification or acceptance are prepared only if requested by the depositing State.

26.5.4. Responsibility within the Secretariat

Within the Secretariat, the primary responsibility for the regularity of and compliance with the Agency's practices with respect to agreements rests with the Legal Division. In particular, the Division is required to participate in the drafting and later the negotiation of the texts of all significant international agreements, and should at least approve those of lesser significance before they are signed for the Agency. It is also charged with the preparation of standard forms of treaties and contracts which may be used without further reference to it unless exceptions from the approved form are to be introduced. ¹⁶³

In addition, the Legal Division administers the functions of the Agency or the Director General as the depositary of certain agreements, ¹⁶⁴ acts as the registrar under the Rules for the Registration of Agreements, ¹⁶⁵ and performs the duties of the Agency with respect to the registration or the filing and recording of agreements with the United Nations. ¹⁶⁶

26.6. REGISTRATION OF AGREEMENTS

26.6.1. Registration with Agency

26.6.1.1. Legal provisions

26.6.1.1.1. The Statute

The first sentence of Statute Article XXII. B provides:

"Agreements between the Agency and any member or members, agreements between the Agency and any other organization or organizations, and agreements between members subject to approval of the Agency, shall be registered with the Agency."

This provision already appeared in substantially its final form in the Negotiating Group draft.¹⁶⁷ Little that illuminates its purpose was said at any stage of the formulation of the Statute. After studying the background of this requirement the Director General was only able to suggest to the Board that the purpose was evidently to prevent secret agreements.

26.6.1.1.2. Regulations for the Registration of Agreements

In April 1958 the Director General proposed to the Board a set of regulations for the registration of the three categories of agreement specified in Statute Article XXII. B. Since all of these would automatically fall within the cognizance of the Agency as a party or as an approving authority, this registration could always be performed *ex officio* by the Secretariat and no obligation with respect to registration need be placed on any other party. (Actually these proposals included a subsidiary category as to which none of these statements fully apply: these are "understandings between Members that certain agreements between them shall be subject to approval by the Agency", which are to be registered at the request of the Members concerned — they are not covered by the Statute, are not automatically within the cognizance of the Secretariat, and cannot be registered without an initiative from Member States.) However, this restriction of the proposed regulations to the limited statutory categories necessitated the omission of a number of agreements that might be of interest to the Agency and its Members: in particular agreements with Non-members and agreements of which the Agency is not a party nor an approving authority but that concern the peaceful uses of atomic energy.

The Board accepted, without change, the Regulations for the Registration of Agreements¹⁶⁸ proposed by the Director General, but also asked him to prepare proposals for a supplementary system of voluntary registration (analogous to "filing and recording" with the United Nations) to cover categories of agreements not mentioned in the Statute. Consequently the Director General prepared a set of proposals relating to the filing and recording of five categories of agreements ((a)-(e) below) and suggested a possible further extension of the system to two additional types of instruments ((f)-(g)). These were:

- (a) Agreements to which the Agency is a party but which are not registrable, because concluded:
 - (i) before the entry into force of the Statute; or
 - (ii) with a Non-member.
- (b) Agreements subject to the approval of the Agency but which are not registrable, because concluded between:
 - (i) Members and Non-members; or
 - (ii) Members and international organizations.
- (c) Bilateral or multilateral agreements in relation to which the Agency agrees to assume safeguards or health and safety functions.
- (d) Agreements for which the Agency is the depository.
- (e) Bilateral or multilateral agreements not subject to approval by the Agency, but as to which filing and recording is requested by a Member State or an international organization party thereto.
- (f) Agreements between international non-governmental organizations (NGOs) and intergovernmental organizations or States.
- (g) Regulations or recommendations promulgated by intergovernmental organizations with respect to atomic energy.

The Board rejected this additional system, ostensibly because voluntary filing and recording would not assist in disclosing secret agreements. In addition it was argued that as the Agency would not publish the texts of agreements filed and recorded (the Regulations do not require the publication even of registered agreements), no additional exposure would be obtained through a formal listing, since even texts that come to the Agency's cognizance informally would be available in its files. Finally, it was feared that the additional system would cause much work and some legal problems¹⁶⁹ for the Secretariat.

The original Regulations thus were not extended, and have not been changed since their adoption.

26.6.1.1.3. Registration Rules

Soon after the adoption of the Regulations the Director General, pursuant to their Article II, promulgated a set of "Rules for the Registration of Agreements under Article XXII.B of the Statute".¹⁷⁰ These Rules were based on but are much simpler than the UN Regulations on the Registration of Treaties, and deal mainly with the mechanics of registration.

26.6.1.2. Implementation

26.6.1.2.1. Agreements subject to registration

Four categories of agreements are subject to registration:¹⁷¹

- (a) Between the Agency and any Member(s);
- (b) Between the Agency and any other organization(s);

- (c) Between Members, when subject to and in receipt of approval by the Agency;
- (d) Understandings between Members that certain agreements between them shall be subject to approval by the Agency (a preliminary step to (c)).

"Agreements" are to be registered "whatever their form or descriptive name" and are defined to include "all written understandings of the Agency with its Members or with other organizations which have been adopted by the Board of Governors, or by the Director General on the authority of the Board of Governors".¹⁷² Excluded from registration are agreements that entered into force before 29 July 1957 (the day the Statute entered into force), but of course no such agreements could exist (at least in categories (a)-(c)) unless those concluded by the Preparatory Commission were to be attributed to the Agency.¹⁷³

The rather vague provisions of the Regulations (which are not clarified by the Rules) have made it necessary to devise some practical criteria as to what instruments should be registered. In particular the following types of agreements are always registered:

- (i) Agreements specifically approved by the Board or the General Conference;
- (ii) Project Agreements relating to the supply of nuclear materials;
- (iii) Master agreements of all types (including EPTA Standard Agreements);
- (iv) Host agreements;
- (v) Agreements for the use of one of the Mobile Radioisotope Laboratories outside Austria;
- (vi) Formal supplements to the Headquarters Agreement.

The following types of instruments are generally not registered:

- (vii) Arrangements with intergovernmental organizations for implementing relationship agreements or as a substitute for such agreements;¹⁷⁴
- (viii) Supplementary arrangements to safeguards agreements;
- (ix) Informal arrangements relating to the Headquarters Agreement.
- (x) Supplementary agreements or contracts concluded under a master agreement, if these contain no terms varying or extending the master text but merely specify particular items to which it is to apply.
- (xi) Exchanges of letters for the transfer of title to equipment at the end of a technical assistance project.

No agreements of types (c) or (d) have been registered, since Member States have never yet indicated to the Agency that they have concluded an agreement subject to its approval — in fact, to the Agency's knowledge, no such condition has ever been included in any bilateral or multilateral agreement.¹⁷⁵

26.6.1.2.2. Date of registration

Article III of the Regulations merely provides that agreements submitted by the Board to the General Conference for confirmatory action shall not

be registered until after the General Conference has taken such action. Article 2 of the Rules requires generally that agreements be registered on the date on which they first enter into force.

These principles have led to minor problems in relation to agreements that enter into force either earlier or later than the date on which they are actually concluded (i.e., signed or ratified). With respect to agreements whose effective date is subsequent to that of conclusion this creates no problems,¹⁷⁶ but in the opposite situation (an agreement concluded with retroactive effect)¹⁷⁷ an instrument must be registered (retroactively) as of a date on which its text was not yet formulated. Similarly, relationship agreements (which enter into force directly on receiving legislative approval) may have to be registered before the protocol establishing their authentic text(s) has been formulated and signed.¹⁷⁸

26.6.1.2.3. Procedure

Registration in effect consists of two separate actions:

- (a) The entry of certain information about each agreement on a separate page of a Register, which is largely based on that maintained by the United Nations (but is kept only in English).
- (b) The filing of three authentic copies of the agreement (usually photocopies unless extra copies of a printed or typewritten text are available), marked with a "ne varietur" stamp initialled by a member of the Legal Division. In accordance with Article I of the Regulations, these copies must be in all the languages in which the agreement was concluded.

Both the Register and the copies of the agreements are accessible to the public in the office of the Legal Adviser.

26.6.1.2.4. Publication

The Agency's registration system does not require the publication of the texts of agreements. This was decided by the Board on the ground that any extensive publication of agreements by the Agency would largely duplicate material appearing in the UN Treaty Series. The Secretariat does publish, in the unrestricted INFCIRC series of documents,¹⁷⁹ the texts of the more significant agreements entered into by the Agency — for the most part those whose text the Board has approved.

Article VI of the Regulations requires the Director General periodically to supply Member States and the UN Secretary-General with statements of agreements registered. Originally this was done by means of a series of INFCIRC documents, but in June 1965 a cumulative list of all agreements registered up to 31 December 1964 was published as the third volume in the Agency's Legal Series and in 1968 and 1969 this was updated to respectively 31 December 1966 and 31 December 1968,¹⁸⁰

Article VII of the Regulations requires the Board to include in its Annual Report to the General Conference "a statement on the operation of the pro-

vision of Article XXII.B of the Statute". Ignored for a number of years, this requirement has been met in some recent Reports by indicating the number of agreements registered with the Agency and with the United Nations during the period of the report, as well as the cumulative totals.¹⁸¹

26.6.2. Registration with United Nations

26.6.2.1. Legal provisions

The final sentence of Statute Article XXII.B requires:

"[Agreements registered with the Agency] shall be registered by the Agency with the United Nations if registration is required under Article 102 of the Charter of the United Nations."

Article XXI of the UN Relationship Agreement¹⁸² provides:

"The United Nations and the Agency shall consult together as may be necessary with regard to the registration with the United Nations of agreements within the meaning of Article XXII.B of the Statute of the Agency."

Article V of the Regulations for the Registration of Agreements¹⁸³ places on the Director General the responsibility for implementing these provisions of the Statute and the Relationship Agreement.

In addition to these provisions, each relationship agreement concluded with an intergovernmental organization includes a provision requiring the agreement to be filed and recorded with the United Nations.¹⁸⁴

From time to time the Legal Adviser of the Agency has consulted with his UN colleague concerning the registration of particular instruments or classes of instruments. In the most important of the responses received from the United Nations, the Agency was advised that, following the practice that had been agreed to with the specialized agencies, it should not present for registration certain agreements with Governments "which apply only for very short periods and are sometimes informal in drafting"¹⁸⁵ — a description designed particularly to exclude supplementary agreements relating to a particular technical assistance project (e.g., the dispatch of an expert for some months) carried out under a master technical assistance agreement (EPTA Standard Agreement).

26.6.2.2. Agreements subject to registration

In general, the Agency only presents such agreements to the UN Secretariat for registration or for filing and recording, as it registers itself.¹⁸⁶ However, with respect to certain agreements the Agency need not itself present them to the United Nations. This is true where the United Nations is party to the agreement (e.g., the Relationship Agreement and all EPTA Standard Agreements), since then the registration is accomplished ex officio by the UN Secretariat; in some instances another party to an agreement with the Agency anticipates the latter and presents the agreement for registration or for filing and recording before the Agency has acted.

Pursuant to the above-mentioned correspondence with the UN Legal Counsel, only about 45% of the agreements registered with the Agency are also registered or filed and recorded with the United Nations.¹⁸⁷ The following are the principal types of agreements registered with the Agency but not with the United Nations:

- (a) Technical assistance agreements subsidiary to an EPTA Standard Agreement;¹⁸⁸
- (b) Agreements for the use of the Mobile Radioisotope Laboratories;¹⁸⁹
- (c) Host agreements for meetings or courses;¹⁹⁰
- (d) Project Agreements relating to minor services performed for Member States outside the technical assistance programme (e.g., the evaluation of a hazards report);¹⁹¹
- (e) Agreements with non-governmental organizations (since these cannot even be filed and recorded with the United Nations).¹⁹²
- (f) Plans of Operation for Special Fund Projects.¹⁹³

The United Nations has accepted, for filing and recording, the Co-operation Agreements concluded by the Agency with regional intergovernmental organizations.¹⁹⁴ Though neither party to these instruments is a specialized agency, the UN Secretariat evidently considers the Agency as falling into that category for the purpose of its registration Regulations.¹⁹⁵

NOTES

- 1 Section 13.1. A reasonably complete list of the principal agreements concluded by the Agency, and of examples of significant types of less important ones, appears in Annex 2.2.
- 2 For the reason indicated in Section 21.2.2, all references to Project Agreements appearing in Statute Articles XII.A.6 and XII.C should also be read as applying, as far as appropriate, to other types of safeguards agreements.
- 3 INFCIRC/9/Rev.2; Section 28.3.
- 4 INFCIRC/15; Section 28.2.
- 5 Section 21.5.4.10.
- 6 INFCIRC/27 and /129; Section 19.1.2.1.
- 7 INFCIRC/51 and /114; Section 19.1.3.1.
- 8 Section 20.1.2.
- 9 INFCIRC/5, Parts I-III; Section 16.4.
- 10 INFCIRC/83, Part II, Annex A; Sections 16.4.12 and 17.3.
- 11 Sections 16.5, 17.2.2 and 17.3.
- 12 INFCIRC/89; Sections 19.2.2.2 and 25.7.4.
- 12A Agency Registration No.186.
- 13 Sections 18.2.7 and 25.7.4.2.
- 14 Statute Article XI.F; Section 17.1.
- 15 Section 17.2.1.2.
- 16 Section 17.3.
- 17 Section 17.4.
- 18 Section 17.8(a).
- 19 Sections 18.1.3.4 and 18.1.5.2.
- 20 Section 18.3.3, AM.IX/4, para.14 and Annex.
- 21 Section 18.3.6.
- 22 Section 18.2.4.

- 23 For example, the Agreement with Malta (not even a Member of the Agency), Agency Registration No.402, 563 U.N.T.S. 54.
- 24 Section 26.5.2.2.1.
- 25 Section 21.5.1.
- 26 Section 21.5.2.
- 27 INFCIRC/55; Section 19.3.2.2.
- 28 INFCIRC/56; Section 19.3.2.3.
- 29 INFCIRC/38; Section 19.3.1.1.
- 30 INFCIRC/49; Section 23.4.1.
- 31 INFCIRC/11, Part I, A; Section 12.2.1.
- 32 INFCIRC/20 and / Add.1; Sections 12.3.2.3-4.
- 33 INFCIRC/25 and / Add.2; Section 12.5.2.
- 34 INFCIRC/33; Section 18.1.4.
- 35 INFCIRC/11, Part II; Section 12.2.2.1.
- 36 INFCIRC/11, Part III; Section 24.5.2.1.
- 37 INFCIRC/11/Add.1; Sections 24.5.2.1 and 27.3.2.3.
- 38 INFCIRC/132; Sections 19.1.3.1 and 19.1.3.3.
- 39 INFCIRC/20, Part I, which is referred to in the preamble to the new Agreement.
- 39A Section 24.1.8.
- 40 Sections 12.3.4.1, 12.3.4.3-4.
- 41 Section 12.3.4.1.
- 42 Section 19.1.3.2.
- 43 INFCIRC/64; Section 19.3.2.4.
- 44 Sections 12.2.1.1, 12.3.2.2 and 26.5.2.1.
- 45 INFCIRC/14.
- 46 Sections 12.6.3(i) and 19.2.6.
- 47 Section 19.2.5.
- 48 Section 14.1.
- 49 Section 20.2.3.
- 50 Section 19.1.3.2. AM.I/4, para.13 and Appendix C (model texts).
- 51 Cf. Article 5 of the Vienna Convention on the Law of Treaties, UN doc. A/CONF.39/27.
- 52 Legal Series No. 4, IAEA, Vienna (1966), p.3; Section 23.1.
- 53 *Ibid.*, p.36; Section 23.2.
- 54 Section 23.7(i)-(ii).
- 55 Sections 23.1.4 and 23.2.10. Under somewhat similar circumstances it was considered appropriate for the IBRD to sign the Articles of Agreement of IFC (264 U.N.T.S. 117) and IDA (439 U.N.T.S. 249), as well as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (575 U.N.T.S. 159).
- 56 Sections 16.5.1(b) and (6), 17.2.2.3 and 17.4.
- 57 See, e.g., the Safeguards Submission Agreement with Romania (INFCIRC/117) described at the end of Section 21.5.5.5.
- 58 Sections 16.5.1(a)(ii) and (4), 16.5.3(a)(i)-(iii), 17.2.2.2.
- 59 Sections 27.2.2.1 and 27.2.2.2.
- 60 Section 16.5.1(6).
- 61 The United States based its critique of the limitation of the ILC's Draft Articles on the Law of Treaties (which became the 1969 Vienna Convention on the Law of Treaties) to treaties among States (Articles 1 and 2(1)) in part on the argument that thereby the important trilateral safeguards agreements to which the IAEA is a party would be excluded from the coverage of the proposed Convention (UN doc. A/6827/Add.2, third paragraph).
- 62 Section 21.5.3.
- 63 INFCIRC/33.
- 64 Following the model text set out in INFCIRC/33. Appendix.
- 65 Section 18.2.4.
- 66 INFCIRC/75; Section 11.2.8.
- 67 INFCIRC/55, Preamble and Sections 26 and 28. Section 19.3.2.2.
- 68 INFCIRC/56, Sections 16 and 17. Section 19.3.2.3.

- 69 INFCIRC/38, Section 32. Section 19.3.1.1.
- 70 INFCIRC/9/Rev.2, Section 38. Sections 28.3.3-4.
- 71 INFCIRC/49, Article XI. In connection with the proposals for a general multilateral emergency assistance agreement, the question was raised whether the Agency has the capacity to enter into such an instrument (Sections 23.4 and 23.7(iii)); however, the reasons advanced by those that would deny such capacity appear to be more political than legal and disregard the fact that the Agency has already, without objection, entered into several multilateral agreements — including the Nordic Agreement in the same field (INFCIRC/49).
- 72 INFCIRC/55, Section 5 under the latest renewal agreement, each State will also have two representatives. Sections 11.2.2 and 19.3.2.2.
- 73 Section 16.5.3(a).
- 74 Section 18.1.5.2. The similar, though for the Agency practically useless, Standard Agreements on Operational Assistance, are mentioned in Section 26.2.1.6.
- 75 For example, INFCIRC/83, Part I; Section 17.3.
- 76 INFCIRC/83, Part II, Annex A; Section 16.4.12 and 17.3.
- 77 INFCIRC/89; Sections 19.2.2.2 and 25.7.4.1.
- 78 INFCIRC/5, Parts I-III; Section 16.4.
- 79 Sections 21.5.2-3, 21.5.4.2 and 21.6.2.1.2. See Gorove, *op.cit.* Annex 5, No.25.
- 80 Section 21.5.4.2.
- 81 Such as the Mexican Safeguards Submission Agreement under the Tlatelolco Treaty (INFCIRC/118), Section 21.3.2.2 and 21.5.5.5(b)-(c).
- 82 INFCIRC/3, Part II, Article 1; Section 17.2.2.1.
- 83 INFCIRC/62/Add.1; Section 17.2.2.11.
- 84 Section 18.1.3.4.
- 85 Section 26.5.2.2.1.
- 86 Section 18.1.5.2.
- 87 Sections 26.6.1.1.2 and 26.6.1.2.1(a)-(b).
- 88 Section 17.3.
- 89 This is evidently the principal reason for the development of a model Safeguards Submission Agreement in relation to the Non-Proliferation Treaty (Sections 21.3.2.3 and 21.5.6, note 275), GC(XII)/OR.119, para.31.
- 90 See, e.g., the Preambles to the three agreements relating to the Congolese TRICO reactor (INFCIRC/37, Parts I-III), Section 17.2.2.8. For some reasons, the preambular paragraphs of Agency agreements are almost always preceded by the monotonous American "Whereas", even though in the resolutions of the political organs the preambles display the greater verbal variety customary in international practice.
- 91 Sections 21.5.4.7-8.
- 92 Section 21.5.4.11.
- 93 INFCIRC/66/Rev.2; Sections 21.4.1.3 and 21.5.4. Even though the Safeguards Documents, as well as the Health and Safety and Inspectors Documents (*infra* notes 94 and 95), are regularly incorporated into agreements registered with the United Nations (Section 26.6.2), the texts of these Documents has never been published in the UN Treaty Series, in contrast to the practice relating to the similarly used Loan Regulations of IBRD (e.g., 414 U.N.T.S. 268).
- 94 INFCIRC/18; Sections 22.1.2.3 and 22.3.1.2.
- 95 GC(V)/INF/39, Annex; Sections 21.4.2.3, 21.5.4.10, 22.1.3, 22.3.1.2 and 22.4.1.
- 96 INFCIRC/9/Rev.2; Section 28.3.5. In addition, the P & I Agreement may even be incorporated into agreements with States that are already parties to the former instrument, if such agreements have a long term and are, legally or politically, difficult to denounce; this avoids gaps in any important rights of the Agency required in connection with the agreement (e.g., one for the carrying out of safeguards) if the State should choose to denounce the P & I Agreement (as it can do at any time upon one year's notice — see Article 39).
- 97 Sections 22.2.3, 22.2.4.2-3, 22.3.1.2.
- 98 Sections 18.1.3.4 and 18.1.5.2.
- 99 Section 27.2.2.2.3.
- 100 Section 17.2.1.2(d).
- 101 Section 26.3.3.
- 102 59 Stat. 669 (1945), 22 U.S.C. Secs. 288-288f; Section 28.4.1.
- 103 For example, INFCIRC/55, Annex D, para.1(a)-(c); Sections 22.3, 22.3.2.1(b).

- 104 INFCIRC/15, Part III; Section 28.2.4.2.
- 105 *Supra* note 102.
- 106 For example, Supply (Lease) Agreement for the Spanish Coral-1 reactor (Section 17.2.2.17), INFCIRC/99, Part I, Section 1.
- 107 *Supra* note 103.
- 108 GC(V)/INF/39, Annex; Sections 21.5.4.10 and 21.8.2.4.
- 109 Section 21.9.2.1.
- 110 Section 19.2.5.
- 111 Under Section 7(b) of the Headquarters Agreement (INFCIRC/15, Part I), the laws of the Republic of Austria apply for most purposes within the headquarters seat.
- 112 The preambles to the Federation Agreements (Section 19.1.3.2; AM.II/4, Appendix C) read as follows: "The International Atomic Energy Agency (hereinafter called the 'Agency') represented for this purpose by the International Centre for Theoretical Physics at Trieste, Italy (hereinafter called the 'Centre') and..."
- 113 One prominent exception is the Headquarters Agreement (INFCIRC/15, Part I), in and to which the "Republic of Austria" is formally named as the party.
- 114 For example, the Safeguards Document provides that safeguards agreements be concluded with States (INFCIRC/66/Rev.2, paras.15 and 82); yet every safeguards agreement, in its preamble as well as in the signature clause, refers to Governments as the ostensible parties.
- 115 For the same reason, most agreements with the United States Government, such as those for the supply of nuclear materials, are concluded by the Agency with the USAEC, acting "on behalf of" the Government (e.g., INFCIRC/99, Part I, preamble, final paragraph).
- 116 Sections 26.3.1-2.
- 117 INFCIRC/27; Section 19.1.2.1.
- 118 INFCIRC/64; Section 19.3.2.4.
- 119 Section 19.1.3.2.
- 120 At the Conference on the Statute, the American representative referred to this provision in responding to a Chinese inquiry as to whether agreements with Member States were to be approved by the Board or by the General Conference (IAEA/CS/OR.18, pp.47-51).
- 121 For this purpose the Executing Agency Agreement with the UN Special Fund (INFCIRC/33) was considered to be a relationship agreement (Section 18.1.4).
- 122 Sections 7.2.2(d) and 28.2.2. However, none of the Supplemental Agreements to the Headquarters Agreement (Section 28.2.4) have been referred to the General Conference, and indeed the conclusion of most of the later instruments in this category has implicitly been delegated to the Director General. See also *infra* note 124.
- 123 Statute Article XV.C.
- 124 It was apparently on such a basis that the Director General signed the Amending Agreement to the Headquarters Agreement, without obtaining the explicit approval of either of the two political organs that had approved the original instrument (Section 28.2.2, final paragraph).
- 125 Sections 12.2.1.2(p), 12.2.2.1 and 26.2.2.2. See in particular the Agreement with UNESCO for the joint operation of the Trieste Centre (INFCIRC/132).
- 126 GC.1(S)/RES/14, para.2.
- 127 GC(II)/DEC/8; GC(III)/99, para.2 and GC(III)/OR.33, para.22; GC(IV)/RES/68 and /70 (see prior debate in GC(IV)/COM.2/OR.18, paras.25-27); GC(V)/RES/96, para.2; GC(VII)/RES/141. Only in respect of the Relationship Agreement with IMCO (GC(V)/RES/95), was this authority inadvertently omitted.
- 128 Though in respect of the Relationship Agreement with ICAO the Board failed to make such a recommendation to the General Conference (GC(III)/82/Rev.1), its approval was inferred from the earlier mention of this matter at the 150th meeting of the Board (*id.f.n.*1; GC(III)/99, para.2; GC(III)/OR., para.22).
- 129 For example, UN Agreement (INFCIRC/11, Part I.A, Article XXIV); UNESCO Agreement (INFCIRC/20, Part I.A, Article XII); ENEA Agreement (INFCIRC/25, Part I.A, Article XI). This organ need not be the one that corresponds most closely to the General Conference; thus the Agreement with UNESCO only required the approval of the Executive Board of that organization.
- 130 For example, UN Agreement (INFCIRC/11, Part I.B.).
- 131 For example, the UN Agreement is registered under Agency Registration No.1 and the Protocol under 1.1; the UN Filing and Recording No. for both is 548, though they appear respectively in Vols.281 and 338 of the UN Treaty Series.

- 132 Section 33.4.
- 133 Only in respect of some of the early Relationship Agreements with specialized agencies have alternate texts (with the names of and references to the two organizations interchanged) been used (compare the text of the Agreement with ILO in INFCIRC/20. Part II with that in 328 U.N.T.S. 273 — registered by ILO). Otherwise this device has never been introduced into any Agency agreement.
- 134 Section 12.2.1.1(i).
- 135 One rare exception is the Second Supply Agreement for the Pakistani PINSTECH reactor (Section 17.2.2.7), INFCIRC/34/Add.1. See also the following note.
- 136 Section 17.2.1.2(1). As mentioned in note 44 thereto, this principle, as well as that of last signature on behalf of the Agency, was violated in the Supply and Project Agreements relating to the Iranian UTRR project (INFCIRC/97, Parts I and II).
- 137 Section 9.4.2.
- 138 The Agency's practice with respect to the Director General's authority is summarized in part in a "Protocol" relating to the signature of the three agreements for the TRICO project in the Democratic Republic of the Congo (Section 17.2.2.8; 463 U.N.T.S.11; the circumstances leading to the execution of the Protocol are recited in note 146 below):
- "It was established that no full powers would be required by the Director General, whose authority to sign the Agreements stems from the decision of the Board approving the Agreements, or for the representatives of Belgium and the United States who are accredited to the Agency."
- 139 Section 18.1.3.2.
- 140 Sections 13.2.1.2-3. See also text quoted supra note 138.
- 141 Legal Series No. 4, IAEA, Vienna (1966), pp.3 and 16.
- 142 One treaty that appears to foresee the possibility of ratification by the Agency is the Nordic Mutual Emergency Assistance Agreement (INFCIRC/49, Article XI). However, in the event, the issue was not raised for the Director General signed unconditionally, as did the representative of Sweden, while those of three other States signed subject to ratification.
- 143 For example, INFCIRC/76, Section 26.
- 144 For example, INFCIRC/15, Part I, Section 52(a).
- 145 For example, INFCIRC/76, Section 26.
- 146 See, e.g., the signature affixed for Norway to the original NORA Project and Supply Agreements (Section 17.2.2.4; INFCIRC/29, Parts I and II). However, when the Congolese representative, desiring to sign the three agreements relating to the TRICO project (Section 17.2.2.8), unexpectedly could only produce full powers allowing him to sign two agreements, and those only subject to ratification, a different device was adopted since he stated that he was actually authorized to affix an unconditional signature: all the four parties to the three agreements signed a "Protocol" (463 U.N.T.S.11) which, inter alia, recited and provided that:
- "3. The full powers of the representative of the Government of the Congo were examined and are attached hereto, and it was established that they referred only to the Title Transfer Agreement and the Project Agreement and that the authorisation extends only to signature subject to ratification. Since the representative of the Congolese Government stated that he was authorised to sign all three Agreements without the stated reservation (which reservation would be contrary to the final clause of each of the three Agreements) and that he would later receive appropriate full powers and would transmit them to the Agency, it was agreed that:
- (a) The three Agreements would be signed this day, each by the parties concerned and without reservation.
- (b) The Director General of the Agency would keep the signed copies until the complete full powers of the representative of the Congo are received, covering all three Agreements, and without reservation.
- (c) The three Agreements would not be considered to have entered into force until such full powers are received by the Agency; when they are received the Director General would transmit them to the other parties and would also transmit to each party a copy of each Agreement signed for it, and these Agreements will then be considered to have entered into force as of today's date."
- 147 Section 21.5.7.3.
- 148 Section 21.5.6(c); e.g., INFCIRC/70, Section 26.
- 149 INFCIRC/9/Rev.2, Article 38; Section 28.3.3.
- 150 INFCIRC/56; Section 19.3.2.3.

- 151 INFCIRC/38; Section 19.3.1.1.
- 152 Section 20.1.2.
- 153 Section 18.1.5.2.
- 154 The somewhat lax practice that had developed in regard to conference agreements led to the awkward incident recited in Section 20.1.2. Presumably in the future, as part of the new measures announced by the Director General, these agreements will be concluded with greater formality.
- 155 INFCIRC/9/Rev.2, Sections 38-39.
- 156 INFCIRC/49, Article XI. Section 23.4.1.
- 157 INFCIRC/56, Sections 16-17. Section 19.3.2.3.
- 158 Legal Series No.4, IAEA, Vienna (1966), p.3, Articles XII, XXIV.2, XXV-XXVIII; p.16, Articles V-VIII. Sections 23.1.4(2) and 23.7(i). (Agency Registration No.13).
- 159 Statute Article XXI.C. Sections 5.1.3.
- 160 Sections 5.3.3.5 -6.
- 161 Section 19.3.1.1. INFCIRC/38, Section 31; this solution was evidently adopted to avoid potential political difficulties in relation to States whose eligibility as "Arab States" might be doubtful.
- 162 Legal Series No.4, IAEA, Vienna (1966), p.36, Articles XXIII, XXV.2 and XXVIII. Sections 23.2.8 and 23.2.10.
- 163 AM.V/6, paras.2-4.
- 164 Section 26.5.3.
- 165 Section 26.6.1.1.3.
- 166 Section 26.6.2.
- 167 WLM Doc.2, Article XXII.B.
- 168 INFCIRC/12.
- 169 Though only "legal problems" were mentioned, Governments were obviously aware of the potential political difficulties relating to agreements involving States outside the pale of the UN system and not recognized by a majority of the members of the world community -- and the real reason for the rejection of the filing and recording system must be sought in that probably exaggerated concern. The Director General had proposed that as to agreements with Non-members, the Board might instruct him to accept automatically the position of the Member registering an instrument, or alternately that only instruments concluded by those States be recognized that are members of some UN system organization.
- 170 The text of these Rules appears only as a draft attachment to a memorandum addressed by Dr. Esser (the then Legal Adviser) to the Director General on 29 April 1958.
- 171 INFCIRC/12, Articles I and III.
- 172 INFCIRC/12, Article III.
- 173 The only agreements concluded by the Preparatory Commission related to the loans received from the United Nations (Section 3.2.3.3) and to the holding of the First General Conference in Austria (Section 28.2.1; GC.1/INF/3), both of these being dated before the entry into force of the Statute; no agreements were concluded by the Commission later.
- 174 Section 12.5.3.5.
- 175 Section 26.2.5.3.
- 176 For example, Supplementary Agreement [to the Headquarters Agreement] on Currency Exchange Facilities (Section 28.2.4.1), INFCIRC/15, Part II, Agency Registration No.3, signed 11 December 1957, with effect as of 1 March 1958 (provisionally 1 January 1958).
- 177 For example, Supplementary Agreement [to the Headquarters Agreement] on Turnover Taxes (Section 28.2.4.3), INFCIRC/15, Part IV, Agency Registration No.4, signed 17 July 1958 with effect as of 1 March 1958.
- 178 For example, UN Relationship Agreement, INFCIRC/11, Part I.A, Agency Registration No.1 (14 November 1957), the Protocol relating to which, INFCIRC/11, Part I.B, Agency Registration No.1.1, only entered into force on 10 August 1959.
- 179 Section 34.2.2.
- 180 INFCIRC/21 and /ADD.1. Agreements Registered with the International Atomic Energy Agency (Third Edition), Legal Series No.3, IAEA, Vienna (1969), STI/PUB/244.
- 181 For example, GC(XI)/355, para.132.
- 182 INFCIRC/11, Part I. A.
- 183 INFCIRC/12.
- 184 For example, the Relationship Agreement with UNESCO (INFCIRC/20, Part I.A., Article XI.2). This requirement implements that contained in Article XX of the UN Relationship Agreement (INFCIRC/11,

- Part I, A) that the Agency shall, inter alia, inform the United Nations of the conclusion of any formal agreement with certain international organizations (Section 12.3.2.2).
- 185 Letter from Stanislaw Kiernik, Acting Chief, UN Treaty Section, to Gurdon Wattles, Acting Director, IAEA Legal Division, 31 May 1960 (LE 231).
- 186 One exception will be the registration of the Vienna Convention on Civil Liability for Nuclear Damage and of its Optional Protocol (Legal Series No. 4, IAEA, Vienna (1966), pp. 3 and (6)), when these enter into force. The Convention will not be registered with the Agency, since it does not fall into any of the three categories covered by the Statute or the additional category created by the Regulations (Section 26.6.1.2.1). Its registration with the United Nations will therefore not be based on Statute Article XXII.B or on the Regulations, but rather on an express provision of the Convention itself (Article XXVIII), with which the Agency must comply since it accepted the task of depositary; inadvertently a similar provision was not included in the hastily drafted Protocol.
- 187 An exact numerical comparison is complicated, because the United Nations assigns the same registration number to agreements that merely supplement or amend another registered agreement, while the Agency usually assigns either a wholly different number (e.g., to each Supplement to the Headquarters Agreement), or a subsidiary number (e.g., the UN Relationship Agreement is No. 1 and the Protocol on its entry into force is No. 1.1 → while the United Nations has assigned Filing and Recording No. 548 to both of them).
- 188 Though in general these fall within the categories excluded by the Kiernik letter (supra note 185), the more recent "master" supplementary agreements (Section 18.1.5.2), e.g., Supplementary Agreement on Provision of Technical Assistance by the IAEA to the Government of India (Agency Registration No. 262), are of a more enduring nature and thus should be (but evidently are not being) registered.
- 189 Section 18.3.6; e.g., in Brazil (Agency Registration No. 119).
- 190 Section 20.1.2; e.g., with Czechoslovakia for a Panel on Recurring Inspection of Nuclear Pressure Vessels, Pilsen, 3-7 October 1966 (Agency Registration No. 415).
- 191 Section 17.8(a); e.g., with Switzerland for the evaluation of the DIORIT reactor (Agency Registration No. 22).
- 192 Section 12.6.3; e.g., with ICRP for Studies on Maximum Permissible Exposure to Radiation (Agency Registration No. 129).
- 193 Section 18.2.4; e.g., with the Philippines (Agency Registration No. 212). If these were to be registered with the United Nations, this would be done ex officio by its Secretariat, since the Special Fund is a party to these agreements.
- 194 Section 12.5.2; e.g., with IANEC (INFCIRC/25, Part II; Agency Registration No. 54; UN Filing and Recording No. 586, 396 U.N.T.S. 285).
- 195 Section 12.1.4.2. Article 10(a) of the Regulations to Give Effect to Article 102 of the Charter of the United Nations (UNGA/RES/97(I), /364.B(IV), /482(V)) calls only for the filing and recording of agreements by the United Nations and the specialized agencies.

CHAPTER 27. SETTLEMENT OF DISPUTES

PRINCIPAL INSTRUMENTS

IAEA Statute Articles XI, F, 6 and XVII

UN Charter Article 96(2)

UN Relationship Agreement (INFCIRC/11, Part I, A), Articles X, 1, XVIII, 2(d)

Resolution of the UN General Assembly authorizing the IAEA to request advisory opinions of the ICJ (UNGA/RES/1146(XII))

Inspectors Document (GC(V)/INF/39, Annex), para. 14.

Disputes Provisions in Agency Agreements with Member States, e. g. :

Supply Agreement (e. g. , in relation to Uruguayan URR reactor, INFCIRC/67, Part I, Sections 41 and 42)

Project Agreement (e. g. , in relation to Uruguayan URR reactor, INFCIRC/67, Part II, Sections 14 and 15)

Safeguards Transfer Agreement (e. g. , Japan/USA, INFCIRC/47, Sections 20 and 21)

Nordic Mutual Emergency Assistance Agreement (INFCIRC/49), Article IX

Agreement for Establishing a Middle Eastern Regional Radioisotope Centre for the Arab Countries
INFCIRC/38), Sections 38 and 39

Headquarters Agreement (INFCIRC/15, Part I), Sections 50 and 51

Privileges and Immunities Agreement (INFCIRC/9/Rev, 2), Sections 33 and 34

Optional Protocol to Vienna Convention on Civil Liability for Nuclear Damage (IAEA Legal Series No. 4), p. 16

Provisional Staff Regulations (INFCIRC/6/Rev, 2), 12, 01 and 12, 02

Staff Rules (AM, II/1), 12, 01.1 and 12, 02.1

Special Agreement Extending the Jurisdiction of UNAT to IAEA with Respect to Applications of Staff Members
of IAEA Alleging Non-observance of the Regulations of UNJSPF (INFCIRC/11/Add.1)

27. 1. STATUTORY PROVISIONS

27. 1. 1. Article XVII. A

27. 1. 1. 1. Development

The first two sentences of Article XIX. E of the Negotiating Group draft of the Statute read as follows:

"The Parties to the present Statute accept the jurisdiction of the International Court of Justice with respect to any dispute concerning the interpretation or application of the Statute. Any such dispute may be referred by any Party concerned to the International Court of Justice for decision unless the Parties concerned agree on some other mode of settlement. "

Quite clearly this provided for the International Court of Justice to exercise jurisdiction under the final clause of Article 36(1) of its Statute. The Soviet Union, four other Eastern European States and Argentina submitted comments

objecting to this provision and suggested that any submission to the Court's jurisdiction may only take place with the consent of all interested parties; the Philippines proposed that a reference should be made to Article 36(2) of the Statute of the Court.¹

At the Working Level Meeting the Soviet Union formally proposed the addition of the words "by mutual consent" into the second sentence quoted above.² Before giving detailed consideration to this proposal, the Meeting established an ad hoc "Committee on Article XIX. E (Disputes)", consisting of the representatives of Czechoslovakia, India, the Soviet Union, the United Kingdom and the United States.³ This Committee proposed the reformulation of the entire disputes article to conform to that in the constitution of WHO; thus the provision quoted above was to be revised to read as follows:

"Any question or dispute concerning the interpretation or application of this Statute which is not settled by negotiation 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."⁴

The Australian representative commented with respect to this proposal that while the word "shall" appeared to call for compulsory submission to the Court's jurisdiction, which he favoured, he opposed the formulation as being also susceptible of a different interpretation.⁵ The Soviet representative indicated that the Russian text clearly called for a voluntary submission and proposed that the English text be changed to "may". The Committee's text was adopted by a vote of 9:1:2, and Australia (which had cast the negative vote) recorded a formal reservation to this provision because of the ambiguity "with respect to the nature of the jurisdiction of the International Court of Justice".⁶

At the Conference on the Statute two formal amendments were proposed, Switzerland urged that the entire Article XVII be replaced by an arbitration clause, since the ICJ could not settle any dispute between the Agency and its Members⁷ -- a proposal it later withdrew on the adoption of Article XI. F. 6.⁸ Mexico proposed that any compulsory submission to the Court be made subject to the terms of declarations deposited pursuant to Articles 36(2) and (3) of its Statute, by the addition of the words underscored in the following text:

"A. Any question or dispute between member States concerning the interpretation or application of this Statute which is not settled by negotiation shall be referred to the International Court of Justice in conformity with the Statute of the Court and the declarations deposited by the parties in accordance with article 36 of that Statute, unless the said parties [concerned] agree on another mode of settlement."⁹

Though eventually withdrawn,¹⁰ the Mexican proposal precipitated an involved and generally uninformed debate on the interpretation of the Working Level Meeting draft in the light of Article 36(1)-(3) of the Statute of the Court;¹¹ at least four distinct positions were taken:

- (a) The draft would make the jurisdiction of the Court, under Article 36(1) of its Statute, compulsory for all Members -- and this is desirable.
- (b) The draft would make the jurisdiction of the Court compulsory for all Members, but such submission should explicitly be made subject to any reservation included by the State concerned in any optional declaration it had filed under Article 36(2) and (3) -- but this proposal did not seem to take account of those States that had not filed any such declaration at all;
- (c) The draft would make the jurisdiction of the Court compulsory for all Members, but such submission is automatically subject to any reservation included by the State concerned in any optional declaration it had filed under Article 36(2) and (3) -- but this interpretation also failed to take account of those States that had not filed any declaration at all;
- (d) The draft does not accomplish any automatic submission to the jurisdiction of the Court.

Finally, on the withdrawal of the Swiss and Mexican proposals, Article XVII. A was adopted in the form proposed by the Working Level Meeting. Though the representative of Belgium explicitly and that of Canada implicitly requested the Chairman to declare interpretation (a) to be the consensus of the Main Committee, the Chairman declined to do so.¹²

In connection with the signature and ratification of the Statute three States made statements or reservations with respect to this Article:

- (i) The Venezuelan signatures included a reference to the following communication, which had earlier been sent to the President of the Conference on the Statute:

"With regard to article XVII thereof, the signing or ratification of this instrument by Venezuela does not signify acceptance by the latter of the jurisdiction of the International Court of Justice without Venezuela's express consent in each case."¹³

- (ii) On depositing his Government's instrument of ratification, the Ambassador of the Union of South Africa stated:

"While the Government of the Union of South Africa is satisfied with Article XVII as it stands and has ratified the Statute unreservedly, it will have to consider very carefully whether it would be in a position to agree to any ratifications which are made subject to reservations on this Article."¹⁴

- (iii) The instrument of ratification of Argentina contained the following reservation:

"So far as concerns Article XVII, the Argentine Government reserves the right not to submit to the procedure indicated in that article any dispute concerning sovereignty over its territory."¹⁵

This reservation was accepted by the States then parties to the Statute.¹⁶

27.1.1.2. Interpretation

On the basis of the proceedings of the Conference on the Statute (those of the Working Level Meeting not having been available to him) one commentator¹⁷ suggested that Article XVII. A might be interpreted in three alternative ways:

- (a) The provision makes the jurisdiction of the International Court of Justice compulsory for all Members of the Agency;
- (b) The provision makes the jurisdiction of the Court compulsory for all Members, except those "having made express reservation at ratifying the Statute of the Agency".
- (c) The provision makes the jurisdiction of the Court compulsory only with respect to States that had either:
 - (i) "specifically accepted the Court's compulsory jurisdiction during or after the elaboration of the Statute of the International Atomic Energy Agency" - i. e. , the States that had stated that they interpreted it as providing for compulsory jurisdiction (though this group might be difficult to identify since the interpretation of Article XVII. A was not put to a vote at the Conference);
 - (ii) "accepted [the Court's compulsory jurisdiction] generally by adhering to the Optional Clause [of its Statute]".

In the light of Article 36(1) of the Statute of the Court the third interpretation would not appear to be a tenable one. The first one can also be discounted since the Agency's Statute contains no restriction on the making of reservations and thus effect would have to be given to any that are made and accepted by the other parties.¹⁸ Consequently, the second interpretation would appear to be the correct one.¹⁹

Up to now there has been no practice to assist in interpreting this provision. However, the three reservations and statements quoted in the previous Section clearly imply that at least these Governments considered the second interpretation to be the correct one, for on either of the other two alternatives these formal pronouncements would not have served any purpose.

The Court itself, which would have the final word under Article 36(6) of its Statute, has not been given any opportunity to decide this point, and the likelihood that such an opportunity will be afforded appears remote. Disputes with respect to the Statute are unlikely to arise and be resolved directly between Members, since most differences would soon be transformed into ones between the Agency and the Member(s) unable to prevail in the representative organs. In such a case it is more likely that an advisory opinion would be requested of the Court under Article XVII. B -- while the Article XVII. A procedure would only be used if both the Board and the General Conference refused to request such an opinion and a minority of the membership attempted to use Article XVII. A to litigate the question against all other Members. In this connection it should also be noted that Article XVII. A is limited to disputes "concerning the interpretation or application of this Statute", a scope considerably less broad than that of Article

XVII. B: "any legal question arising within the scope of the Agency's activities"; it is thus doubtful whether a Member could submit to the Court a dispute with another Member that does not relate directly to the Statute but merely to an agreement concluded pursuant to it (e. g. , a bilateral supply agreement sponsored by the Agency but to which it has not become a party²⁰).

27. 1. 1. 3. Application

For the reasons indicated immediately above, Article XVII. A has not yet been used, nor has any suggestion for its use ever been made with respect to any particular question or dispute.

27. 1. 2. Article XVII. B

27. 1. 2. 1. Development

The final sentence of Article XIX. E of the Negotiating Group draft of the Statute read as follows:

"The Board of Governors is authorized to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the Agency's activities."

At the Working Level Meeting the same ad hoc Committee that recommended the adoption of the WHO Constitution formula for the first part of the Article made a similar proposal with respect to the second part. The following text was presented:

"The Board of Governors is empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the Agency's activities." ²¹

It was adopted by the Working Level Meeting without any recorded debate.

At the Conference on the Statute two amendments were proposed. That by Switzerland, referred to in Section 27. 1. 1. 1, would also have eliminated this provision.²² Mexico and the Netherlands proposed that the following be substituted for the opening words:

"The General Conference and the Board of Governors are separately empowered. . ." ²³

This proposal, which was designed to strengthen the General Conference, was adopted without any dissenting vote.²⁴

The debate with respect to Article XVII. B concerned itself almost exclusively with the question whether the Agency, which was not to become either an organ of the United Nations or a specialized agency, could receive from the General Assembly blanket authority under Article 96(2) of the UN Charter to request advisory opinions from the Court, or whether each re-

quest would have to be passed on separately by the General Assembly under Article 96(1).²⁵ The UN Secretary-General and UNSAC had expressed the view that the latter would be the proper procedure.²⁶ This interpretation was expressly criticized by the Dutch representative,²⁷ and his American colleague also expressed the view that there would be no difficulty in granting the Agency blanket authority;²⁸ the Philippines representative appeared to share the Secretary-General's doubts;²⁹ the Israeli representative asserted that the matter need not be resolved in the context of the formulation of the Statute, but should be regulated by the relationship agreement to be concluded with the United Nations.³⁰ Finally the Greek representative suggested that the Agency should, as foreseen in the draft Statute, actually obtain blanket authority from the General Assembly to request advisory opinions from the Court -- and that once such authority had been granted the Preparatory Commission (sic) should apply to the Court for an interpretation of this very provision.³¹ However, no proposal was advanced in the Conference on the Statute for any change relevant to this point, and thus Article XVII, B was adopted substantially unchanged. Nor did the Conference record any view as to its interpretation, except as implied on the one hand by the wording of the Article itself (which evidently foresees a blanket authorization) and on the other by its undebated endorsement of the UN Secretary-General's memorandum on the future relationship between the organizations.³²

27.1.2.2. Relationship Agreement with the United Nations

The question whether the Agency could receive a blanket authorization from the General Assembly proved to be one of the two most difficult points in negotiating the Relationship Agreement with the United Nations.³³ After the UN Secretariat and UNSAC on the one hand and the Preparatory Commission and its Executive Secretary on the other had developed separate formulae embodying their respective conclusions, the matter was resolved at a joint meeting of UNSAC and the Preparatory Commission³⁴ in favour of the latter's formula, as follows:

"The United Nations will take the necessary action to enable the General Conference or the Board of Governors of the Agency to seek an advisory opinion of the International Court of Justice on any legal question arising within the scope of the activities of the Agency, other than a question concerning the mutual relationships of the Agency and the United Nations or the specialized agencies."

However, the two bodies also formally recorded their understanding "that the text of Article X, paragraph 1 did not and was not intended to affect the constitutional powers of the General Assembly of the United Nations".

This question was again raised briefly in the Administrative and Legal Committee of the first special session of the General Conference,³⁵ on the basis of whose recommendation the Conference then approved the draft Relationship Agreement in the form negotiated by the Preparatory Commission. Finally the General Assembly considered this point during its debate on the Agreement itself and on a resolution concurrently introduced

by the United States by which the Assembly was to implement Article X of the Agreement by immediately granting the authority promised therein; of the four speakers who addressed themselves to this point, only the British representative indicated any doubt; though supporting the American resolution as a proper interpretation of the UN Charter, he foresaw the possibility that the ICJ might rule otherwise (once the Agency addressed a request to it) and indicated that in that case his Government would be prepared to consider amending the Charter.³⁶

Immediately after approving the Relationship Agreement,³⁷ the General Assembly unanimously adopted the American resolution by which it:

"Authorize[d] the International Atomic Energy Agency to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities other than questions concerning the relationship between the Agency and the United Nations or any specialized agency."³⁸

Thus the Assembly in effect disregarded the earlier doubts of the UN Secretariat.³⁹

27. 1. 2. 3. Application

Up to now the Agency has not requested any advisory opinion from the Court, nor has any suggestion that it do so ever been formally advanced. The suggestion of the Greek representative at the Conference on the Statute that the effectiveness of the General Assembly's authorizing resolution be tested by a request to the Court itself was never taken up by any organ of the Agency; indeed it would not be feasible to do so since the authority granted specifically excludes "questions concerning the relationship between the Agency and the United Nations. . ." -- and the characterization of the Agency's status within the meaning of Article 96(2) of the UN Charter would certainly fall under this heading.

The possibility of using advisory opinions of the Court to settle certain types of disputes is foreseen in several Agency agreements. These are mentioned in Section 27. 2. 1.

27. 1. 3. Article XI. F. 6

27. 1. 3. 1. Development

At the Conference on the Statute the Netherlands proposed the addition of the following new sub-paragraph to Article XI, F (in which the provisions to be included in Project Agreements are listed):

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

"6. Make appropriate provision regarding settlement of disputes."⁴⁰

This proposal was adopted.⁴¹

Though the new provision did not state what type of disputes provisions would have to be included in Project Agreements, it is significant that the Swiss proposal to substitute an arbitration provision for Statute Article XVII. A and B was withdrawn on the strength of the adoption of the Dutch proposal, with the explanation that though Article XVII could not be used to settle disputes between the Agency and its Members, an effective disputes procedure, such as arbitration, could under the new Article XI. F. 6 be included in the most important agreements that would be concluded between the Agency and its Members;⁴² the Swiss representative also suggested that the Co-ordination Committee might wish to add a third paragraph to Article XVII, as follows:

"Disputes arising from any agreements between the Agency and a member State shall be settled in accordance with procedures established under that agreement." ⁴³

Similarly the Syrian representative suggested the addition of a paragraph along the following lines:

"Any disputes between a State member and the Agency, including those concerned with the safeguards applied by the Agency, may be settled by arbitration procedures through a compromis between the State in question and the Director General of the Agency. This compromis should specify the cause of the dispute, the position and the seat of the arbitral court, the number of arbiters and any other provisions which the parties may wish to include." ⁴⁴

The Co-ordination Committee rejected both these proposals.⁴⁵

27. 1. 3. 2. Application

As pointed out in Section 27. 2. 2, Article XI. F. 6 has been consistently and faithfully applied, through the inclusion of disputes clauses in practically all agreements that the Agency concludes with its Members.

In particular, disputes clauses appear in all types of Project Agreements, the instruments to which Article XI. F. 6 directly applies. Among these are the agreements establishing reactor projects, nuclear materials supply projects and equipment projects.⁴⁶ Such clauses are also used with respect to every grant of technical assistance, of late usually in the master subsidiary instrument concluded under or with reference to an EPTA Standard Agreement (which itself includes no disputes provisions).⁴⁷ Similar provisions are also included in the agreements relating to the use of the Mobile Radioisotope Laboratories.⁴⁸

In addition, disputes provisions are also included in:

- (a) All types of safeguards agreements;⁴⁹
- (b) Most supply agreements, excepting the "general" ones and those relating to such small quantities that they are obtained through routine Purchase Orders;⁵⁰

- (c) Agreements establishing joint programmes;⁵¹
- (d) The Headquarters Agreement and host agreements relating to particular activities.⁵²

By an extension of the principle embodied in Article XI. F. 6, the Agency in concluding a Project Agreement that relates to a supply contract to which it is not a party, usually requires that such contracts include a clause for the settlement of any dispute that might arise between the Supplying and the Receiving States.⁵³

27. 1. 4. Interpretation of agreements registered with the Agency

During the debate on Article XXII. B⁵⁴ at the Conference on the Statute, the representative of Syria proposed that an additional article be inserted into the Statute to specify the authority to be responsible for interpreting agreements registered with the Agency.⁵⁵ This proposal was referred to and rejected by the Co-ordination Committee.⁵⁶

27. 2. DISPUTES PROVISIONS IN AGREEMENTS WITH AND BETWEEN MEMBER STATES

27. 2. 1. Reference to the International Court of Justice

27. 2. 1. 1. For decision

It is clear that under Article 34(1) of the ICJ Statute, an international organization cannot be a party to a case before the Court and therefore this method of settling disputes is not available as between the Agency and its Members. However, reference to the International Court of Justice for a decision is provided for in several multilateral agreements sponsored by the Agency, as a procedure for settling disputes among the States parties to the agreement. But these provisions are not derived from Article XVII. A of the Agency's Statute, since that Article only relates to disputes concerning that instrument and since no authority is required for States to agree in a treaty to accept the jurisdiction of the Court under Article 36(1) of its Statute.

The first sentence of Section 34 of the Agreement on the Privileges and Immunities of the IAEA⁵⁷ provides:

"Unless in any case it is agreed by the parties to have recourse to another mode of settlement, all differences arising out of the interpretation or application of the present Agreement shall be referred to the International Court of Justice, in accordance with the Statute of the Court."

In accepting this Agreement, the Soviet Union made a reservation to the effect that it "adheres as before to the position that the consent of all parties involved in a dispute must be obtained in each individual case before that dispute can be referred to the International Court of Justice".⁵⁸ Similar reservations were made by the other Eastern European States.⁵⁹

Article IX of the Nordic Mutual Emergency Assistance Agreement⁶⁰ provides:

"Any dispute concerning the interpretation or application of this Agreement which is not settled by negotiation shall, at the request of any party to the dispute, be settled by arbitration, or, if the parties do not agree upon the constitution of an arbitral tribunal within three months after the request for arbitration was made, by the International Court of Justice."

Since the Agency is also a party to the agreement, this provision is apparently also meant to apply to it; of course the final clause could not be implemented if the Agency were a party to the dispute.

Articles XX and XXI of the Brussels Convention on the Liability of Operators of Nuclear Ships⁶¹ provides:

"Article XX

Without prejudice to Article X, any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"Article XXI

1. Each Contracting Party may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by Article XX of the Convention. The other Contracting Parties shall not be bound by this Article with respect to any Contracting Party having made such a reservation.

2. Any Contracting Party having made a reservation in accordance with paragraph 1 may at any time withdraw this reservation by notification to the Belgian Government."

The Vienna Convention on Civil Liability for Nuclear Damage⁶² does not include a provision for the settlement of international disputes. However, in connection with the Convention an Optional Protocol Concerning the Compulsory Settlement of Disputes⁶³ was agreed to, whose Article I reads as follows:

"Disputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to a dispute being a Party to the present Protocol."

Articles II and III provide that the parties to a dispute may instead agree to submit it to arbitration or to conciliation, with the Court to be used as a last resort if such alternative procedures are not successful.

27.2.1.2. For an advisory opinion

Though the "Advisory Opinions" procedure under Chapter IV of the ICJ Statute was not designed for the settlement of disputes, it offers a feasible device for doing so with respect to disputes between international organizations authorized to request such opinions from the Court and their members. Indeed, the Court has apparently been content to accept this *de facto* extension of its jurisdiction, even when, in order to conform this device as closely as possible to a direct submission to the Court by parties authorized to do so, the parties agree in advance that the "advisory" opinion will be accepted by them as conclusive.⁶⁴

Unlike the reference of disputes to the Court for decisions (as discussed in the previous Section), the advisory opinion procedure is related directly to Article XVII. B of the Agency's Statute since the request for such an opinion must be made by an organ of the Agency (even if the moving party is actually a State in dispute with it). Consequently the residual legal doubts about the Agency's ability to implement Article XVII. B under the blanket authorization of the UN General Assembly⁶⁵ make the use of this device less attractive.

In the negotiation of the Agency's first Supply and Project Agreements (those relating to the JRR-3 project),⁶⁶ the Secretariat originally proposed that each Agreement provide for the Agency to request an advisory opinion either at its own initiative or whenever demanded by the Government of Canada or Japan, which opinion (if granted) would be accepted as binding; however, bearing in mind the doubts that had been expressed about the Agency's ability to obtain such an opinion, a subsidiary arbitration procedure would be included for use if "it should for any reason be impossible to obtain an advisory opinion from the Court". However, at least one of the Governments concerned as well as a majority of the Board felt that this two-tier procedure was too baroque for these relatively minor agreements, and that in any case reference to the ICJ of the commercial disputes most likely to arise under them would be inappropriate and would derogate from the dignity of the Court. The Board therefore decided to include only an arbitration provision in these two agreements.⁶⁷

Though some of the agreements subsequently concluded between the Agency and its Members were more likely to lead to political rather than to commercial disputes (e. g. , safeguards agreements), many of the reasons for opting for an unqualified arbitral procedure with respect to the first project remained valid. Consequently the Secretariat made no further proposals to base settlement procedures on ICJ advisory opinions, except if particularly desired by the States concerned or where necessary to maintain conformity with a relevant UN precedent (e. g. , with the Convention on the Privileges and Immunities of the Specialized Agencies). This restraint reflects the preferences of the Board as indicated by the following minor decision: in drafting the Inspectors Document⁶⁸ it was decided that the rights

of inspectors would normally be assured by referring in each safeguards agreement to the relevant provisions of the Privileges and Immunities Agreement;⁶⁹ in order to avoid uncertainty as to whether any differences concerning the rights of inspectors should be settled under the disputes clause of that Agreement (which, as indicated below, foresees reference to the ICJ) or of the relevant safeguards agreement (which customarily provides for arbitration), the Secretariat proposed that it be stated that the former be used; however, the Board, yielding to the customary prejudice of several of its members against the ICJ, decided that:

"Disputes between a State and the Agency arising out of the exercise of the functions of Agency inspectors will be settled according to an appropriate disputes clause in the pertinent project or safeguards agreement."⁷⁰

Up to now the settlement of disputes by means of an advisory opinion of the Court has only been provided for in two agreements:

- (a) The second and third sentences of Section 34 of the Privileges and Immunities Agreement⁷¹ provide:

"If a difference arises between the Agency and a Member and they do not agree on any other mode of settlement, a request shall be made for an advisory opinion on any legal question involved, in accordance with Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court and the relevant provisions of the agreement concluded between the United Nations and the Agency. The opinion given by the Court shall be accepted as decisive by the parties."

In accepting this Agreement the Soviet Union (followed by the other Eastern European States) indicated that its reservation with respect to the first sentence of Section 34 (quoted in the preceding Section) "applies equally" to the third sentence.⁷²

- (b) Section 39 of the Agreement establishing the Middle Eastern Radio-isotope Centre⁷³ provides:

"If a dispute arises between the Agency on the one hand and one or more other parties to this Agreement on the other hand, concerning the interpretation or application of this Agreement, which is not settled by negotiation or other agreed mode of settlement, the Agency shall request the International Court of Justice to give an advisory opinion in accordance with Article XVII, B of the Agency's Statute. The opinion given shall be accepted as binding by the parties to this Agreement."

27.2.2. Arbitration

Since only few agreements provide for reference of disputes to the International Court of Justice, and no other international courts are conveniently

available to the Agency, almost all of its agreements have an arbitration clause. This can take several forms, depending on the nature and importance of the agreement. However, an attempt is made to use as far as possible a few standardized provisions.

27.2.2.1. Standard provisions

For most of the important agreements concluded by the Agency (e. g. , those relating to projects or safeguards) a rather elaborate standard arbitration clause has been evolved. It usually consists of three paragraphs of which the first and last⁷⁴ are largely invariant, while the second, which specifies the method of selecting the members of the tribunal, may take several forms depending on the potential number of parties to the dispute.

All these provisions are designed so that no compromise should be necessary -- i. e. , that once any party to the agreement has decided to avail itself of the disputes procedure it need not reach any further accords with the others on any point in order to enable the tribunal to be established, function and reach decisions. This cautious approach is used because the clause was originally designed for project and other safeguards agreements where no chance should be taken of the control system breaking down because of an inability or unwillingness to settle disputes promptly.⁷⁵

27.2.2.1.1. Scope

The scope of the disputes clause is usually stated as broadly as possible. A typical introductory paragraph reads as follows:

"Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or as may otherwise be agreed by the Parties concerned shall on the request of any Party be submitted to an arbitral tribunal composed as follows:"⁷⁶

It should be noted that the parties need not reach agreement on whether a dispute exists or on what its scope is, though, as indicated below, the tribunal itself may decide these as well as all other jurisdictional points.

In general no specific reference is made to disputes arising out of instruments subsidiary or supplementary to the main agreement, since it is evident that such disputes arise "out of the application" of that agreement.⁷⁷

27.2.2.1.2. Constitution of tribunal

In a bilateral agreement the second paragraph of the arbitration clause reads along the following lines:

"Each party shall be entitled to designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If within thirty days of the request for arbitration either party has not

designated an arbitrator, the other party may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected."⁷⁸

In a trilateral agreement a dual procedure is usually provided for:

"(a) If the dispute involves only two of the Parties to this Agreement, all three Parties agreeing that the third is not concerned, the two Parties involved shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If within thirty days of the request for arbitration either Party has not designated an arbitrator, either Party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected.

"(b) If the dispute involves all three Parties to this Agreement, each Party shall designate one arbitrator, and the three arbitrators so designated shall by unanimous decision elect a fourth arbitrator, who shall be the Chairman, and a fifth arbitrator. If within thirty days of the request for arbitration any Party has not designated an arbitrator, any Party may request the President of the International Court of Justice to appoint the necessary number of arbitrators. The same procedure shall apply if, within thirty days of the designation or appointment of the third arbitrator, the Chairman or the fifth arbitrator has not been elected."⁷⁹

Finally, in agreements with more than three parties a provision along the following lines is made:

"Each Party to this Agreement, except any Party which all such Parties decide is not concerned in the dispute, shall designate one arbitrator. If within thirty days of the request for arbitration any party to the dispute has not designated an arbitrator, the President of the International Court of Justice may appoint the necessary number of arbitrators at the request of any party to the dispute. The arbitrators so designated or appointed shall by unanimous decision elect an additional arbitrator, who shall be the Chairman, as well as a sufficient number of other arbitrators so that the number of elected arbitrators is one less than the number of parties to the dispute. If within thirty days after the necessary number of arbitrators has been designated or appointed, the Chairman or any of the other additional arbitrators have not been elected, the President of the International Court of Justice may appoint the necessary number of additional arbitrators at the request of any party to the dispute."⁸⁰

The tri- and multilateral formulae essentially constitute mere logical extensions of the conventional bilateral formula. The reason for developing

these two special formulae is that the Agency frequently enters into agreements with exactly two and sometimes with three or more Member States.⁸¹ However, since the basic principle is the same it would be possible to use the multilateral form even in bilateral or trilateral agreements, though for the former it would certainly appear peculiar. The following features should be noted:

- (a) The procedure is designed to enable a single determined party to cause the tribunal to be fully constituted within a limited period of time, even without the co-operation (or against the opposition) of the other parties. Thus the President of the International Court of Justice may be called on to intervene at one or both of two successive stages:
 - (i) if any or all of the parties fail to designate the arbitrator each is entitled to; or
 - (ii) if the designated arbitrators (or any substitutes previously appointed by the ICJ President) are unable to elect the necessary number of additional members.
- (b) The number of jointly elected arbitrators is always only one less than the number of designated ones, and always includes the Chairman of the tribunal. Through this formula the tribunal (which is authorized to take all procedural and substantive decisions by majority vote)⁸² can always reach a decision in favour of any party, even if all the others are ranged against it in the dispute. This device is necessary, for in many instances there is no a priori method of deciding how the interests of the parties will be aligned: for example, in a Safeguards Transfer Agreement,⁸³ both States might differ with the Agency on whether a particular item transferred between them should come under safeguards, or the Agency and the Supplying State might line up against the Receiving (i. e., the controlled) State on whether a particular safeguards measure is justified, or finally the Supplying State might urge more severe controls than the Agency and the Receiving State consider appropriate; with respect to a supply arrangement⁸⁴ the Agency might line up with either State against the other on some issue relating to the terms of delivery.
- (c) In the trilateral or multilateral agreements a party to the instrument can be excluded from the disputes procedure (and thus from the binding effect of the decision) only if that party itself as well as all the other parties to the agreement concur in such exclusion. This might, for instance, be arranged in a dispute relating to a trilateral supply agreement, where both States and the Agency agree that the latter (as a mere intermediary)⁸⁵ is not really involved in a dispute on whether the items delivered conform to the agreed specifications.

27.2.2.1.3. Operation of tribunal

The final paragraph of the arbitration clause usually reads as follows:

"A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall be made by majority vote. The arbi-

tral procedure shall be fixed by the tribunal. The decisions of the tribunal, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between the Parties, shall be binding on all Parties. The remuneration of the arbitrators shall be determined on the same basis as that of ad hoc judges of the International Court of Justice."⁸⁶

The powers of the tribunal are stated comprehensively so that once it is constituted (and this can be forced through by any one party) it can decide any and all questions relating to its own functioning. Since a simple majority of the tribunal constitutes a quorum and a simple majority of the members participating can take all decisions, the non-cooperation of all the arbitrators designated by all but one party cannot block the work of the tribunal.⁸⁷

27.2.2.2. Variants on the standard provisions

Aside from the differences relating to the number of potential participants in a dispute, some other special features are introduced into the arbitration clause of certain types of agreements.

27.2.2.2.1. Interim decisions

All safeguards agreements provide that, even during the pendency of a formal dispute, certain decisions directly related to the application of controls can be taken by the Board with binding effect on all parties.⁸⁸ In recent project agreements this clause reads as follows:

"Decisions of the Board concerning the implementation of [the Articles on "Agency Safeguards", "Health and Safety Measures" and "Agency Inspectors"] shall, if they so provide, be given effect immediately by the Agency and [the Government], pending the final settlement of any dispute."⁸⁹

In some safeguards agreements the powers of the Board to make temporarily binding decisions are restricted to the application of sanctions and related matters; however, in such agreements the arbitral tribunal is explicitly authorized to make interim decisions in those areas where the Board has no special authority to do so. This is done by adding a sentence and a half to the third paragraph of the standard clause, as follows:

"Upon application by any Party, and if necessary to ensure that this Agreement continues to function effectively, the arbitral tribunal shall be empowered to make interim decisions and to issue interim orders pending a final decision on any dispute, except with respect to matters covered by [the Section reciting the Board's interim powers]. The final decision and interim orders and decisions of the tribunal, including all rulings concerning its constitution, . . ."⁹⁰

The corresponding clause relating to the reserved powers of the Board then reads as follows:

"Decisions of the Board concerning the inability of the Agency to apply safeguards or concerning any non-compliance with this Agreement. . . shall, if they so provide, immediately be given effect by the Parties, pending the conclusion of any consultation, negotiation or arbitration that may be or may have been invoked with regard to the dispute." ⁹¹

In an important extension of this principle, in the Mexican Safeguards Submission Agreement the tribunal is entirely divested of authority to decide over the imposition of sanctions, a function entirely reserved there to the Board.⁹²

27. 2. 2. 2. Inclusion of additional parties

With respect to certain agreements concluded by the Agency with one or more States, disputes may arise whose complete resolution requires that other States, not parties to the agreement, participate in the settlement proceeding. For example, in a Project Agreement relating to assistance from a Supplying State that is not party to a trilateral supply agreement, it may be desirable to make that State a formal party to any dispute concerning that assistance. Thus, in the Master Agreements for Assistance by the Agency in Furthering Projects by the Supply of Materials,⁹³ the following sentence has been added at the end of the first paragraph of the standard arbitration clause:

"At the request of the Agency the supplier may also join in such a proceeding as a separate party." ⁹⁴

The second paragraph is then written in the standard multilateral form, permitting its use for either bilateral or trilateral arbitration. Obviously the Supplying State cannot, by means of this provision in the Project Agreement (to which it is not a party) be required to participate in arbitration under it, but such a requirement may be included in the Supply Agreement between the Agency and the Supplying State.

27. 2. 2. 3. Incorporation by reference

When a bilateral Project Agreement is concluded in conjunction with a trilateral Supply Agreement containing the usual trilateral arbitration clause (allowing either bilateral or trilateral arbitration), it is customary to refrain from including in the former instrument a full disputes clause. Instead, the settlement procedure set out in the Supply Agreement is usually incorporated by reference into the Project Agreement.⁹⁵

27. 2. 2. 3. Non-standard provisions

In certain agreements a non-standard, usually simpler arbitration clause is used.

In the Headquarters Agreement, which was concluded before the standard clause was evolved, the following is provided:

"Any dispute between the IAEA and the Government concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the headquarters seat or the relationship between the IAEA and the Government, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by the Director General, one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the IAEA or the Government."⁹⁶

In the agreement for establishing the Middle Eastern Radioisotope Centre a special provision is made for settling any inter-State disputes not involving the Agency:

"Any dispute between any two or more States parties to this Agreement concerning the interpretation or application thereof, which is not settled by negotiation or other agreed mode of settlement, shall be settled by arbitration."⁹⁷

In the Nordic Mutual Emergency Assistance Agreement an over-simple arbitration clause⁹⁸ is backed up by a possible reference to the International Court of Justice.

Certain agreements relate to items of such relatively slight value or are so unlikely to lead to serious disputes, that any fully elaborated arbitration clause seems unjustified. In the supplementary agreements to the EPTA Standard Agreements⁹⁹ the following is used:

"Any disputes between the Government and the Agency arising out of or relating to this letter which cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either the Government or the Agency. The Minister for Foreign Affairs and the Director General of the Agency shall each appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the Chairman. If within 30 days of the request for arbitration either party has not appointed an arbitrator or within 15 days of the appointment of two arbitrators the third arbitrator has not been appointed, either party may request the Secretary-General of the United Nations to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the parties as assessed by the arbitrators. The arbitrators shall make decisions by a majority vote, and any two shall constitute a quorum. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the parties as the final adjudication of the dispute."¹⁰⁰

27. 2. 2. 4. Formalities relating to arbitration

27. 2. 2. 4. 1. Notifying the impartial appointing authority

In the standard arbitration clause (as well as in most of the non-standard forms) included in agreements to which States are parties, the President of the International Court of Justice is generally named as the impartial official who is to appoint arbitrators in certain specified contingencies.¹⁰¹ Since this is an extra-judicial function not foreseen in the Statute of the Court, it is technically necessary to secure the agreement of the President before concluding an agreement assigning this function to him.¹⁰² However, because of the large number of agreements concluded by the Agency which contain the standard disputes clause,¹⁰³ the President of the Court has given the Agency blanket approval for the inclusion of a reference to him in that clause, with the proviso that after each agreement is concluded it be notified to the Registrar of the Court.¹⁰⁴

The UN Secretary-General is the appointing authority named in some agreements, such as those relating to technical assistance and those to which the other parties are not States (e. g. , research contracts¹⁰⁵); apparently no blanket arrangement has been made with him regarding such inclusion nor is his approval routinely requested on an ad hoc basis.

The President of the Permanent Court of Arbitration was named in one agreement, at the request of one of the States parties to it.¹⁰⁶

27. 2. 2. 4. 2. Responsibility to act for the Agency

Except for the Headquarters Agreement and supplementary technical assistance agreements, which name the Director General as the official to perform certain actions for the Agency in connection with arbitration proceedings,¹⁰⁷ most disputes clauses are silent as to whether the Board or the Director General is to decide on:

- (a) The existence of a dispute and the demand for the constitution of an arbitral tribunal;
- (b) The designation of an arbitrator for the Agency;
- (c) A request to the President of the International Court of Justice (or another appropriate official) to act if the procedure for choosing the members of the tribunal breaks down.

27. 2. 3. Umpire provisions

In nuclear materials Supply Agreements, any dispute is most likely to relate to the quality or quantity of the material delivered. Since a conventional arbitral tribunal is ill-equipped to resolve questions of this type, a special "umpire laboratory" clause is usually included in these instruments:

"If the parties should be unable to reach agreement with respect to the determination [of the precise quantity and enrichment of the nuclear material] within thirty days of the submission of such determination to them by the Manufacturer, any party may request that such a determi-

nation be made by a laboratory agreed upon by all the parties. The laboratory may perform any tests or analyses that it may deem necessary, and all parties agree to facilitate its work in every way. The results of the determination by the laboratory shall be considered as final and binding on all parties. The costs of the determination by the laboratory shall be borne equally by the parties, provided that if the determination insisted on by any party or parties is confirmed by the laboratory such party or parties shall not be obliged to bear any share of the costs."¹⁰⁸

Though the results of the laboratory's determination are stated to be "final and binding", if any legal dispute should relate either to the choice or work of the umpire, to the interpretation of its conclusions or to the sharing of costs, this would be referred to arbitration under the standard disputes clause which follows the umpire provision in each of these Supply Agreements.

27.2.4. Safeguards tribunal

As mentioned in Section 21.10, the lack of a standing tribunal to which disputes concerning the implementation of safeguards might be referred, may complicate efforts to keep uniform the interpretation of series of similar Safeguards Submission Agreements to be concluded pursuant to the Tlatelolco and Non-Proliferation Treaties. However, up to now no proposals have been made for the establishment of such a forum.¹⁰⁹

27.3. DISPUTES WITH PRIVATE PERSONS

Section 50 of the Headquarters Agreement¹¹⁰ provides:

"The IAEA shall make provision for appropriate methods of settlement of:

- (a) Disputes arising out of contracts and disputes of a private law character to which the IAEA is a party; and
- (b) Disputes involving an official of the IAEA who, by reason of his official position, enjoys immunity, if such immunity has not been waived by the IAEA."

Section 33 of the Privileges and Immunities Agreement¹¹¹ contains an essentially identical provision.

The following Sections describe the arrangements the Agency has made in compliance with paragraph (a) above. No provisions have yet been made in compliance with paragraph (b), and instead the Agency's practice has been to waive the immunity of officials involved in private disputes.¹¹²

27.3.1. Research and other contracts

The following arbitration clause is included in all research contracts,¹¹³ excepting those relating to cost-free arrangements:

"Any dispute between the Agency and the Contractor arising out of or relating to this Contract which cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either the Agency or the Contractor. The Director General of the Agency and the Contractor shall each appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the chairman. If within 30 days of the request for arbitration either party has not appointed an arbitrator or within 30 days of the appointment of two arbitrators the third arbitrator has not been appointed, either party may request the Secretary-General of the United Nations to appoint an arbitrator. The arbitral procedure shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the parties as assessed by the arbitrators. The arbitrators shall make decisions by majority vote, and any two shall constitute a quorum. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the parties as the final adjudication of the dispute."

Most commercial arrangements by the Agency for securing supplies and services are made by use of a simple Purchase Order form, which includes no disputes clause. Certain substantial contracts, such as those concerning the construction of the Agency's Laboratory at Seibersdorf, provided for arbitration according to the Rules of the International Chamber of Commerce.

27.3.2. Disputes with staff members

Whether or not the Headquarters and the Privileges and Immunities Agreements require the Agency to establish formal machinery for the settlement of disputes with members of its staff, the Board of Governors has through the Staff Regulations provided for the adoption of procedures closely corresponding to those that relate to the UN Secretariat.

27.3.2.1. Joint Appeals Committee

Provisional Staff Regulation 12.01¹¹⁴ provides:

"The Director General shall establish administrative machinery with staff participation to advise him in case of any appeal by a staff member against an administrative decision in which the staff member alleges the non-observance of the terms of his appointment, including all pertinent Regulations and rules, or of appeals against disciplinary action."

Pursuant to this Regulation the Director General promulgated Staff Rule 12.01.1 for the establishment of a "Joint Appeals Committee",¹¹⁵ consisting for each case of three members:

- (a) A Chairman designated ad hoc by the Director General from a panel appointed annually by him, after consultation with the Staff Council;

- (b) One member appointed annually by the Director General;
- (c) One member elected annually by the staff.

The Rule, which is based on a similar UN provision,¹¹⁶ regulates in detail the extent of the Committee's jurisdiction and the procedure to be followed by it.¹¹⁷ Its report, which requires only a majority vote, is communicated to the Director General, to the staff member concerned and normally to the Staff Council; it merely constitutes a recommendation to the Director General, who must then take the final decision.

27.3.2.2. ILO Administrative Tribunal

Provisional Staff Regulation 12.02 provides:

"The Board of Governors shall make arrangements for the hearing by an independent tribunal of an appeal by a staff member against any administrative decision directly affecting him taken pursuant to Regulations 4.01 [Involuntary termination of appointment] or 12.01."

Though Article XVIII.2(d) of the Relationship Agreement with the United Nations¹¹⁸ provides for the two organizations:

"To co-operate in the establishment and operation of suitable machinery for the settlement of disputes arising in connexion with the employment of personnel and related matters",

the Board in January 1959 decided to accept the Director General's recommendation that the Agency should obtain the extension to it of the competence of the ILO Administrative Tribunal rather than that of the United Nations. The considerations in favour of ILOAT were:

- (a) ILOAT always meets in Geneva while UNAT generally meets in New York;
- (b) ILOAT has wide experience with the specialized agencies while UNAT deals almost exclusively with United Nations cases;
- (c) UNAT's Statute foresees the extension of its jurisdiction only to "specialized agencies", and though the UN General Assembly could have changed this by a resolution¹¹⁹ this would have resulted in about a year's delay.

The Board's decision was implemented through a simple letter of notification addressed by the IAEA Director General to ILO, whose Governing Body thereupon gave the necessary approval pursuant to Article II.5 of the ILOAT Statute. The Agency's submission specifically excluded cases relating to the UNJSPF, since only UNAT is competent for cases involving the Pension Fund.

The Director General of ILO informally consults with the Agency before submitting to his Governing Body nominations for any new judges for ILOAT.

27. 3. 2. 3. UN Administrative Tribunal

Article XLI of the Regulations of the United Nations Joint Staff Pension Fund¹²⁰ provides that applications alleging non-observance of the Regulations of the Fund arising out of a decision of its Board may be submitted directly to UNAT by "Any staff member of a member organization which has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases. . ."

Although the Agency had been admitted into the Pension Fund in 1958, the Board only took the action foreseen by Article XLI of the Regulations in September 1963. The Agency and the United Nations thereupon concluded a Special Agreement Extending the Jurisdiction of the Administrative Tribunal of the United Nations to IAEA, with Respect to Applications by Staff Members of IAEA Alleging Non-observance of the Regulations of the United Nations Joint Staff Pension Fund.¹²¹ This Agreement is in the same form as those that had been concluded earlier between the United Nations and the specialized agencies for the same purpose.

27. 3. 2. 4. Advisory Board on Compensation Claims

Pursuant to Article 17 of Appendix D to the Staff Rules, the Advisory Board on Compensation Claims¹²² is charged with making recommendations to the Director General if the latter should be requested to reconsider any decision relating to a determination of an injury, illness or incapacity attributable to the performance of official duties.

27. 4. PRACTICE

27. 4. 1. Disputes with States

No dispute with or among States has ever been submitted to a formal disputes procedure by or through the Agency. Nor has any request been addressed to the International Court of Justice for an advisory opinion to settle a dispute or for any other purpose.

27. 4. 2. Disputes with contractors

Only once has a dispute with a contractor of the Agency resulted in the initiation of litigation. Although the contract in question, which related to the construction of the Seibersdorf Laboratory,¹²³ provided for arbitration under the rules of the International Chamber of Commerce, the Agency and the contractor agreed to the ad hoc appointment of a single arbitrator. At the conclusion of the proceeding the parties complied with the arbitral award.

27. 4. 3. Disputes involving staff members

A number of cases have been referred to the Joint Appeals Committee. Of these four were appealed by the staff member concerned to ILOAT -- but in no case did the appellant prevail. One of these challenged the ad hoc application by the Director General of the maternity leave rule of the United

Nations before the Agency's (more generous) provisions on this point had been promulgated;¹²⁴ the second challenged the refusal to grant a Non-resident's Allowance to a General Service staff member;¹²⁵ the third related to the enforceability of a written promise made to a staff member in violation of the relevant Staff Regulations and Rules relating to repatriation;¹²⁶ the fourth contested the decision reassigning him from a deputy directorship as well as an alleged slur on his professional work appearing in an official report.¹²⁷

One staff member appealed to UNAT against a decision taken by the Standing Committee of the UNJSPF by delegated authority of the UNJSPF Board; however he withdrew the case after a settlement satisfactory to him was approved by the Board.¹²⁸

27.4.4. Disputes in national courts

The Agency has never agreed to the submission of any dispute to a national court, either in the abstract with respect to specified future controversies or with reference to any current matter. However, four staff members have litigated in the Austrian courts certain questions relating to the Headquarters Agreement. In one case, which was finally decided by the highest competent Austrian court (the Oberste Gerichtshof), it was decided that the Headquarters Agreement did not preclude the collection from staff members of the compulsory "church tax" or "contribution", calculated by taking into account the salary he received from the Agency.¹²⁹ A second staff member was, however, successful in resisting the "church tax" imposed by the Roman Catholic Church, on the ground that the regulations issued by that Church automatically excluded income exempt from Austrian taxes.¹³⁰ In another case, the Commercial Court (Handelsgericht) of Vienna held that a staff member's IAEA salary could not be garnished, *inter alia* since this would require the service of legal process within the Headquarters of the Agency and since a garnishment would constitute a measure of execution against the Agency, as to which the Headquarters Agreement specified that it cannot waive its immunity.¹³¹ A staff member unsuccessfully challenged the supplemental Agreement between the Agency and the Austrian Government Concerning the Social Insurance of Officials of the Agency,¹³² on the ground that his exclusion from the benefits of the Austrian social security scheme because of his participation in the UNJSPF resulted in an unfair discrimination in violation of the Austrian Constitution.

NOTES

1 WLM Doc. 3.

2 WLM Doc. 2(Add. 19).

3 WLM Doc. 18(Rev. 1), para. 2. D.

4 WLM Doc. 2(Add. 19), 16 March 1956.

5 WLM Doc. 18 (Rev. 1), second part, para. 2. A.

6 WLM Doc. 31, Annex IV, para. 1.

7 IAEA/CS/Art. XVII/Amend. 1/Corr. 1.

8 IAEA/CS/OR. 33, pp. 48-51. This step is regretted by Fischer, *op. cit.* Annex 5, No. 20, at p. 624.

9 IAEA/CS/Art. XVII/Amend. 3/Rev. 1.

- 10 IAEA/CS/OR.33, p.46; /OR.36, p.27.
- 11 IAEA/CS/OR.33, pp.41-96, and /OR.34, pp.3-27 (*passim*).
- 12 IAEA/CS/OR.34, pp.16-18 and /OR.36, pp.28-30.
- 13 276 U. N. T. S. 121; INFCIRC/42/Rev.5, Part I, para.14(b); Section 5.1.5.3(iii).
- 14 276 U. N. T. S. 122; INFCIRC/42/Rev.5, Part I, para.11; Section 5.1.5.3(iv).
- 15 293 U. N. T. S. 360; INFCIRC/42/Rev.5, Part I, para.5(a).
- 16 Section 5.1.5.3(v).
- 17 Dölleman, *op. cit.* Annex 5, No.14.
- 18 Section 5.1.5.
- 19 See Fischer, *op. cit.* Annex 5, No.20, at pp.624-625.
- 20 Section 16.5.1(b) and (5).
- 21 WLM Doc.2(Add.19), 16 March 1956.
- 22 IAEA/CS/Art. XVII/Amend.1/Corr.1.
- 23 IAEA/CS/Art. XVII/Amend.2.
- 24 IAEA/CS/OR.36, pp.28-30.
- 25 Section 12.1.4.1.
- 26 IAEA/CS/5, para.15.
- 27 IAEA/CS/OR.33, p.47, and /OR.34, pp.11-12.
- 28 IAEA/CS/OR.38, pp.73-75.
- 29 IAEA/CS/OR.33, pp.61-65.
- 30 IAEA/CS/OR.34, pp.3-5.
- 31 IAEA/CS/OR.34, p.27.
- 32 IAEA/CS/OR.33, pp.38-41; Section 2.8.7(b).
- 33 Section 12.2.1.1(f) and (ii).
- 34 IAEA/PC/OR.42 -- ST/SG/AC.1/SR.32, pp.7-10.
- 35 GC.1(S)/COM.2/OR.6, paras.28-33.
- 36 UNGA/PV.715, paras.10, 23-25, 38, 53-54.
- 37 UNGA/RES/1145(XII); INFCIRC/11, Part I.A, Article X.1.
- 38 UNGA/RES/1146(XII).
- 39 Rosenne, *op. cit. supra* Chapter 12, note 34, gives an interesting rationale to justify the General Assembly's decision: that "the Agency may properly be regarded as an organ of the United Nations for the purposes of Article 96 [of the UN Charter]" (p.682). However, as suggested in Section 12.1.4.1, a more plausible rationale is the assimilation of the special status of the Agency to that of the specialized agencies.
- 40 IAEA/CS/Art. XI/Amend.3.
- 41 IAEA/CS/OR.28, pp.7-10.
- 42 *Supra* note 8.
- 43 IAEA/CS/OR.33, pp.48-50; IAEA/CS/COORD/2/Add.1, para.19.
- 44 IAEA/CS/OR.33, p.52; IAEA/CS/COORD/2/Add.1, para.20.
- 45 IAEA/CS/10, para.17.
- 46 Sections 17.2.1.2, 17.3 and 17.4.
- 47 Section 18.1.5.2.
- 48 Section 18.3.6.
- 49 Sections 21.5 and 21.10.
- 50 Sections 16.4.10 and 16.5.2.
- 51 Sections 19.3.2.1-4.
- 52 Sections 28.2.3 and 20.1.2.
- 53 Sections 16.5.1(b) and (5), 17.4. See, e.g., INFCIRC/101, Section 3(c), which in a unique clause provides that in an agreement under which Poland and Bulgaria are to supply equipment to Mexico, Poland is to represent its co-supplier in any dispute with the Receiving State.
- 54 Sections 26.6.1.1.1 and 26.6.2.1.
- 55 IAEA/CS/OR.35, pp.86-87; IAEA/CS/COORD/2/Add.1, para.26.
- 56 IAEA/CS/10, para.18.
- 57 INFCIRC/9/Rev.2, Section 28.3.
- 58 INFCIRC/9/Rev.2/Add.1, Reservation No.9; Section 28.3.3.
- 59 INFCIRC/9/Rev.2/Add.1, Reservation Nos.10 (UkSSR), 11 (BSSR), 12 (Hungary), 13 (CSSR), 14 (Bulgaria).
- 60 INFCIRC/49, Section 23.4.1.

- 61 Legal Series No. 4, IAEA, Vienna (1966) p. 36. Section 23. 2.
- 62 Ibid., p. 3. Section 23.1.
- 63 Ibid., p. 16. Section 23.1.4(ii) and footnote 20 thereto.
- 64 Judgements of the Administrative Tribunal of the International Labour Organisation upon Complaints made against the United Nations Educational, Scientific and Cultural Organization, 1956 ICJ 4, at pp. 84-85.
- 65 Sections 12.1.4.1 and 27.1.2.
- 66 INFCIRC/3; Section 17.2.2.1.
- 67 Rosenne, *op. cit. supra* Chapter 12, note 34, at p. 682.
- 68 GC(V)/INF/39, Annex; Sections 21.4.2.1.1 and 22.1.3.
- 69 GC(V)/INF/39, Annex, para. 13.
- 70 *Idem*, para. 14. Rosenne, *op. cit. supra* Chapter 12, note 34, at p. 685.
- 71 INFCIRC/9/Rev. 2 -- see also Section 26 thereof. *Infra* Section 28. 3.
- 72 *Supra* note 58.
- 73 INFCIRC/38. Section 19.3.1.1.
- 74 Though in the Japan/UK Safeguards Transfer Agreement, the standard final paragraph has been split into 2½ separate Sections (INFCIRC/125, Sections 28-30).
- 75 Section 21.10.
- 76 For example, China/US Safeguards Transfer Agreement, INFCIRC/72, Section 21.
- 77 See, however, the NPY Agreement (Section 19.3.2.2), INFCIRC/55, Section 25.
- 78 For example, US Safeguards Submission Agreement, INFCIRC/57, Section 18 (not paragraphed).
- 79 For example, China/USA Safeguards Transfer Agreement, INFCIRC/72, Section 21.
- 80 For example, the similar formulation in the IPA Joint Project Agreement (Section 19.3.2.3), INFCIRC/56, Section 15.
- 81 Sections 26.3.1-2.
- 82 Section 27.2.2.1.3.
- 83 Section 21.5.2.
- 84 Section 16.5.
- 85 Section 16.5.1(4).
- 86 For example, Uruguayan URR Supply Agreement (Section 17.2.2.12), INFCIRC/67, Part I, Section 42.
- 87 The scale of compensation of the arbitrators is specified in the disputes clause, since this is the one procedural point that should not be left to the tribunal itself to decide.
- 88 Section 21.10.
- 89 For example, Uruguayan URR Project Agreement (Section 17.2.2.12), INFCIRC/67, Part II, Section 15.
- 90 For example, China/USA Safeguards Transfer Agreement, INFCIRC/72, Section 21.
- 91 For example, *idem*, Section 22.
- 92 INFCIRC/118, Section 26, final sentence. Sections 21.3.2.2 and 21.5.5.5.
- 93 Section 17.3.
- 94 For example, Agreement concluded with Turkey, INFCIRC/83, Part I, Section 13.
- 95 Section 17.2.1.2(k). E. g., Uruguayan URR Project Agreement (Section 17.2.2.12), INFCIRC/67, Part II, Section 14.
- 96 INFCIRC/15, Part I, Section 51.
- 97 INFCIRC/38, Section 38. For disputes involving the Agency, see Section 39, quoted in Section 27.2.1.2(b) above.
- 98 Quoted in Section 27.2.1.1 above.
- 99 Section 18.1.5.2.
- 100 For example, as concluded with India, Agency Registration No. 262.
- 101 Incidentally, no provision has been made in any Agency agreement for recusing that official should he have the nationality of one of the States parties to the dispute; presumably, however, the President of the Court would do so anyway, according to the pattern explicitly provided in many similar arbitration agreements referring to him.
- 102 ICJ Yearbook 1966-1967, Chapter III, Section III.1, second paragraph. See, e. g., the arrangement made for consulting the President of the Court in connection with the disputes clause in the Headquarters Agreement (quoted in Section 27.2.2.3), IAEA/PC/OR, 56, p. 10.
- 103 See, e. g., the ICJ Yearbook for 1963-1964 (the last year in which such a list was published), Chapter X, Section IV. 11 Dec. 1957 *et seq.*
- 104 Letter by the ICJ Registrar to the Director of the IAEA's Legal Division, 3 March 1962.

- 105 Quoted in Section 27.3.1. See also the Master Contract [between the Agency and the USAEC] for Sales of Research Quantities of Special Nuclear Materials (Section 16.4.12 and 17.9), INFCIRC/83, Part II, Annex A, para. 14.
- 106 South Africa/USA Safeguards Transfer Agreement (INFCIRC/70, Section 21), at the request of South Africa during the pendency before ICJ of the South-West Africa suit by Ethiopia and Liberia; the permission of the PCA President was duly secured. The same disposition was made in the superseding agreement (INFCIRC/98, Section 29).
- 107 Both quoted in Section 27.2.2.3. See also the clause quoted in Section 27.3.1.
- 108 For example, Mexican TRIGA Supply Agreement (Section 17.2.2.9), INFCIRC/52, Part I, Section 10. For a more elaborate version, see the Spanish CORAL-1 Supply Agreement (Section 17.2.2.17), INFCIRC/99, Part I, Section 32(a)(4).
- 109 Except for a tentative suggestion at the Conference on the Statute, IAEA/CS/OR.12, p.26.
- 110 INFCIRC/15, Part I; Section 28.2.
- 111 INFCIRC/9/Rev.2; Section 28.3.
- 112 Section 28.5.
- 113 Section 19.2.5.
- 114 INFCIRC/6/Rev.2; Section 24.1.3.
- 115 AM, II/1; Sections 24.1.5. and 24.10.2.3.
- 116 UN Staff Rule 111.1.
- 117 Since para. (D)(6) of the Rule permits the staff member concerned to be represented before the Committee by another staff member, but not by an outsider, the Staff Council (Section 24.12.3.4) has established a roster of staff members (for the most part lawyers not assigned to the Legal or Personnel Divisions) to give such assistance to staff members (Staff Association document A/61/1, para. 30).
- 118 INFCIRC/11, Part I, A; Sections 12.2.1.2 and 24.2.1.
- 119 Section 12.1.4.2.
- 120 UN doc. JSPB/G.4/Rev.5. This corresponds to Article 49 of the revised UNJSPF Regulations (JSPB/G.4/Rev.6).
- 121 INFCIRC/11/Add.1. Though, as pointed out in Section 27.3.2.2(c), the jurisdiction of UNAT can generally only be extended to specialized agencies, the UN General Assembly had earlier decided that the Agency be treated as a specialized agency for the purpose of the UNJSPF Regulations (Sections 12.1.4.2 and 24.5.2.1).
- 122 AM, II/1; Section 24.10.2.5.
- 123 Section 19.1.1.
- 124 *Wawrik v. IAEA*, ILOAT Judgment No. 41, XLIII ILO Off. Bull. 468-471. See also Chapter 24, note 65.
- 125 *Benedek v. IAEA*, ILOAT Judgment No. 113, LI ILO Off. Bull. 113-115; summarized in 1967 UN Juridical Yearbook, p. 307. See also Chapter 24, note 99.
- 126 *Martin v. IAEA*, ILOAT Judgment No. 123, LII ILO Off. Bull. 123-126.
- 127 *Silow v. IAEA*, ILOAT Judgment No. 142.
- 128 His legal position was, however, later vindicated in *Chomis v. UNJSPF Board*, UNAT Judgment No. 108.
- 129 *Evangelische Kirche A. u. H. B. in Oesterreich v. Gnezda*, OGH vom 27.2.1964 SZ. XXXVII 33, 6 Ob 302/63; summarized in UN Juridical Yearbook 1964, pp. 274-275; Section 28.2.6. The decisions below can be found under *Landesgericht für Zivilrechtliche Sachen, Wien*, 12.7.1963, GZ. 42 R 287/63-11; *Bezirksgericht Innere Stadt Wien*, 5.4.63, GZ. 32 C 216/63-7. Because of the Agency's interest in securing an interpretation in the sense desired by the staff member, it assumed the direction of and the costs of the suit at all three levels. Nevertheless, the Agency did not become a party to the suit and is thus not bound by the decision. Though it is not in a position to challenge that decision directly, it might eventually require the Government, which has adopted the position of the court, to arbitrate the matter under the procedure provided for in Article 51 of the Headquarters Agreement (quoted in Section 27.2.2.3).
- 130 *Erzdiözese Wien v. Berger*, OGH vom 17.10.1967, 406 538/67, Section 28.2.6. The Oberste Gerichtshof was, however, explicit in reaffirming the principle of the decision in the *Evangelische Kirche* case. The decisions below can be found under *Landesgericht für Zivilrechtliche Sachen Wien*, 10.2.1967, GZ. 43 R 20/67-19; *Bezirksgericht Döbling*, 5.12.1966, GZ. 4 C 1056/66-12.
- 131 *Panuschka v. Schaufler*, Handelsgericht Wien, 29.11.1965, 12 Cg 802/65-2; summarized in UN Juridical Yearbook 1965, p. 246.
- 132 INFCIRC/15, Part VI; Section 24.5.3.

CHAPTER 28. PRIVILEGES AND IMMUNITIES

PRINCIPAL INSTRUMENTS

IAEA Statute, Article XV and Annex I, para. C.6.
First Conference Agreement with Austria (GC.1/INF/3)
Headquarters Agreement with Austria, and the supplementary agreements thereto (INFCIRC/15 and /Add.1-3)
Agreement on the Privileges and Immunities of the IAEA (INFCIRC/9/Rev.2)
Inspectors Document (GC(V)/INF/39, Annex), paras. 13, 14
International Organizations Immunities Act of the US (59 Stat. 669 (1945)) and Executive Order No. 10727 (22 F.R. 7099 (1957))
Agreement with Italy for the Establishment of an International Centre for Theoretical Physics at Trieste (INFCIRC/114), Article III
Agreement for the Establishment in Cairo of a Middle Eastern Regional Radioisotope Centre for the Arab Countries (INFCIRC/38), Sections 25, 27
Safeguards Agreements, e.g. :
 Argentine/USA Safeguards Transfer Agreement (INFCIRC/79), Sections 17, 18
 Mexican TRIGA III Project Agreement (INFCIRC/52), Section 9
Technical Assistance Agreements, e.g., the Revised Standard Agreement with Thailand (TAB/R.251/Add.44), Article V.1
Provisional Staff Regulation (INFCIRC/6/Rev.2) 1.10
Headquarters Regulations
Commissary Regulations (AM.VIII/11, Annex I)
Explanatory summary "Privileges and Immunities of the Staff" (AM.1/9)

The privileges and immunities of and relating to the Agency are principally set forth in three instruments: Article XV of the Statute, the Headquarters Agreement and the Agreement on the Privileges and Immunities of the IAEA.¹ These instruments and the rights and duties they establish deliberately follow the patterns that had previously been set in the United Nations system. Consequently the account below is restricted to the development and the few peculiarities of the Agency's instruments and to their relationship to each other and to other components of the legal structure of the organization.²

28.1. STATUTORY PROVISIONS

28.1.1. Development

Article XVII of the Negotiating Group draft was evidently and admittedly based closely on Article 105 of the UN Charter. Paragraphs A and B would have provided, respectively to the Agency and to persons associated with it, the "necessary" privileges and immunities; however, paragraph C was introduced by the words: "Without prejudice to the immediate effectiveness of paragraphs A and B of this Article", before specifying that these rights would be defined in a later agreement. It was thus clearly intended that the first two paragraphs would be self-executing.

At the Working Level Meeting the representative of Australia introduced three amendments to eliminate any automatic application of the proposed Article:³

- (a) To commence paragraphs A and B with the words: "subject to paragraph C";
- (b) To delete the introductory words of paragraph C;
- (c) To add the following underlined words: "the privileges ... referred to in this article shall be defined in and subject to a separate agreement ..."

The United States opposed these amendments on the ground: "that some immunities and privileges were necessary in getting the Agency started". Finally, only proposal (b) was accepted by the Meeting, with the explanation:

"That it was the intention that paragraphs A and B would be a statement of principles setting forth the minimum of privileges and immunities for the initial period of the Agency and before the conclusion of individual agreements".⁴

At the Conference on the Statute only one formal amendment was introduced, to add a sentence at the end of paragraph C stating:

"This agreement shall be concluded in accordance with the constitutional processes of each member."⁵

This proposal was defeated.⁶ An oral amendment to add the words "or agreements" after "agreement" in paragraph C⁷ was referred to the Co-ordination Committee and accepted by it;⁸ in proposing it, the United States had explained that different circumstances in various countries might require different agreements, giving as an example the special provisions of a headquarters agreement.

As finally adopted, Article XV provides in three paragraphs:

- (i) The Agency itself is to have the necessary legal capacity, privileges and immunities in the territories of its Members;
- (ii) Delegates and Governors, together with their alternates and advisers, as well as the Secretariat, shall enjoy the necessary privileges and immunities;
- (iii) The rights mentioned above are to be defined in agreements between the Agency and its Members.

28.1.2. Interpretation

There have been few occasions to interpret the general language of paragraphs A and B. Obviously, what is "necessary" in a given case is a matter for negotiation and potentially for dispute. But since the Agency carries out almost all its activities on the basis of general or special agreements with the Member States concerned,⁹ the occasions to rely directly on the statutory provisions have been so rare and the confrontations were kept

deliberately so vague that no catalogue or even short list of these rights can be based on actual experience.

The real question, however, is whether paragraphs A and B are at least minimally or temporarily self-executing, that is, whether they automatically place any obligations on Member States. The Secretariat has always taken an affirmative position, relying both on the unconditional language in paragraphs A and B and on the fact that Article C merely provides for these rights to be "defined" but not to be created by the special agreements to be concluded between the Agency and its Members.¹⁰ The proceedings of the Working Level Meeting also tend to support this view: it is clear that the intention of the Meeting, which was not challenged at the Conference on the Statute, was to give the Agency at least certain minimum rights for the initial period – and there is no reason to assume that these statutory rights somehow automatically lapsed at a particular time (perhaps a reasonable interval after the Board first invited the membership to accept the general Privileges and Immunities Agreement¹¹).

Another question is whether Article C creates any obligation for Member States to enter into privileges and immunities agreements. With respect to the general Agreement, though the Director General has emphasized (in several circular notes to the membership) the importance of this instrument gaining wide acceptance, the Board in the resolution by which it approved the text clearly negated any implication that States were under any obligation to accept it.¹² However, whenever the Agency carries out an activity in a Member State at its invitation or request, an agreement is concluded providing, *inter alia*, for the recognition of the necessary rights – i.e., the Agency will not accept an invitation or comply with a request unless this condition is fulfilled. Thus the question whether the Agency would have a legal right to insist on the conclusion of a general agreement with each Member State remains moot.

28.2. THE HEADQUARTERS AGREEMENTS

28.2.1. The First Conference Agreement

Pursuant to its obligation under paragraph C.3 of Annex I to the Statute, the Preparatory Commission negotiated an Agreement with the Government of Austria "Concerning Arrangements in Vienna for the Preparatory Commission and the First General Conference of the Agency".¹³ Though intended to be only of temporary duration, this instrument was the subject of extensive consideration in the Preparatory Commission and of prolonged consultations with the Austrian authorities in Vienna and at UN Headquarters in New York.¹⁴ It spelled out in considerable detail not only the facilities to be made available by the Government for use by the Commission and for the first session of the General Conference (including the arrangements for the press), but also the privileges and immunities to be enjoyed both by the Commission and by the Agency (which at the time of the signature of the Agreement had not yet formally come into existence); a suggestion that these rights be specified by incorporating by reference the Specialized Agencies Convention was turned down by the Commission at an early stage.¹⁵

Though the sources on which the Executive Secretary and the Austrian authorities drew in preparing the first draft are not clearly indicated (except that the privileges and immunities are based on the Specialized Agencies Convention), certain provisions inserted later were based on the agreement between CERN and Switzerland.¹⁶

The Conference Agreement was concluded on 24 July 1957 by an exchange of letters between the Executive Secretary and the Permanent Representative of Austria to the United Nations. Four letters were exchanged at the same time: two of these constituted a supplemental agreement as to certain financial and administrative matters; in the third the Austrian representative stated his Government's interpretation of several clauses of the main Agreement and also that its provisions were not to be considered as precedents for the Headquarters Agreement; the Executive Secretary's reply merely noted the Austrian comments and agreed that no precedents were being established.¹⁷

Though the title of the Agreement, as well as the Preparatory Commission's limited authority in concluding it, suggested an absolute temporal limitation, actually paragraph 1 provided that it should remain in force "Pending the entry into force of a headquarters agreement between the future Agency and the Austrian Government"; paragraph 22 stated even more clearly that the "Agreement shall be in force ... until the date on which a Headquarters Agreement between the Agency and the Government comes into force or a date to be mutually agreed by the parties (sic)¹⁸ after the closing of the Conference", with the proviso that the Austrian obligation to provide staff and facilities for the Conference would terminate within 30 days of its adjournment.

Since, as indicated below, the Headquarters Agreement required the approval of the Austrian Parliament¹⁹ and therefore could not enter into force immediately on the conclusion of the negotiations and approval by the Agency, the "First Conference" Agreement actually remained in force for several months and thus constituted a provisional Headquarters Agreement for the Agency. The permanent Agreement itself was provisionally applied as of 1 January 1958 and entered into force on 1 March 1958, so that the Conference Agreement expired on one of these two dates.

28.2.2. Negotiation of the Headquarters Agreement

Paragraph C.6 of Annex I to the Statute required the Preparatory Commission to:

"Make recommendations for the first meeting of the Board of Governors concerning the provisions of a headquarters agreement defining the status of the Agency and the rights and obligations which will exist in the relationship between the Agency and the host Government;"

The initial step in complying with this charge was the preparation by the Executive Secretary of a list of "points to be covered by the Headquarters Agreement".²⁰ This was revised and adopted by the Commission on 22 March 1957²¹ and transmitted to the Austrian Government.²²

The first internal draft of the Headquarters Agreement was issued by the Executive Secretary just after the First Conference Agreement was safely signed.²³ That draft was annotated to show the sources from which most of its provisions were derived: by far the largest number were imported from the FAO Headquarters Agreement with Italy; a number came from the First Conference Agreement; a few from the UN Headquarters Agreement with the United States; and one from the ILO Headquarters Agreement with Switzerland.²⁴ This draft was first discussed by the Commission on 10 September 1957²⁵ and was approved for communication to the Austrian Government on 24 September²⁶ – the eve of the General Conference session. By the time the Austrian response was received the Preparatory Commission had ceased to exist and consequently its Executive Secretary, now in his capacity as Secretary General of the General Conference, communicated the results of the negotiations directly to the Board of Governors on 15 October. The Board agreed to most of the Austrian proposals and approved the revised text for re-submission to the Government on 19 October. After the Board had considered and accepted the last few Austrian counter-proposals it decided on 22 October to approve the text and to authorize the Director General, subject to the concurrent authorization of the General Conference, to conclude the Agreement after making such editorial changes as might be necessary; at the same time it recommended that the General Conference approve the Agreement.²⁷ The same day the Administrative and Legal Committee of the Conference concurred in the recommendation of the Board²⁸ and on 23 October the General Conference at its first special session unanimously gave the requested authorization to the Director General.²⁹

Just by examining this timetable it becomes apparent that the principal differences with respect to the Headquarters Agreement arose and were resolved not between the Agency and the Government but within the Preparatory Commission and later within the Board itself. In only a few instances did the same point become an object of controversy both during the formulation and during the negotiation of the text; many of the points in controversy at either stage related to peripheral issues:

- (a) The most persistent controversy concerned the grade down to which staff members should enjoy diplomatic rights.³⁰ At the suggestion of the Soviet Union and over the opposition of several Western countries the Preparatory Commission tentatively proposed the Second Officer (P-3) level, with the justification that the special requirements of the Agency for trained scientists made this necessary as an inducement to attract and keep highly qualified staff.³¹ This was resisted by the Austrian Government, which proposed that the still unusually low Senior Officer (P-5) level be adopted.³² The Board finally accepted this but the matter was mentioned once more in the Administrative and Legal Committee of the Conference.³³
- (b) A proposal that only the Board should be authorized to waive the immunity of staff members³⁴ was resolved in the Preparatory Commission by adopting the same formula for the Agreement as had previously been approved for the draft Staff Regulations,³⁵ i.e., that the Director General shall have that authority but should consult the Board "where appropriate".³⁶

- (c) With reference to the Director General's power to waive the inviolability of the Headquarters Seat, the Preparatory Commission "officially interpreted" the relevant provision as allowing the Director General to delegate this power so as to make possible rapid action in the case of emergencies.³⁷
- (d) The Executive Secretary's draft had proposed that the Agreement be concluded in English and German. At its first consideration the Preparatory Commission decided that all the "official languages" and German should be used.³⁸ This was evidently interpreted by the Executive Secretary as referring to the official languages of the Commission: English, French, Russian and Spanish. However, when the Soviet representative thereupon pointed out that the Statute had been concluded in five languages and formally proposed that the Agreement also be concluded in Chinese, the Commission agreed.³⁹
- (e) Austria proposed additional provisions to disclaim responsibility for the activities of the Agency, to enable the Government to take precautions for the security of Austria,⁴⁰ to secure the co-operation of the Agency in not prejudicing that security⁴¹ and to oblige the Agency to establish machinery for the settlement of private disputes;⁴² all these were based on the WHO Headquarters Agreement with Switzerland. The Board accepted these with only minor changes.
- (f) A proposal to accord Austrian and stateless staff members rights only "to the extent recognized by international law as accepted by the Government" was accepted by the Board with the proviso that certain listed Sections of the Agreement should in any event apply to such officials.⁴³
- (g) As it was not possible to resolve, within the limited time available for negotiations, all technical financial questions (e.g., the right of the Agency to convert Schillings into non-Austrian currency, the method of relieving the Agency from the burden of indirect taxes, and the pension coverage of those Agency officials who might also be subject to the Austrian social security system), it was agreed to deal with these matters in supplemental agreements.⁴⁴

One troublesome procedural point was the determination of which Agency organ was to approve the Agreement. The Executive Secretary's draft had initially specified the Board, on the ground that the Headquarters Agreement was a special type of privileges and immunities agreement covered by Statute Article XV.C and that paragraph C.6 of Annex I to the Statute only directed the Commission to address its recommendations with respect to this Agreement to the Board.⁴⁵ Though it had initially decided to provide for approval by the General Conference (on the understanding that, if such approval could not be secured at the first session, the Conference could delegate the power of approval to the Board)⁴⁶ the Commission finally deleted from the text all indications as to which organ was to authorize the Director General to conclude the agreement; however, it decided to recommend to the Board that the approval of the Conference be secured.⁴⁷ The Board complied with this recommendation,⁴⁸ though the view was expressed that such a reference, while perhaps desirable for political and psychological reasons, was not required by the Statute. Since the Secretariat's original legal interpreta-

tion appears to have been correct and was shared by probably a majority of the Preparatory Commission and the Board, it would appear that the involvement of the Conference was pursuant to Statute Article V.F.1,⁴⁹ to which however no explicit reference was made.

The Agreement was signed by the Director General and the Austrian Foreign Minister on 11 December 1957. Since entry into force required the approval of the Austrian Parliament, and meanwhile the continued application of the First Conference Agreement was not entirely adequate, the Agency and the Government agreed on the provisional application of the Headquarters Agreement as of 1 January 1958. After parliamentary approval had been secured,⁵⁰ Notes were exchanged on 26 February 1958 as required by Section 52(a), bringing the Agreement into force on 1 March 1958.⁵¹

After UNIDO established itself in Vienna and negotiated its headquarters agreement, the Agency in 1968 approached the Austrian Government under the most-favoured-organization clause of its Agreement⁵² to renegotiate certain provisions of that instrument in light of the better provisions of UNIDO's treaty. By early 1969 an "Amending Agreement" had been negotiated, which, however, needs the approval of Parliament to enter into force; on the part of the Agency, the instrument was merely signed by the Director General and the approval of neither the Board nor the General Conference was sought to be obtained. The draft instrument, each of whose substantive articles is designed to change or extend a particular section of the original Agreement, concerns the following points:

- (i) Clarification of the right of the Agency to resell articles imported by it duty-free for its own use;⁵³
- (ii) UNJSPF is granted the same privileges and immunities as the Agency itself;⁵⁴
- (iii) The obligation of Austria to provide social benefits to non-Austrians not covered by UNJSPF is restricted;⁵⁵
- (iv) Pensions (and not only current emoluments) paid on the basis of Agency salaries are to be free of income tax;⁵⁶
- (v) Agency officials are to have the right to acquire real property on the same basis as Austrians (i.e., existing and future restrictions on foreigners are not to apply to them);⁵⁷
- (vi) The right of the Agency to establish a Commissary is stated explicitly;⁵⁸
- (vii) The rights of Agency officials who are Austrians are specified more precisely,⁵⁹ and the rights of experts who are Austrians are clarified for the first time;
- (viii) The privileges and immunities of national representatives are explicitly exempted from the requirement of reciprocity.⁶⁰

28.2.3. Provisions of the Headquarters Agreement

The Headquarters Agreement is a highly eclectic instrument: Though its structure and the bulk of its provisions were based on the FAO Headquarters Agreement, others are borrowed from the corresponding UN, WHO and ILO Agreements; a number of provisions were taken from the First Conference Agreement, which itself was considerably influenced by the Convention on the Privileges and Immunities of the Specialized Agencies and to a lesser extent by the agreement between CERN and Switzerland.

Like many similar instruments, the Agreement has two principal purposes:

- (a) It requires the Austrian Government to make available to the Agency certain physical facilities and the related services for the establishment and maintenance of its headquarters;
- (b) It guarantees to the Agency and to persons associated with it (representatives, invitees, staff members, experts) certain rights and exemptions.

Both these grants are subject to stated limitations and to the assumption by the Agency of certain correlative duties.

By reason of its origins and the conscious design of its drafters, the Agency's Headquarters Agreement does not differ substantially from previous models. Several provisions may, however, be of special interest:

- (i) With respect to the privileges and immunities of members of the Secretariat, the Agreement in effect recognizes three special categories:
 - (A) The Director General and officials down to Senior Officer (P-5) (and such additional categories as may be designated by agreement of the parties)⁶¹ receive diplomatic rights; those of the Director General and of senior officials acting temporarily on his behalf are such as appertain to an Ambassador who heads a mission, and those of other officials correspond to the rights of staff having comparable rank in diplomatic missions accredited to Austria.⁶²
 - (B) "All persons of Austrian citizenship and all stateless persons resident in Austria" enjoy rights only "to the extent recognized by international law as accepted by the Government", except that the provisions as to social security coverage and tax exemption on income from the Agency, as well as exemption from national service obligation (qualified for Austrian citizens) must be applied to such officials.⁶³
 - (C) Staff members "locally recruited and assigned to hourly rates" are not considered to be officials under the Agreement and receive no rights under it.⁶⁴

All other members of the Secretariat receive the rights, and only those, that are specified in Sections 38 and 45 of the Agreement. Special provisions are made in Chapter XVI for, inter alia, "Experts ... other than officials of the IAEA".

- (ii) Section 46 provides:

"The Republic of Austria shall not incur by reason of the location of the headquarters seat of the IAEA within its territory any international responsibility for acts or omissions of the IAEA or of its officials acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Republic of Austria would incur as a Member of the IAEA."

This provision, adapted from the WHO Headquarters Agreement, was requested by the Austrian Government in view of the constitutional provisions and international understandings assuring its perpetual neutrality. It was hoped by this device to avoid any international responsibility, deriving from the generally accepted principles of law, which Austria might otherwise incur for actions of the Agency taking place on Austrian territory. It is of course doubtful whether such an exculpation is effective against third parties, though perhaps the Members of the Agency, or at least those that had voted to approve the Headquarters Agreement, might be considered bound by it; in any case it is not clear by what means the Austrian concern could more effectively have been met.

(iii) Section 49(c) contains a "most favoured organization" clause in the following terms:

"If and to the extent that the Government shall enter into any agreement with any intergovernmental organization containing terms or conditions more favourable to that organization than similar terms or conditions of this Agreement, the Government shall extend such more favourable terms or conditions to the IAEA by means of a supplemental agreement."

During the first decade there was no occasion to rely on this provision; however, as indicated above,⁶⁵ with the establishment of the seat of UNIDO in Vienna, it came to be of more than merely academic interest.

Altogether it has been suggested that the Agency's Headquarters Agreement, by reason of the above-quoted most-favoured organization clause and considering the broad coverage of certain classes of persons, is among the most advantageous instruments of this category.⁶⁶

28.2.4. Supplemental Agreements

Sections 1(f), 3, 4(b), 6, 38(j)(iii) and 49(c) of the Headquarters Agreement provide for the conclusion of supplemental agreements with respect to particular questions; several of these provisions were included to avoid any delay in completing the negotiation of the principal Agreement, while others cover points as to which no definitive regime could be established to remain valid for the indefinite duration of that instrument. Other Sections, such as 5 and 22(g),⁶⁷ provide that certain steps may only be taken by the Agency or by the Government in agreement with the other party. Finally Section 49(a) contains a general provision foreseeing that "the IAEA and the Government may enter into such supplemental agreements as may be necessary".

Pursuant to these several provisions, a number of supplemental agreements have been concluded between the Agency and Austria. Some of these relate to the specific matters as to which such agreements were already foreseen during the negotiation of the Headquarters Agreement, while others serve to interpret the scope of that instrument.

28.2.4.1. Currency exchange facilities

During the negotiation of the Headquarters Agreement it was decided that the right of the Agency and its officials to convert Austrian Schillings could

more conveniently be defined in a supplemental agreement. The Austrian authorities proposed the text of such an instrument which was formally approved by the Board and was concluded by an exchange of letters concurrently with the signature of the main Agreement itself, together with which it entered into force. The "Supplemental Agreement on Currency Exchange Facilities"⁶⁸ provides:

- (a) For the conversion by the Agency of Schillings it acquires from the sale of freely convertible currencies, and for those of other origins.
- (b) For the transfers of currencies out of Austria by Agency officials and experts.

28.2.4.2. Temporary headquarters seat

It is a peculiar feature of the Headquarters Agreement, which deals in detail with a number of relatively trivial matters, that the obligation of the Government to provide to the Agency the physical facilities for its headquarters seat is specified only in the following vague terms:

"The Government grants to the IAEA, and the IAEA accepts from the Government, the permanent use and occupation of a headquarters seat as may from time to time be defined in supplemental agreements to be concluded between the IAEA and the Government."⁶⁹

Thus both the extent of the grant and the definition of the headquarters seat⁷⁰ (which is important for interpreting the scope of many other provisions of the Headquarters Agreement) are left to subsequent arrangements. This device was adopted because of the likelihood that the Agency would during its first few years occupy successively at least three headquarters sites: the provisional one left over from the First General Conference (and defined in the First Conference Agreement), a temporary one to be occupied for at least several years, and finally a permanent one which might be constructed especially for the Agency; the use of supplemental agreements would avoid the necessity of requiring parliamentary approval for each major or even minor change of location.

The Austrian obligation to provide the Agency with a headquarters seat derived originally from two promises contained in a memorandum submitted by the Government to the Preparatory Commission on 1 June 1957.⁷¹ In this the Government offered "to put at the disposal of the Agency, free of charge a building to serve as headquarters for a number of years, and in due time a building site for the construction of a new headquarters building". These two offers were spelled out more clearly in later parts of the memorandum as follows:

"The Austrian Federal Government is prepared to put the building chosen by the IAEA at the disposal of the Agency for a nominal rent of AS 10.- per annum until the Agency has the opportunity to erect its own headquarters-building; the Austrian Government is led by the expectation that this will be possible within a period of 2 to 4 years."

and

"The Austrian Government and/or the City of Vienna are prepared to put at the disposal of the IAEA, free of charge, a building site for the erection of a new headquarters building."

The offer of a provisional headquarters was made in the course of negotiating the First Conference Agreement and the provisional headquarters seat (though not called that) was originally defined in that instrument.⁷² This, however, ceased to be in force⁷³ some months before the Agency actually left the buildings described therein in August 1958. Though consideration was given to entering into a supplemental agreement under the Headquarters Agreement to cover the use of these buildings, this was never done.

After having proposed to the Agency several buildings for its temporary headquarters, none of which were accepted by the Board, the Austrian Government offered the New Grand Hotel as a temporary accommodation pending occupancy of permanent headquarters.⁷⁴ The Board accepted this offer and authorized the Director General to conclude the necessary agreement (whose text it did not ask to approve). The Supplemental Agreement on the Temporary Headquarters Seat⁷⁵ was signed and entered into force on 3 June 1958; it was stated to be irrevocable on the part of the Government but terminable on six months' notice by the Agency. The agreement granted to the Agency the new Grand Hotel, to be altered by the Government to meet reasonable requirements for "use for the purpose of the IAEA for an indefinite time" at a "yearly nominal rent of AS 1.-". The Government also agreed conditionally to supply additional office facilities for the temporary headquarters if the original building should not suffice.

Even at the time this Supplemental Agreement was concluded, it did not cover all the premises used by the Agency, since part of the Secretariat was then occupying extensive areas in the Hofburg, a public building no portion of which was ever formally incorporated into the Headquarters seat. Subsequently the Government, to meet its conditional obligation to make available additional office space and also to enable the Secretariat to leave the Hofburg and unify its operations at one site, reconstructed and made available to the Agency the Old Grand Hotel adjoining the original temporary seat.⁷⁶ Though the Agency has occupied some of these additional premises since 1961, almost all since September 1963 (the time of their formal transfer to the Agency) and the balance since 1964, and though the Board decided in 1960 that by making these additional premises available the Austrian authorities would fulfill their obligations to provide additional facilities for the temporary headquarters, no supplemental agreement including the Old Grand Hotel in the headquarters seat has been concluded. In large part this was due to the Government's reluctance to perpetuate the Agency's rent-free occupancy of choice down-town property - which by 1968 had already lasted a full decade instead of the originally contemplated 2 - 4 years.

With respect to the permanent headquarters, the Government as early as the fall of 1957 offered the Agency a choice of several sites. Though the Board established a Committee to Advise the Director General on Permanent

Headquarters and instructed him to continue consultations with the Austrian authorities, no decision was reached during the first decade. From time to time the Board asked the Government to keep certain sites available for a specified period or as long as possible, and from time to time the Austrian authorities withdrew certain of these sites and offered others. The matter rested there until UNIDO accepted the Austrian offer to establish its headquarters in Vienna. Soon thereafter the Government decided to establish an International Centre on the outskirts of the city and made co-ordinated offers to the Agency and UNIDO to provide each of them with a large building site and to erect thereon, at its own expense but in consultation with the organization concerned, permanent headquarters buildings to be leased for up to 99 years at a nominal rent - with the possibility that a separate conference building would also be added. This offer, which went considerably beyond the Government's clear obligation to provide the Agency with merely a site for its permanent headquarters, was accepted by the Board in June 1967, on the understanding that further detailed negotiations would take place.⁷⁷ Later the Government informed the Agency that in view of the expected increase in its work in connection with the Non-Proliferation Treaty and pending the completion of the new buildings, Austria would make available additional office space free of charge.⁷⁸ The first phase of the international architectural competition organized by the Austrian Government for the new Centre was concluded in September 1969.⁷⁹

The Agency has leased from the Austrian Studiengesellschaft für Atomenergie a site on which to erect the Agency's Laboratory, which operates in conjunction with the adjoining SGAE reactor.⁸⁰ Though consideration was given to the inclusion of this site in the headquarters seat by means of another supplemental agreement concluded pursuant to Section 3 of the Headquarters Agreement, no action has yet been taken to do so. The status of this facility is therefore governed by Sections 5 and 6 of that Agreement, which foresee that the Agency may "establish and operate research and other facilities of any type" "outside the headquarters area".

28.2.4.3. Turnover taxes

Section 22(b) of the Headquarters Agreement states in part:

"In so far as the Government, for important administrative considerations, may be unable to grant the IAEA exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to the IAEA, the Government shall reimburse the IAEA for such taxes by the payment, from time to time, of lump sums to be agreed upon by the IAEA and the Government. It is, however, understood that the IAEA will not claim reimbursement with respect to minor purchases."

It was understood that the modalities of such reimbursement would be set forth in a subsidiary instrument. Such an agreement was negotiated and, in reliance on Statute Article XV.C, presented to the Board. On receiving the latter's approval, it was brought into force by an exchange of

letters on 17 July 1958, but with the same effective date as the Headquarters Agreement (i.e., provisionally as of 1 January and definitively as of 1 March 1958).

The Supplemental Agreement on Turnover Taxes⁸¹ provides that every six months the Agency is to submit a list of the costs of all transactions and services for which reimbursement of turnover taxes is claimed, including running accounts but excluding individual "minor purchases" of less than AS 20 000 (about US \$800). The rate of reimbursement for various types of transactions and ancillary provisions concerning purchases by the Commissary are also included. That basic reimbursement rate was changed by an Amendment to the Supplemental Agreement, which entered into force on 8 April 1969.⁸²

28.2.4.4. Commissary

Section 38 of the Headquarters Agreement provides in part:

"Officials of the IAEA shall enjoy within and with respect to the Republic of Austria the following privileges and immunities:

...

(j) the right to import for personal use, free of duty and other levies, prohibitions or restrictions on imports:

...

(iii) subject to a supplemental agreement to be concluded between the IAEA and the Government, limited quantities of certain articles for personal use and consumption and not for gift or sale."⁸³

The Supplemental Agreement on the Establishment of an Agency Commissary,⁸⁴ whose provisions and implementation are discussed in Section 24.13.1, was approved by the Board and entered into force upon signature on 17 July 1958, with effect from 15 August 1958.⁸⁵

28.2.4.5. Social Security.

Section 25 of the Headquarters Agreement exempts the Agency and its officials from contributions to and participation in "any social security schemes of the Republic of Austria". Section 26, on the other hand, obliges the Government to make provisions to enable such Agency officials as are not afforded coverage by the Agency, to participate in the Austrian scheme.⁸⁶ To implement these provisions, two Supplemental Agreements were concluded, one Concerning the Social Insurance of Officials of the Agency⁸⁷ and the other Concerning the Regulation of Pension Insurance for Officials of the Agency;⁸⁸ their provisions and implementation are dealt with in Section 24.5.3.

The two Agreements, whose subject matters are interrelated, were concluded separately because the second required parliamentary approval (as changing provisions of Austrian law). However, neither was submitted to the Board for approval. The first was signed and entered into force on 29 December 1958, but with effect from 1 January 1959. The second was

signed on 12 February 1959 and entered into force on 3 July 1959 upon an exchange of Notes regarding the approval of Parliament, but with retroactive effect from 1 October 1958 (the date of the Agency's participation in UNJSPF⁸⁹).

28.2.4.6. Definition of Agency officials

In connection with the establishment of the Joint FAO/IAEA Division in Vienna,⁹⁰ the Agency requested the Austrian Government to grant to the FAO officials attached to that unit the same status and rights as Agency officials. The Government indicated that this could not be done under the Headquarters Agreement, since "officials of the IAEA" were defined as meaning members of the staff of the Agency; staff members of any specialized agency could only be covered by Section 27(a)(iv) and by Article XVI ("experts, members of IAEA missions and committees and representatives of organizations") of that Agreement, and by the Convention on the Privileges and Immunities of the Specialized Agencies (to which Austria is a party with respect to FAO). Therefore, to enable the Agency to place FAO staff members on the same basis as its own (e.g., to allow them access to the Commissary) another supplement to the Headquarters Agreement was concluded providing that the "Members of the staff of the IAEA" defined in Article I, Section 1(o), be considered as including "members of the Secretariats of the United Nations and the specialized agencies attached to the staff of the International Atomic Energy Agency on a continuing basis by agreement between the International Atomic Energy Agency and the organizations concerned".⁹¹

This instrument, which was submitted neither to the Board nor to the Austrian Parliament for approval, entered into force by letters exchanged on 20 December 1964 and 1 March 1965.

28.2.5. Administrative arrangements and internal regulations

Over the years it has been convenient or necessary to make a number of more or less formal administrative arrangements between the Agency and various Austrian authorities. Because of their limited and specialized scope these are not concluded in the form of supplemental agreements. For example, arrangements have been made: for the resale (pursuant to Section 22(g) of the Headquarters Agreement) of used articles that had been imported by the Agency;⁹² concerning the procedures for obtaining residence visas for Agency officials; and for defining who may be classified as "dependent relatives" under Section 38(f) of the Agreement. Because of their informal nature no complete register of these arrangements is maintained.

Section 8(a) of the Headquarters Agreement authorizes the Agency "to make regulations, operative within the headquarters seat, for the purpose of establishing therein any conditions necessary for the full execution of its functions"; the effect of such regulations is to exclude the application of inconsistent Austrian laws within the headquarters seat, and their texts are to be notified to the Government from time to time. On 19 September 1969 the Board of Governors approved the first such Regulations:⁹³

- (a) Regulation No.1 - Qualifications for professional or other special occupational services with the Agency: authorizing the Director General to determine such qualifications (though medical personnel must be qualified to practice in some country).
- (b) Regulation No.2 - Hours of operation of services, facilities or retail establishments within the headquarters seat: authorizing the Director General to fix such hours.

Section 48(a) requires that the Director General "take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur, and for this purpose shall, with the approval of the Board of Governors, establish such rules and regulations as may be deemed necessary and expedient ..."; no regulations have been issued pursuant to this Section, though occasional reminders have been addressed by the Director General to the staff with regard to traffic violations, police registration requirements, etc.⁹⁴ Finally, Article I of the Supplemental Agreement relating to the Commissary⁹⁵ requires the Director General to issue regulations to ensure that Commissary privileges are "used consistently with the provisions of the Headquarters Agreement and especially that the imported commodities shall not be used for gift or sale"; these regulations are to be communicated to the Austrian Government for information; as recalled in Section 24.13.1, such regulations have indeed been promulgated.

28.2.6. Differences of interpretation

Though disagreements have occasionally arisen between the Agency or the representatives of Member States covered by the Headquarters Agreement on the one hand, and the Austrian authorities on the other, no resort has yet been had to the formal procedure for the settlement of disputes by arbitration in accordance with Section 51.⁹⁶

Though the Headquarters Agreement explicitly provides that the applicability of its provisions does not depend on the existence of diplomatic relations between Austria and a State asserting the Agreement,⁹⁷ there have long been disagreements about whether the principle of reciprocity is applicable to Permanent Missions.⁹⁸ In particular, Austria has, over the Agency's protest, declined to refund gasoline taxes paid, or to permit the resale of used cars without payment of customs duties, by certain missions (from countries that do not grant these courtesies to Austrian diplomats) or to issue visas to their members for the customary one-year period.⁹⁹ However, the proposed Amending Agreement will explicitly provide for the inapplicability of reciprocity.¹⁰⁰

Another troublesome issue has been the appointment, by some States, of "Resident Representatives"¹⁰¹ of Austrian nationality. These persons, usually local businessmen, for some years claimed full privileges and immunities under the Headquarters Agreement and, in particular, access to the Commissary - not only for personal purchases, but also for "official entertaining". After some years of uncertainty on this subject, with the Agency caught in the middle between the claims of the appointing States and the reluctance of the Austrian authorities, the latter, upon the adoption of

the Vienna Convention on Diplomatic Relations,¹⁰² have taken the firm position that local businessmen can only serve as "Liaison Officers" who enjoy only functional immunity for their official acts.

One persisting difference concerns the applicability of the tax exemption (granted to staff members by Section 38(d) of the Headquarters Agreement) to the contributions required to be paid to the "recognized" Austrian churches (Anerkannte Religionsgemeinschaften). These contributions are assessed by the latter on the basis of the income earned by each person professing their creed and residing within their jurisdiction, and can be enforced on such persons (whether Austrian or foreign) by suit in civil court. Though popularly these contributions are therefore known as "Church Taxes" ("Kirchensteuer"), the Austrian courts had held that they are legally only membership contributions to voluntary associations, since any person may formally renounce his "membership". When the Protestant (Lutheran) Church sued an Austrian member of the staff for contributions calculated on the basis of the income he received from the Agency, he (with the unofficial assistance of the Agency) pleaded exemption under the Headquarters Agreement. However, all three levels of the competent Austrian courts, up to the Oberste Gerichtshof, rejected the argument that the word "taxation" in that Agreement must be read in the light of the general purposes of the instrument and of the use of the same word in many similar international treaties, and held that the earlier domestic interpretations that these payments were not taxes made inapplicable the protection of Section 38(d).¹⁰³ Though neither the Agency nor the Austrian Government were parties to these proceedings and are therefore not bound by this interpretation by the highest competent Austrian Court, the Agency officially indicated to the Government its disagreement and requested that this matter be otherwise resolved; though no action has yet been taken on this proposal, the Agency has reached informal understandings under which the principal ecclesiastic financial authorities usually refrain from formal demands for contributions, in particular from non-Austrians, and endeavour to reach voluntary settlements.^{103A}

28.2.7. Trieste Centre Agreement

The Agreement with Italy concerning the seat of the International Centre for Theoretical Physics is also a type of headquarters agreement, with relatively elaborate privileges and immunities provisions.¹⁰⁴

28.3. AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE AGENCY

28.3.1. Formulation

One of the matters to which the first Board of Governors immediately turned its attention was the implementation of Statute Article XV.C, which foresees the conclusion of an agreement or agreements between the Agency and its members "defining" the rights established by Articles XV.A and B. It

was generally agreed that a regime based on that of the Specialized Agencies Convention¹⁰⁵ should be established, in order to reinforce the Agency's integration into the UN system and to benefit from the uniform rules as to privileges and immunities that had been established within it. On the other hand it was recognized that the Agency was not a specialized agency within the meaning of Section 1(j) of the Convention ("any other agency in relationship with the United Nations in accordance with Articles 57 and 63 of the Charter"),¹⁰⁶ and therefore its coverage could not be extended to the new organization through the mechanism provided for in Article X (the adoption by each agency of a special Annex specifying any special rules required by it). Altogether six approaches to this problem were investigated in the light of these considerations:

- (a) To apply the Specialized Agencies Convention to the Agency by amending that instrument;
- (b) To apply the Specialized Agencies Convention to the Agency by means of a resolution of the UN General Assembly (which had originally formulated that instrument), by which the Agency would be defined to be a specialized agency for the purpose of the Convention (as had been done with respect to UNJSPF¹⁰⁷);
- (c) To apply the Specialized Agencies Convention to the Agency by means of a special multilateral "protocol" to be presented by the Board to the Members of the Agency;
- (d) To apply the Specialized Agencies Convention to the Agency by means of bilateral agreements between the Agency and each Member State;
- (e) To present to the Member States a new agreement formulated by the Board but based as far as possible on the Specialized Agencies Convention;
- (f) To conclude separate bilateral agreements with each Member State.

The Secretariat of the Agency originally preferred solution (b), to which it saw no substantial legal obstacle. However, the UN Legal Counsel concluded that the General Assembly had no power at that stage to change the scope of the Convention by an interpretative definition;¹⁰⁸ on the other hand to amend the Convention (approach (a)), would, pursuant to Section 48, require a conference of all States then parties to it. The United Nations therefore preferred solution (c) or alternatively (d); in either case the special provisions that each specialized agency normally included in its Annex to the Convention, could be incorporated into the body of the protocol or of the bilateral agreements.

The Board originally agreed that solution (c) would be the best and instructed the Secretariat to prepare a draft protocol.¹⁰⁹ However, when the Secretariat presented such a draft in April 1958 the suggestion was made in the Board that instead of merely referring to the standard clauses of the Convention these be set out in full (which in effect constituted solution (e)). Pursuant to new instructions from the Board the Secretariat then drafted a complete agreement and circulated this proposal in August 1958 to all Member States for comment; subsequently it revised this draft on the basis of the dozen responses it had received, and presented its new draft to the

Board in March 1959. The Board thereupon established an ad hoc committee in which any of its members could participate; ten did so, besides the Chairman. After that body had revised the Secretariat's draft it was returned to the Board, which after further amendment passed it on 1 July 1959.

The pusillanimous Resolution by which the Board adopted the Agreement and submitted it to the membership reflected the reluctance of its members to commit their own Governments to an acceptance of the instrument. The operative part reads as follows:

"The Board of Governors

1. Has approved, without committing the Governments represented on the Board, the text below, which in general follows the Convention on the Privileges and Immunities of the Specialized Agencies; and
2. Invites the Members of the Agency to consider and, if they see fit, to accept this Agreement."¹¹⁰

28.3.2. Provisions

Both the Secretariat and the majority of the Board were extremely conscientious, in drafting the Privileges and Immunities Agreement,¹¹¹ of the desirability of conforming its text as closely as possible to the standard clauses of the Convention on the Privileges and Immunities of the Specialized Agencies. Even the special provisions incorporated were as far as possible adapted to the form of the Annexes to the Convention that had been adopted by the principal specialized agencies. Though proposals for changes were introduced by almost every member of the Board, most of these were rejected if they could not be justified in terms of the special requirements of the Agency.

Aside from a number of drafting changes (to which the jealous concern for conformity to the earlier instrument did not seem to apply), the following are the principal departures from the Convention:

- (a) Section 10 of the Agreement differs from Section 11 of the Convention in that the favoured treatment of official communications is required only "as far as compatible with international conventions". This addition was made in the light of the 1952 Buenos Aires Telecommunications Convention, which in the view of some of its parties bars the granting of governmental treatment to the communications of international organizations.¹¹²
- (b) Section 17 of the Agreement differs in form from Section 18 of the Convention, since the specification of the categories of officials to which Article VI applies is included in Section 1(v) rather than being left for subsequent decision by the Agency and communication to Member States. However, the definition actually given ("officials of the Agency" means the Director General and all members of the staff of the Agency except those who are locally recruited and assigned to hourly rates") is in fact the same as had been adopted by most of the specialized agencies.
- (c) Section 18 of the Agreement differs from Section 19 of the Convention by the inclusion of a special sub-paragraph concerning the additional

privileges and immunities to be accorded to inspectors and project examiners while exercising their functions and during any related travel. In effect, these additional rights are specified by assimilating inspectors and examiners to "experts on mission for the Agency".¹¹³

- (d) Section 20 of the Agreement differs in form from Section 21 of the Convention by the addition of a final sentence according the rights of diplomatic envoys to Deputy Directors General and officials of equivalent rank.¹¹⁴ However, this sentence is based on the Annexes to the Convention adopted by most of the major specialized agencies.
- (e) Section 26 of the Agreement differs from Section 24 of the Convention by the addition of a final sentence providing that the withdrawal by a State of any privileges and immunities from the Agency on the grounds of their abuse "must not interfere with the Agency's principal activities or prevent the Agency from performing its principal functions".
- (f) A new Article VII was inserted into the Agreement to specify the status of "Experts on Mission for the Agency" – and thus indirectly (see paragraph (c) above) also those of safeguards (including health and safety) inspectors and of project examiners. These provisions, however, do not constitute a substantive departure from the Convention, since they were based directly on the Convention Annexes relating to the major specialized agencies.

In addition, two important innovations were introduced into the final clauses:

- (g) A reservations clause was added to Section 38 in the following form:

"It shall be permissible for a Member to make reservations to this Agreement. Reservations may be made only at the time of the deposit of the Member's instrument of acceptance and shall immediately be communicated by the Director General to all Members of the Agency."

This clause was adopted in spite of the original Secretariat proposal that the Agreement, following the corresponding United Nations and Specialized Agencies Conventions, need not have such a provision,¹¹⁵ and that, whenever any reservation is proposed, the Board should decide whether or not it should be accepted as compatible with the Agreement. Later, at the request of the Board Committee and then of the Board itself, the Secretariat prepared draft clauses which embodied this concept (the first would have empowered the Board to pass on reservations, and the second would have left the specification of the competent organ open so that it might be the Board, the General Conference or all Members that had earlier become parties to the Agreement). However, the Board finally adopted the unrestricted formula quoted above, in order to facilitate the acceptance of the Agreement by as many Members as possible.

- (h) A denunciation clause was included in Section 39, permitting a State to withdraw from the Agreement on giving one year's notice to the Director General.

28.3.3. Acceptances and reservations

Up to 1 November 1969, 35 Member States had become parties to the Agreement by depositing an instrument of acceptance with the Director General.¹¹⁶ Of these 15 made use of the right to make reservations; one State later withdrew some of the reservations it had originally made – a procedure considered compatible with the above-quoted portion of Section 38.¹¹⁷ Though the Agreement does not appear to give the Agency any option to refuse to accept a reservation,¹¹⁸ the Director General has on occasion convinced a Member State to delay submission of a qualified instrument of acceptance in order to afford an opportunity for consultations about the proposed reservation – and in one instance these consultations have been continued fruitlessly for over half-a-dozen years.

Reservations have been made with respect to the following Sections and Articles of the Agreement:¹¹⁹

Section 18 (a) (ii)

Germany – not applicable to citizens¹²⁰

Korea – not applicable to locally recruited personnel

Canada – not applicable to citizens and residents

Section 18 (a) (iii), (v), (vi)

United Kingdom – not applicable to citizens of the United Kingdom and Colonies; not applicable to specified territories

Korea – not applicable to locally recruited personnel

Section 18 (a) (iv)

Korea – not applicable to locally recruited personnel

Section 18 (b) (to the extent that it grants rights under Sections 23 (a) and (f))

United Kingdom – not applicable to citizens of the United Kingdom and Colonies; not applicable to specified territories

Section 19

Korea – not applicable to locally recruited personnel

Thailand – not applicable to nationals

Switzerland – the Government need not grant deferments, but will give sympathetic consideration to requests by the Agency

Section 20

United Kingdom – not applicable to citizens of the United Kingdom and Colonies; not applicable to specified territories; also not applicable to any official, other than a Deputy Director General, acting on behalf of the Director General

Denmark – duties and excise taxes applicable to citizens and to other persons conducting business in Denmark

Belgium – not applicable to Deputy Directors General unless acting for the Director General

Section 23 (a) and (f)

United Kingdom - not applicable to citizens of the United Kingdom and Colonies; not applicable to specified territories

Section 26

USSR; UkSSR; BSSR; Hungary; Czechoslovakia; Bulgaria - not obliged to submit to the jurisdiction of ICJ¹²¹

Section 32

Denmark - duties and excise taxes applicable to citizens and to other persons conducting private business in Denmark

Section 34

USSR; UkSSR; BSSR; Hungary; Czechoslovakia; Bulgaria - not obliged to submit to the jurisdiction of ICJ; no acceptance of the binding effect of advisory opinions¹²²

Articles VI-IX

Pakistan - not applicable to nationals serving on the staff of the Agency in Pakistan

It will be noted that none of these reservations relate to any vital matter, since most merely restrict the rights a State will grant to its own citizens or residents, or the special diplomatic privileges it will grant to certain senior officials. At most these limitations might slightly restrict the choice of persons that the Agency would send on certain assignments - which is in principle objectionable as tending to detract from the ideally homogeneous nature of the international civil service.

28.3.4. Status of the Agency as a party

The Secretariat has considered that the Agency itself is a party to the Privileges and Immunities Agreement,¹²³ and has so indicated in the registration of that instrument with both the Agency and the United Nations (though this is not reflected in the text or notes published in the UN Treaty Series).¹²⁴ This conclusion was based on the following considerations:

- (a) Statute Article XV. C, pursuant to which the Agreement was drawn up, refers to agreements "between the Agency. . . and the members".
- (b) Section 38 provides for the coming into force of the Agreement as regards each Member on the date of the deposit of its instrument of acceptance. However, the first accepting member (actually Finland on 29 July 1960, six days ahead of the Federal Republic of Germany) would have temporarily become the sole party to the Agreement unless the Agency is also counted as a party.
- (c) Though the Agency has not deposited an instrument of acceptance, any action to "accept" the Agreement would be superfluous since it itself had proposed it.

- (d) The Agreement establishes a number of duties for the Agency.¹²⁵
- (e) In discussing the originally proposed protocol (which was later expanded into the full Agreement), the UN Legal Counsel indicated that such an instrument would constitute both an agreement among all Member States parties to it and also between each of them and the Agency.
- (f) The fact that the United Nations permitted the Agency to register the Agreement, which under a strict interpretation of the appropriate Regulations it may only do if it is either a party to the Agreement, or a specialized agency (which it is not) or a depositary especially authorized to register (an authorization not stated in the Agreement).¹²⁶
- (g) The fact that the Agency has no explicit right to reject reservations is not conclusive, since no such right has been granted even to the States parties to the Agreement.¹²⁷

28.3.5. Application in non-party States

A decade after its promulgation by the Board only about a third of the Members of the Agency have become parties to its Agreement on Privileges and Immunities. In practice, however, almost all operations of the Agency outside the headquarters State are covered by the Agreement since its provisions are routinely incorporated by reference into the treaties relating to any arrangement that might expose the Agency, or any of its property or officials or other persons connected with it, to the jurisdiction of any State (whether or not that State is a Member of the Agency).¹²⁸

States have occasionally indicated that they are unable or unwilling to accept the complete incorporation of the Agreement into an instrument covering some limited activity; in such event exceptions and provisos may be included as long as these cannot interfere with the Agency's functions under the instrument in question.¹²⁹ It has been assumed that the denunciation of the Agreement by a State party to it¹³⁰ would not affect its application under other instruments that incorporate it unless these too can be and are properly denounced; otherwise a State party to the Agreement would have an advantage over one that is not, in that the former could denounce the incorporated provisions while the latter would clearly be unable to do so. Similarly, it has been assumed that when incorporation takes place with respect to a State that had accepted the Agreement with a reservation, the incorporated provisions are not subject to the reservation unless reference is made to it in the incorporating instrument.

In addition to the device of incorporation by reference, whenever a question relating to privileges and immunities arises in a State not directly or indirectly bound by the Agreement, the Agency asserts that that instrument, pursuant to Statute Article XV. C, defines the privileges and immunities that are automatically binding on all Members pursuant to Article XV. A and B.¹³¹

28.3.5.1. Safeguards and health and safety controls

Paragraph 13 of the Inspectors Document provides:

"Agency inspectors shall be granted the privileges and immunities necessary for the performance of their functions. Suitable provision shall

be included in each project or safeguards agreement for the application, in so far as relevant to the execution of that agreement, of the provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency excepting Articles V and XII thereof, provided that all parties to the project or safeguards agreement so agree."¹³²

Pursuant to this provision the Privileges and Immunities Agreement is incorporated into reactor Project Agreements,¹³³ Safeguards Transfer Agreements, Unilateral Safeguards Submission Agreements¹³⁴ and into all other Project Agreements pursuant to which the Agency might have to conduct health and safety inspections.¹³⁵ This is done either by referring to the entire Agreement,¹³⁶ or merely to "its relevant provisions",¹³⁷ or to the entire Agreement excepting Articles V ("Representatives of Members") and XII ("Final Provisions").¹³⁸ Such incorporation is usually provided for even if the State concerned is party to the Agreement since otherwise it could be denounced the latter leave inspectors essentially unprotected;¹³⁹ the Agreement has even been incorporated into a Safeguards Transfer Agreement with Austria,¹⁴⁰ since the rights of inspectors under the Privileges and Immunities Agreement are somewhat wider than those provided for in the Headquarters Agreement for Agency officials below the Senior Officer level.¹⁴¹

28.3.5.2. Technical assistance

At the request of the Agency a reference to the Agency's Privileges and Immunities Agreement has been included in all EPTA Revised Basic Agreements,¹⁴² in the following form:

"1. The Government, in so far as it is not already bound to do so, shall apply to the Organisations, their property, funds and assets, and to their officials, including technical assistance experts,
...

(c) in respect of the International Atomic Energy Agency, the Agreement on the Privileges and Immunities of the International Atomic Energy Agency."

When providing technical assistance to a State that is not a party to a Revised Agreement in this form, then a reference to the Agency's P & I Agreement is incorporated into the supplementary technical assistance agreement.¹⁴³

Similarly, the Privileges and Immunities Agreement is incorporated into the agreements relating to the use of the Agency's Mobile Radioisotope Laboratories.¹⁴⁴

The Agreement is even incorporated into certain treaties to which the Agency is not a party, such as the master agreements concluded between the Special Fund and potential recipient States.¹⁴⁵

28.3.5.3. Conferences

The Privileges and Immunities Agreement is routinely incorporated into all formal agreements relating to conferences, symposia or other meetings

outside the headquarters State.¹⁴⁶ Particular emphasis is placed on the provisions designed to enable all Member States to participate in such meetings, regardless of their relations with the host State.¹⁴⁷

28.3.5.4. Special agreements

The Agreement on Privileges and Immunities has also been incorporated into such instruments as the Agreement relating to the Monaco Laboratory,¹⁴⁸ the Agreement for the Establishment of a Middle Eastern Regional Radio-isotope Centre for the Arab Countries,¹⁴⁹ the Agreement Concerning the Establishment of an International Centre for Theoretical Physics at Trieste,¹⁵⁰ and the Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents.¹⁵¹

28.4. RELIANCE ON OTHER PRIVILEGES AND IMMUNITIES

28.4.1. In the United States

By Executive Order No. 10727 of 31 August 1957¹⁵² the President of the United States designated both the Preparatory Commission¹⁵³ and the Agency itself as international organizations entitled to the benefits of the International Organizations Immunities Act of 1945.¹⁵⁴ This was a unilateral action requiring no concurrence from the Agency, but is subject to withdrawal at any time should the President consider that the privileges, exemptions or immunities have been abused, or for any other reason.

At the time the Board concluded its consideration of the Privileges and Immunities Agreement, the American representative indicated that his Government would not become a party to it since the Agency and its officials were sufficiently protected in the United States by the Act. Similarly, during the consideration by the Board of the Inspectors Document,¹⁵⁵ the American representative indicated that Agency inspectors in the United States would only be covered by the Act and not by the Agreement.

In accordance with these statements the United States has indeed neither taken any action to become a party to the Agency's Agreement, nor has it consented to the incorporation of the Agreement, in such a way that its provisions would apply to the United States, into any instrument to which it is a party. Consequently many Agency activities in the United States are carried out, in reliance on the Act, without including any special provision as to privileges and immunities in the relevant treaty.¹⁵⁶ However, in most safeguards agreements to which the United States is a party, the provisions of the Act are incorporated by reference;¹⁵⁷ since the application of the Act is automatic the primary purpose of such incorporation (aside from the psychological undesirability of entering into a safeguards agreement with apparently no protection for inspectors) is to prevent or at least inhibit unilateral withdrawal of privileges from the Agency.

28.4.2. In other countries

Before the Agency's Agreement was formulated it was necessary for the Agency to refer to some other instrument to specify the privileges and immunities it required for operations outside the headquarters State. Even since the Agreement was adopted by the Board, it sometimes is convenient or necessary to refer instead to some other instrument: this may occur when the State concerned is already party to another agreement (e. g., the Specialized Agencies Convention, or a headquarters agreement) whose relevant provisions are adequate for the proposed Agency activity, and the State finds that the ad hoc, mutatis mutandis extension of that instrument to the Agency is constitutionally simpler than the ad hoc use of the Agency's Agreement. For example, the following instruments have been relied on:

- (a) Convention on the Privileges and Immunities of the United Nations;¹⁵⁸
- (b) Convention on the Privileges and Immunities of the Specialized Agencies;¹⁵⁹
- (c) UNESCO Headquarters Agreement.¹⁶⁰

28.5. WAIVER OF IMMUNITY

Sections 19, 36, 40(a) and 43(b) of the Headquarters Agreement and corresponding Sections 3, 15, 21 and 25 of the Privileges and Immunities Agreement provide for the waiver of certain of the rights granted with respect to the Agency itself, or the representatives to it, or its officials or experts. In addition, certain other clauses, such as Section 9(a) of the Headquarters Agreement, in effect also provide for certain waivers, without using that term.

Though it would seem that in principle all rights granted can also be waived, Section 19 of the Headquarters Agreement and Section 3 of the Privileges and Immunities Agreement provide that while the Agency may waive its immunity from every form of legal process "no waiver of immunity shall extend to any measure of execution".

Under both Agreements, the authority to waive the immunities of representatives to the Agency is accorded to the Member State accrediting them.¹⁶¹ In every other case the power to waive rests with the Agency - even under Section 43(b) of the Headquarters Agreement which refers, inter alia, to the rights of "representatives of organizations invited by the Board of Governors or the General Conference to the headquarters seat on official business" - though presumably, if the Agency were requested to waive the rights of such a representative, it would first consult with the organization concerned.

With respect to the Agency itself, neither Agreement states any obligation for the organization to waive its own rights under any circumstances. However, each provides that the rights of national representatives must, in appropriate cases, be waived if this can be done without prejudice to the purpose for which the right has been granted; this obligation is expressed in various ways: thus Section 36 of the Headquarters Agreement provides that "it is incumbent upon a Member State to waive the immunity of any of its representatives in any case where, in the judgment of the Member State,

the immunity would impede the course of justice and where it can be waived without prejudice to the purpose for which it was accorded", and Section 15 of the Privileges and Immunities Agreement states that in such circumstances a State "not only has the right but is under a duty to waive the immunity of its representatives". Similarly, Sections 40 (a) and 43(b) of the Headquarters Agreement provide that the immunities of Agency officials, experts, members of committees or representatives of other organizations invited to the Agency on business shall be waived by it in cases where the immunity impedes the course of justice and can be waived without prejudice to the interest of the Agency, and Sections 21 and 25 of the P & I Agreement specify that the Agency "shall have the right and the duty to waive the immunity of any [official/expert] in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency".

Quite properly it is in general not stated in agreements which organ of the Agency has authority to give an effective waiver. This point is covered only with respect to Agency officials in Section 40 (a) of the Headquarters Agreement:

"In any case where these privileges and immunities arise, the official involved shall immediately report to the Director General who shall decide, in consultation where appropriate with the Board of Governors, whether they shall be waived. In the case of the Director General, the Board of Governors shall have the right to waive immunities."

This provision itself was adapted¹⁶² from the draft Staff Regulations,¹⁶³ of which Provisional Regulation 1.10 now reads as follows:

"Any privileges and immunities granted to the Agency or to members of its Secretariat are conferred in the interests of the Agency. Such privileges and immunities shall not excuse members of the Secretariat who enjoy them from performance of their private obligations or from the observance of laws and police regulations. In any case, where these privileges and immunities arise, the staff member involved shall immediately report to the Director General who shall decide, in consultation where appropriate with the Board of Governors, whether they shall be waived. In the case of the Director General, the Board of Governors shall have the right to waive immunities."

This latter provision applies to privileges and immunities deriving from any source, i. e., from the Headquarters Agreement, the Privileges and Immunities Agreement, ad hoc agreements, the US International Organizations Immunities Act, or from the Statute itself.

The Agency has occasionally waived the privileges and immunities of staff members, though usually only for some limited purposes, such as permitting the giving of testimony in court or administrative proceedings. No general policy relating to the granting or refusal of waivers has been established. Though in principle all questions concerning privileges and immunities are to be referred to the Agency for decision, in practice staff members are urged to settle minor traffic summonses (e. g., parking tickets) instead of claiming immunity.¹⁶⁴

28.6. DIPLOMATIC STATUS OF OFFICIALS

Whether or not an official of the Agency enjoys diplomatic status depends in part on his grade¹⁶⁵ and in part on the type of instrument covering him in the jurisdiction in question.

- (a) Within Austria, all officials from the Director General down to those having the grade of Senior Officer (P-5) are assimilated to diplomats "having comparable rank";¹⁶⁶
- (b) In States parties to the Privileges and Immunities Agreement or in which it is applicable on an ad hoc basis for a particular purpose, provided no special reservation has been made, the Director General, all Deputy Directors General and officials of equivalent rank, and officials acting on behalf of the Director General during his absence from duty, as well as his spouse and minor children, have diplomatic status.¹⁶⁷ In addition, Agency inspectors and project examiners, while functioning or travelling in that capacity, enjoy both the privileges and immunities of staff members and those of experts on mission for the Agency – a combination which in practice assures almost diplomatic rights.¹⁶⁸
- (c) In the United States, Section 8(c) of the International Organizations Immunities Act precludes any Agency official from enjoying diplomatic status under that Act.¹⁶⁹
- (d) In Italy, the diplomatic status of the Director of the International Centre for Theoretical Physics (who has the rank of Deputy Director General) is especially confirmed.¹⁷⁰

Diplomatic status thus exists only in relation to a given Member State and is not one that is recognized within the operation of the Agency itself. A differentiation is only made in the granting of UN laissez-passers, which according to the rules of that organization are granted in diplomatic form (red) to officials having a grade of D-2 and above,¹⁷¹ and in normal form (blue) to other officials.

NOTES

1 Some other instruments, such as Article III of the Agreement between the Agency and the Government of Italy Concerning the Seat of the International Centre for Theoretical Physics (INFCIRC/114, Sections 10-16) also provide for substantial immunities outside of the framework of the three principal instruments (Section 28.2.7). See also Section 28.4.

2 Summaries of the principal privileges and immunities of the staff appear in AM.1/9 and in the Handbook "Presenting Vienna", supra Chapter 24, note 304. See also the UN Secretariat study on The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency Concerning their Status, Privileges and Immunities (UN doc. A/CN.4/L.118 and /Add.2, reproduced in 1967 ILC Yearbook, Vol. II, A/CN.4/SER.A/1967/Add.1 — hereinafter "P & I Report"), Part One.B, para.24, and Part Two.B, paras.12, 55, 57, 97, 106, 133-134 and 191.

3 WLM Doc.2 (Add.17); WLM Doc.15 (Rev.1), second part, para.3.B.

4 WLM Doc.15 (Rev.1), second part, para.3.B. An American amendment (WLM Doc.2 (Add.17), 12 March 1956), to delete the words "for the fulfillment of its objectives and" which had preceded the words "for the exercise" in paragraph A, was also adopted (WLM Doc.15 (Rev.1), second part, para.3.A).

5 IAEA/CS/Art.XV/Amend.1/Rev.1.

- 6 IAEA/CS/OR.30, pp.26-37; /OR.36, p.26.
- 7 IAEA/CS/OR.30, p.31.
- 8 IAEA/CS/COORD/2/Add.1, para.16; IAEA/CS/10 (no explanation by Co-ordination Committee).
- 9 Section 13.1.
- 10 A strong statement of this position appears in P & I Report, para.191. This is also supported by Einhorn and Goldman, *op.cit.* Annex 5, No.15, at pp.245-247.
- 11 Section 28.3.1.
- 12 Quoted at the end of Section 28.3.1.
- 13 GC.1/INF/3 - GOV/INF/2, Section 3.3.1.1.
- 14 IAEA/PC/W.27(S) and /Rev.1-4 and /Rev.4/Add.1-2. IAEA/PC/OR.15; /OR.16, pp.13-15; /OR.17; /OR.22; /OR.23; /OR.50; p.4.
- 15 IAEA/PC/W.27/Rev.1, Annex I, paras.2 and 9; IAEA/PC/OR.16, pp.13-15.
- 16 IAEA/PC/OR.23, p.7.
- 17 IAEA/PC/14.
- 18 This formulation involved a slight conceptual error, since the Preparatory Commission, one of the parties to the Agreement, would no longer be in existence after the selection of the first Board (Section 3.1).
- 19 Section 28.2.2.
- 20 IAEA/PC/W.22(S).
- 21 IAEA/PC/OR.13 and /OR.14.
- 22 IAEA/PC/W.22(S)/Rev.2.
- 23 IAEA/PC/W.51(S).
- 24 FAO/Italy - 46; First Conference Agreement - 29; UN/USA - 10; ILO/Switzerland - 1.
- 25 IAEA/PC/OR.54; see also /OR.56-59 and /OR.63.
- 26 IAEA/PC/OR.63; IAEA/PC/W.51/Rev.2.
- 27 GC.1(S)/COM.2/13.
- 28 GC.1(S)/COM.2/OR.8, paras.1-6; GC.1(S)/32.
- 29 GC.1(S)/RES/14.
- 30 Sections 24.3.1.1, 24.3.1.2.1.1-3 and 28.6(a).
- 31 IAEA/PC/OR.59, pp.5-7.
- 32 Which is apparently only matched in the UNESCO Headquarters Agreement with France (P & I Report, Part TWO.B, Section 30, paras.130 to 140).
- 33 GC.1(S)/COM.2/OR.8, para.2.
- 34 IAEA/PC/W.62(USSR); IAEA/PC/OR.56, p.3.
- 35 Now INFCIRC/6/Rev.2, Regulation 1.10.
- 36 INFCIRC/15, Part I, Section 40 (a). Section 28.5.
- 37 INFCIRC/15, Part I, Section 10 (a); IAEA/PC/OR.58, p.5.
- 38 IAEA/PC/OR.56, p.11.
- 39 IAEA/PC/OR.57, p.20; /OR.59, pp.15-16. Sections 33.1.2 and 33.4.
- 40 Section 46; quoted in Section 28.2.3(ii) below.
- 41 Section 47(b).
- 42 Section 50; quoted in Section 27.3 above.
- 43 Section 48(c); see Section 28.2.3(i)(B).
- 44 Section 28.2.4.
- 45 IAEA/PC/OR.59, pp.12-15.
- 46 IAEA/PC/63, para.2; IAEA/PC/OR.56, pp.10-11.
- 47 IAEA/PC/OR.63, p.12.
- 48 GC.1(S)/COM.2/13.
- 49 Section 7.2.2(d).
- 50 To assist the Parliament in its consideration of the Headquarters Agreement, the Government prepared a commentary (erläuternde Bemerkungen - Regierungsvorlage, 376 der Bellagen zu den stenographischen Protokollen des Nationalrates VIII. GP, 11.1.1958), which forms a useful indication of the Austrian interpretation of some of the provisions.
- 51 Text in INFCIRC/15, Part I, and in AM.1/8.
- 52 INFCIRC/15, Part I, Section 49(c); quoted in Section 28.2.3(iii), below.
- 53 INFCIRC/15, Part I, Section 22(g).
- 54 *Idem*, Section 24.

- 55 *Idem*, Section 26. See Section 24.5.3 above and 28.2.4.5 below.
- 56 INFCIRC/15, Part I, Section 38(d). See Section 24.4.6, above. This is a concession which pensioners of UNJSPF have not been able to achieve generally (see the 1960 Report of the Pension Review Group – UN doc. A/4427 (UNGA Off. Rec. (15th sess.) Annexes, Agenda Item No. 63), para. 73).
- 57 INFCIRC/15, Part I, Section 38(h). This addition became desirable because of recent moves in Austria to restrict the acquisition of real estate by foreigners.
- 58 *Idem*, Section 38(j) (iii). See Section 24.13.1 above and 28.2.4.4 below.
- 59 INFCIRC/15, Part I, Section 48(c). See Section 28.2.3(1) (B), below.
- 60 INFCIRC/15, Part I, Section 48(d). See Section 28.2.6 below.
- 61 Up to now no such additional categories have been designated.
- 62 INFCIRC/15, Part I, Section 39. See also Section 28.6 below. The Austrian commentary (*supra* note 50) states that the rank of Senior Officer (P-5) (Section 24.3.1.2.1.3) corresponds to that of Counsellor of Legation in the diplomatic service.
- 63 INFCIRC/15, Part I, Section 48(c). This is one of the provisions that is to be clarified and slightly extended by the proposed Amending Agreement, which is also to deal, for the first time, with Austrian Agency experts. A further differentiation, in this instance to the detriment of certain non-Austrian staff members, is to be introduced through that Agreement by an addition to Section 26, dealing with the obligation of the Austrian Government to provide social security coverage for certain Agency officials (Sections 24.5.3 and 28.2.4.5). This differentiation between Austrian and non-Austrian staff is reflected in certain internal provisions relating to the Agency's staff administration (see Chapter 24, note 95).
- 64 INFCIRC/15, Part I, Section 1(o); this corresponds to Section (v) of the Privileges and Immunities Agreement (INFCIRC/9/Rev.2). In practice, no persons employed on such basis are considered as staff members within the meaning of the Staff Regulations.
- 65 Section 28.2.2, final paragraph.
- 66 Rodgers, *op.cit.* Annex 5, Nos. 50 and 51. In particular he points to the relatively wide freedom given to persons attending Agency meetings, including NGO representatives and members of the press, in contrast to those provided for in the UN Headquarters Agreement.
- 67 The latter Section is to be altered by the Amending Agreement, which will state a definite rule and thus eliminate the need for a supplemental agreement.
- 68 INFCIRC/15, Part II.
- 69 INFCIRC/15, Part I, Section 3.
- 70 *Idem*. Section 1(f) (i).
- 71 IAEA/PC/W.44.
- 72 GC.1/INF/3, Sections 2 and 22.
- 73 Section 28.2.1, final paragraph.
- 74 GC (II)/39, paras. 109-111.
- 75 INFCIRC/15, Part III.
- 76 GC (IV)/114, paras. 90-91; GC (V)/154, paras. 63-64.
- 77 GC (XI)/355, para. 118; GC (XII)/380, para. 11.
- 78 GC (XIII)/OR.127, para. 45.
- 79 GC (XIII)/OR.131, paras. 93-96; an illustration of the first prize model appears in GC (XIII)/JOURNAL No. 131.
- 80 Section 19.1.1.3.
- 81 INFCIRC/15, Part IV.
- 82 INFCIRC/15/Mod.1.
- 83 By means of the proposed Amending Agreement, this provision would be expanded to provide specifically for the establishment of a Commissary, though its modalities would still be specified in a supplemental agreement. In addition, Section 48(c) of the Headquarters Agreement would be amended to specify the right of Austrian staff members to use the Commissary, though on a restricted basis; this right had been granted, albeit only tentatively, by the original Commissary Agreement (INFCIRC/15, Part V).
- 84 INFCIRC/15, Part V.
- 85 Its original one-year duration was twice extended (INFCIRC/15, fn. 8; INFCIRC/15/Add.1), but after the expiration of the second extension the operation of the Commissary was continued on an informal basis, pending the negotiation of a more permanent arrangement, which now appears to be close to realization (*supra* note 83).
- 86 This obligation is to be somewhat restricted, by the Amending Agreement, with regard to non-Austrians.
- 87 INFCIRC/15, Part VI, and INFCIRC/15/Add.3.

- 88 INFCIRC/15, Part VII.
- 89 Section 24.5.2.1.
- 90 Section 12.3.4.1.
- 91 INFCIRC/15/Add.2.
- 92 The essence of these arrangements is now to be incorporated into Section 22(g), by means of the Amending Agreement.
- 93 GOV/1359.
- 94 For example, SEC/INS/80, para.2, and SEC/INS/81.
- 95 INFCIRC/15, Part V; Section 28.2.4.4.
- 96 Text quoted in Section 27.2.2.3.
- 97 INFCIRC/15, Part I, Section 48(d).
- 98 The point was first raised in the Preparatory Commission (IAEA/PC/OR.58, p.17).
- 99 P & I Report (supra note 2), Part One.B, para.24.
- 100 By amending Section 48(d) of the principal Agreement.
- 101 Section 13.2.1.3.
- 102 500 U.N.T.S.95, in particular Articles 8(1) and (2), and 42. This position is also consistent with Article 11 of the Draft Articles on Representatives of States to international organizations. Chapter II of ILC's Report on its 20th Session (UN doc.A/7209/Rev.1, UNGA Off.Rec.(23rd sess.) Suppl.No.9).
- 103 Chapter 27, notes 129 and 130. The effect of the second decision was notified to the staff in SEC/NOT/151, but soon thereafter the staff had to be informed that the Roman Catholic diocese had changed its fiscal rules to avoid the effects of that decision and to allow it to tax international civil servants (SEC/NOT/163).
- 103A SEC/NOT/186.
- 104 INFCIRC/114, Article III. This characterization could have been applied to the original Trieste Agreement (INFCIRC/51), though that instrument also had other aspects. Section 19.1.3.1.
- 105 Convention on the Privileges and Immunities of the Specialized Agencies, 33 U.N.T.S.261.
- 106 Section 12.1.4.3.
- 107 Sections 12.1.4.2 and 24.5.2.1.
- 108 Study by the Office of the Legal Counsel of the United Nations on the Privileges and Immunities of the International Atomic Energy Agency, 7 January 1958, communicated to the Board of Governors at its 3rd series of meetings.
- 109 GC(II)/39, para.118(a).
- 110 INFCIRC/9/Rev.2, p.2.
- 111 INFCIRC/9/Rev.2; the two "Revisions" of this document do not reflect any changes in the original text, but merely the correction of slight errors in the prior versions.
- 112 See Part Two.B, Section 18 (paras.95-97) of the P & I Report (supra note 2) for a full discussion of this problem in relation to the Specialized Agencies Convention.
- 113 Section 21.4.3.3.
- 114 Section 28.6(b).
- 115 It should be noted that the UN and the Specialized Agencies Conventions were both promulgated before, but the Agency's Agreement after, the adoption of the General Assembly's recommendation that international agreements should, generally, include a reservations clause (UNGA/RES/598(VI), para.1).
- 116 INFCIRC/9/Rev.2/Add.1. The States that have become parties have done so on the basis of, or with consequent changes in, their applicable domestic legislation, which in many instances had originally been passed with reference to the UN and Specialized Agencies Conventions and could relatively simply be adapted to the requirements of the Agency's similar Agreement; for an example of a rather elaborate instrument promulgated for this purpose, see the Indian domestic "Notification" pursuant to its United Nations (Privileges and Immunities) Act, 1947(46 of 1947), reproduced in UN Juridical Yearbook 1963, pp.11-14.
- 117 Though no provision of the Agreement explicitly allows the withdrawal of reservations, there seems to be no reason why such a step should be prohibited or even inhibited; therefore, if a reservation may be withdrawn in whole it may also be withdrawn in part. However, the addition or enlargement of a reservation would require one year's notice, since technically it could only be done by a denunciation pursuant to Section 39, followed by a qualified reacceptance.
- 118 Section 28.3.3(g).
- 119 Not all reservations refer specifically to a particular provision, but some merely describe the type of right to which the acceptance of the Agreement does not apply. The texts of all reservations are set out in INFCIRC/9/Rev.2/Add.1.

- 120 Though the reservation appears to make all German staff members subject to German income tax on their Agency emoluments, in practice this would only apply to any who are employed within Germany.
- 121 Section 27.2.1.1.
- 122 Sections 27.2.1.1-2.
- 123 As the UN Legal Counsel has asserted at the 1016th meeting of UNGA's 6th Committee with respect to the UN's P & I Convention (UNGA Off.Rec. (22nd sess.), Annexes, agenda item 98, A/C.6/385).
- 124 Agency Registration No.44. 374 U.N.T.S. 147.
- 125 For example, Sections 21 and 25 (duty to waive immunity of officials and experts -- see Section 28.5 below); Section 38 (duty to make provision for appropriate modes of settling private disputes -- see Section 27.3 above).
- 126 Article 4(2) of the UN Regulations cited in Chapter 26, note 195. This argument was cited by Hungdah Chiu, *The Capacity of International Organizations to Conclude Treaties, and the Special Legal Aspects of the Treaties so Concluded*, (The Hague, 1966) p.151.
- 127 Section 28.3.3(g).
- 128 A list of agreements into which the P & I Agreement is incorporated is published regularly in the UN Juridical Yearbook, Part One, Chapter II.B.
- 129 For example, the Mexican TRIGA Project Agreement (Section 17.2.2.9), INFCIRC/52, Part II, Section 9, prohibits the Agency from acquiring real property in Mexico and limits the immunities of safeguards and of health and safety inspectors of Mexican nationality. The Chinese Safeguards Submission Agreement provides that the relevant provisions of the P & I Agreement shall be applied "provisionally...pending [the Government's] acceptance of that Agreement", INFCIRC/133, Section 19.
- 130 Section 28.3.2(h).
- 131 This is in accord with the position taken by the UN Legal Counsel with respect to the UN Convention on Privileges and Immunities (op.cit. supra note 123).
- 132 GC(V)/INF/39, Annex, Sections 21.4.2 and 22.1.3.
- 133 Section 17.2.1.2.
- 134 Sections 21.5.2 and 21.5.4.10.
- 135 Section 22.3.1.2.
- 136 For example, NORA Project Agreement (Sections 17.2.2.4 and 19.3.2.1), INFCIRC/29, Part II, Section 22.
- 137 For example, the Turkey/USA Safeguards Transfer Agreement, INFCIRC/123, Section 25.
- 138 See the Safeguards Letter to Finland in connection with the FIR-1 Project (Section 17.2.2.2), INFCIRC/24/Add.1, para.11, which merely incorporates the entire Inspectors Document, including the portion quoted in the text above.
- 139 Safeguards agreements, of whatever type, can generally not be denounced -- or can only be so terminated if thereupon a prior safeguards arrangement is automatically revived (Section 21.5.4.14).
- 140 INFCIRC/76, Section 17.
- 141 INFCIRC/15, Part I, Section 38.
- 142 Section 18.1.3.4.
- 143 Section 18.1.5.2. In some agreements, however, this reference is highly attenuated; thus Iran, in a technical assistance agreement concluded on 4 October 1967, merely undertook "to use its best endeavours to submit as soon as possible to Parliament for approval the Agreement on the Privileges and Immunities of the Agency".
- 144 Section 18.3.6.
- 145 INFCIRC/33, Appendix, Article VIII.2. Section 18.2.4.
- 146 With reference to a scientific conference on the disposal of radioactive wastes in Monaco, the Conference Agreement itself was concluded with Monaco (a Member State), but the privileges and immunities were provided for in a separate agreement with France, which is responsible for the customs and border controls of the Principality (see agreements dated 20 October 1959 and registered under Agency Registrations Nos.28 and 29). In connection with an agreement to hold a symposium in Tokyo (Agency Registration No.130) into which the Japanese Government refused to incorporate the P & I Agreement fully, since it was not a party, a separate letter was written to the Agency to the effect that while under the Constitution no immunity from civil suit could be granted, the Government would do its best to prevent such suits (Uchida to Director General, 5 Dec.1962, L/351 JPN-1).
- 147 Section 20.1.2.
- 148 Section 19.1.2.1; INFCIRC/27, para.11(a).
- 149 Section 19.3.1.1; INFCIRC/38, Section 25.

- 150 Section 19.1.3.1; INFCIRC/51, Section 20, superseded by INFCIRC/114, Section 9. That Agreement is, in effect, a minor headquarters agreement (Section 28.2.7).
- 151 Section 23.4.1; INFCIRC/49, Article VI.
- 152 22 Fed. Reg. 7099, partially codified in 19 C.F.R. 10.30a.
- 153 Section 3.2.4.
- 154 59 Stat. 669, codified principally in 22 U.S.C. Sec. 288-288f.
- 155 *Supra* note 132.
- 156 For example, the 4 Reactors Safeguards Submission Agreement, INFCIRC/36 (Section 21.5.5.3 and note 232 thereto).
- 157 For example, the Yankee Safeguards Submission Agreement, INFCIRC/57, Section 15; the Turkey/USA Safeguards Transfer Agreement, INFCIRC/123, Section 26.
- 158 For example, Agreement of 18 March 1959 for the provision of technical assistance to Thailand, 339 U.N.T.S. 307, para.3.
- 159 For example, host agreement of 8 November 1960 for symposium in Taormina, Italy, 14-18 November 1960 (Agency Registration No. 49).
- 160 For example, host agreement of 5 May 1959 for seminar in Saclay, France, 6-10 June 1959 (Agency Registration No. 16), para. E.1.
- 161 INFCIRC/9/Rev.2, Section 15; INFCIRC/15, Part I, Section 36.
- 162 Section 28.2.2(b).
- 163 INFCIRC/6/Rev.2.
- 164 AM.1/9, para. 24.
- 165 Sections 24.3.1.1 and 24.3.1.2.1.1-3.
- 166 INFCIRC/15, Part I, Section 39; *supra* note 62.
- 167 INFCIRC/9/Rev.2, Section 20; Section 28.3.3.
- 168 INFCIRC/9/Rev.2, Section 18(b); Sections 21.4.3.3 and 28.3.2(c).
- 169 22 U.S.C. Sec. 288e (c).
- 170 INFCIRC/114, Section 13.
- 171 INFCIRC/9/Rev.2, Section 32.

CHAPTER 29. LIABILITY

PRINCIPAL INSTRUMENTS

Headquarters Agreement with Austria (INFCIRC/15, Part I), Section 46

Health and Safety Document (INFCIRC/18), para. 24

General Supply Agreements (INFCIRC/5):

With the Soviet Union (ibid., Part I), Article 7

With the United Kingdom (ibid., Part II), para. (5)

With the United States (ibid., Part III), Article III

Supply Contracts, such as:

For sale of nuclear materials (e. g., for Mexican Research Reactor Project, INFCIRC/52, Part I, Article III)

For lease of nuclear materials (e. g., for Mexican Sub-critical Assembly Project, INFCIRC/82, Part I, Article XI)

Joint activity agreements, such as:

NPY Project Agreement (INFCIRC/55), Article X and Annex C, Part 2, para. (e)

Nordic Mutual Emergency Assistance Agreement (INFCIRC/49), Article IV

EPTA Revised Standard Agreement (TAB/R. 251), Article I. 6

Executing Agency Agreement with the Special Fund (INFCIRC/33), Article III and Appendix, Article II, 2
Staff Rule (AM, II/1) 8. 04. 1

Commissary Regulation (AM, VIII/11, Annex I) 5. 7

29. 1. GENERAL

The Agency has always assumed that, under general principles of law, it would be liable to anyone injured by its fault or that of any staff member acting in the course of duty. Similarly it has assumed that if the Agency, and perhaps also if any of its staff, is injured through the fault of another, there would be corresponding liability toward the Agency. Fortunately, for want of injuries there has been no occasion to test these suppositions and even much less to explore the limits of the areas in which liability or claims might be attributed to the Agency.

With respect to most situations in which its liability might be engaged, the Agency is shielded from any immediate impact by the immunity it enjoys in essentially all the jurisdictions in which it has legal personality – since in most instances its immunity is created or defined by the same instrument (Statute, Headquarters Agreement, etc.) that recognizes its personality or status and is thus coincident therewith.¹ However, this immunity, which in effect is merely a protection from involuntary subjection to domestic courts and does not constitute an exemption from liability itself, is not and is not intended to be a complete armour. Every significant activity of the Agency, and in particular all those that might result in damage or injury, is carried out pursuant to an agreement between the Agency and one or more States, and these agreements always provide for the settlement of any disputes arising out of their application;² by means of these provisions any

State injured directly or through one of its nationals can obtain a decision against the Agency which the latter has in advance agreed to accept as binding, and similarly the Agency can secure a binding decision against the State. In addition, the Agency has undertaken in the Headquarters and the Privileges and Immunities Agreements to establish appropriate methods of settling disputes of a private character — and these may be used to establish the liability of the Agency towards private persons.³

Since the Agency thus enjoys at most a tentative immunity, amounting to no more than a limited freedom to choose the forum in which its liability is to be determined, the means it has to protect itself in situations in which it might be injured or might become liable are substantially the same as those available to private persons:

- (a) In the agreements relating to operations out of which injury or liability might arise, the Agency may agree with the other parties to the transaction on the limits of their respective liability vis-à-vis each other. Such agreements may either amount to a mere definition or clarification of how liability would lie under general principles of law, or may aim at a contractual shifting of any potential liability.
- (b) In the same agreements, which of course are binding only upon the parties and on persons they represent (e. g. , on the nationals of a State who might advance claims through it, and perhaps on staff members who might advance claims through the Agency), the parties may agree to a shifting of liability incurred toward third parties through an undertaking, by the party to whom such liability is attributed by the agreement, to reimburse (hold harmless) or even to protect from all consequences of suit any of the other parties.
- (c) If the potential liability of the Agency in a given situation is sufficiently defined the Agency can try to obtain insurance or other coverage.

Though most situations in which the Agency might become liable relate to other activities not directly involving the threat of any nuclear incident or even of any radiation hazard, it is from these that any massive liability might, in rare instances, arise. Here it is important to note that the Agency itself cannot become a party to any of the existing conventions concerning civil liability for nuclear hazards.⁴ However, in jurisdictions where these conventions, or similar domestic legislation, are applicable the Agency may benefit from the protection granted by these instruments to all "third parties" by channeling all liability to the operator of the installation where the accident occurred; in principle the Agency might even become, by license from the State concerned, a facility operator — liable for all hazards but only up to a fixed, insurable limit.⁵

One question that has received almost no consideration is whether any liability of the Agency would engage the liability of its Members; if so, would such derivative liability be joint or several and would it be attributed to Members in accordance with the scale of charges (for the appropriate year) established in accordance with Statute Article XIV, D.⁶ Since the insulation of the participants in a joint enterprise from the potential liabilities of that enterprise must ordinarily be based on a specific law under which the latter

is organized, and no such limitation of liability was provided for the Agency (or for any major international organization), it would seem that Member States could not escape at least a proportional share of such liability. In this connection it should be noted that Statute Article XIV. G specifically exempts the Members from liability with respect to loans entered into by the Agency pursuant to the Statute,⁷ and this is the only field in which the liability of Members for acts of the Agency is limited by that instrument. Had a similar limitation with respect to tort liability been included in the Statute it would of course have been ineffective against Non-member States; but as almost all States are Members and as the Agency only carries out significant activities in Member States,⁸ in practice such a limitation would have been effective in most situations.

Though the Austrian Government was primarily concerned with safeguarding its political neutrality, the broad disclaimer clause included at its request in the Headquarters Agreement⁹ might be interpreted as covering also any international tort liability that might result if an Agency activity in Austria should injure foreign States or persons:

"The Republic of Austria shall not incur by reason of the location of the headquarters seat of the IAEA within its territory any international responsibility for acts or omissions of the IAEA or of its officials acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Republic of Austria would incur as a Member of the IAEA. "¹⁰

Whether or not this provision is effective against utter strangers to the Headquarters Agreement is not clear, but it might be held to bind at least the Member States of the Agency, and perhaps also their citizens.

29. 2. ARRANGEMENTS LEADING TO POSSIBLE LIABILITY

29. 2. 1. Supply of nuclear items

29. 2. 1. 1. General Supply Agreements

The three General Supply Agreements concluded with the Soviet Union, the United Kingdom and the United States provide primarily for the non-liability of the Supplying State vis-à-vis the Agency and require the making of appropriate arrangements in the agreements relating to particular deliveries in order to protect that State against third party claims.¹¹ These provisions are the residue of wider hold harmless clauses that had originally been proposed but which met with considerable resistance in the Board Committee charged with advising the Director General on the negotiation of these agreements.¹²

The Agreement with the Soviet Union provides:

"Immediately upon receipt of the special fissionable materials or any other materials supplied, the Agency shall assume all liability

arising from the possession, use and transfer of such materials.

"After delivery of special fissionable or any other materials to the Agency or to a Member of the Agency designated by it, the Government shall bear no responsibility arising from the possession, use or transfer of such materials. In the case of a direct delivery to a designated Member, the Agency itself shall bear no responsibility." ¹³

The Agreement with the United Kingdom provides:

"The Government of the United Kingdom and the United Kingdom Atomic Energy Authority shall bear no responsibility for damage or injury from any cause arising after delivery of the material to the Agency or to a Member or group of Members designated by it. Mutually satisfactory arrangements for the protection of the Government of the United Kingdom and the United Kingdom Atomic Energy Authority against third party liability shall be made before delivery of any part of the material takes place." ¹⁴

The Agreement with the United States provides:

"All agreements for the lease of any special nuclear material, source material or reactor material pursuant to this Agreement shall include a mutually acceptable provision relieving the lessor of liability arising out of or in connection with material after delivery." ¹⁵

29.2.1.2. Particular supply contracts

In contracts for the sale of nuclear materials from a Supplying State through the Agency to a Receiving State, ¹⁶ usually only a simple exculpatory clause is used by which it is agreed that after any material has been transferred, the transferor ceases to be liable for its handling or use. For example:

"Neither the Agency nor any person acting on its behalf shall at any time bear any responsibility towards Mexico or any person claiming through Mexico for the safe handling and the use of the fuel material and the indicator material.

"After acceptance of possession pursuant to sub-section 3(e), the Agency shall assume full responsibility to the Commission for the fuel material and the indicator material, and Mexico shall be equally responsible to the Agency; neither the United States, nor the Commission, nor any person acting on behalf of the Commission shall bear any responsibility for the safe handling and the use of such materials." ¹⁷

As required by the portion of the Co-operation (General Supply) Agreement with the United States quoted in the previous Section, whenever material is leased by the USAEC a clause protecting the lessor from liability must be included in the supply contract. In lease contracts an elaborate Article relating to "Warranty, Responsibility and Liability" includes, besides Sections covering: claims for delayed or faulty delivery; responsibility

for loss of or damage to the leased material; liability for the use or handling of the material (the usual exculpation adapted from sales contracts); and liability for patent infringements on leased equipment;¹⁸ a hold harmless clause such as the following:

"The Agency shall hold harmless the Commission and Mexico shall hold harmless the Agency against any liability from any cause arising in connection with the source material during the transport of such material to the United States port of export and during the period of the leases."¹⁹

29.2.2. Safeguards

The general question of the liability of the Agency for the acts of its safeguards inspectors is discussed in Section 21.9.2.

Though the Ad hoc Board Committee that formulated the Inspectors Document²⁰ had recommended that the question of including an appropriate liability provision should be considered in drafting any safeguards agreement, provisions regulating either the Agency's liability to the State or the State's liability to the Agency or its inspectors were placed into only very few Project or other Safeguards Agreements concluded under the First Safeguards Document.²¹ The following Section appears in the Agreement for the application of Agency Safeguards to Four United States Reactor Facilities.

"The Agency shall indemnify the United States, its officials, agents, employees, contractors and others claiming through it for any injury or damage caused by the Agency or its inspectors, provided, however, that nothing in this Section shall deprive the Agency or its inspectors of any rights under Section 170 of the United States Atomic Energy Act of 1954, as amended, it being understood that the reactor facilities are covered by indemnification agreements pursuant to that Act."²²

In Safeguards Transfer Agreements concluded with the United States under the Revised Safeguards Document a dual clause along the following lines is included:

- "(a) Brazil shall ensure that any protection against third party liability, including any insurance or other financial security, in respect of a nuclear incident occurring in a nuclear installation under its jurisdiction shall apply to the Agency and its inspectors when carrying out their functions under this Agreement as that protection applies to nationals of Brazil.
- "(b) In carrying out its functions under this Agreement within the United States, the Agency and its personnel shall be covered to the same extent as United States nationals by any protection against third-party liability provided under the Price-Anderson Act, including insurance or other indemnity coverage that may be required by the Price-Anderson Act with respect to nuclear incidents within the United States."²³

In some safeguards transfer agreements to which the United States is not a party, sub-paragraph (b) is omitted and sub-paragraph (a) is made appli-

cable to both States parties to the agreement,²⁴ unless one or both can assure the Agency that under national legislation or applicable international agreements the rule prescribed in that paragraph is automatically applied in the State – in which case the entire provision may be omitted.²⁵

A similar provision is now also being included in Project Agreements providing for the application of Agency safeguards,²⁶ as well as in Unilateral Submission Agreements.²⁷

29.2.3. Health and safety controls

While one purpose of the exercise by the Agency of health and safety controls in connection with Agency projects may be to avoid any potential liability that might arise from its support of an unsafe operation,²⁸ it is also possible that the exercise of these very controls (e. g. , the approval of a project taking into account the "adequacy of proposed health and safety standards"; the requirement that certain safety measures be taken; or the dispatch of inspectors) might itself expose the organization to liability should an accident somehow be attributed to some negligency in carrying them out. Consequently the Board provided in the Health and Safety Document:

"The responsibility for safety measures shall be assumed by the State and the Agency shall have no liability whatsoever. "²⁹

The legal effect of this clause is not entirely clear, since the Document does not have any binding force of itself.³⁰ However, the Document as a whole (though not the quoted paragraph specifically) is referred to in every agreement pursuant to which the Agency carries out controls in a Member State.³¹

No special liability provisions have ever been used to protect health and safety inspectors. However, whenever a safeguards agreement affords particular protection to safeguards inspectors, then the coverage of such clause is always drawn broadly enough to cover any health and safety inspectors carrying out functions pursuant to that instrument.³²

29.2.4. Technical and other assistance

Since arrangements under which the Agency grants assistance to a Member State are concluded for the benefit of that State, it has always been considered appropriate to include a clause completely exculpating the Agency for harm not deliberately caused, and in appropriate cases even holding it harmless. Following are the principal clauses used:

The EPTA Revised Standard Agreement provides:

"The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization(s) and their experts, agents or employees and shall hold harmless such Organization(s) and their experts, agents and employees in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government, the Executive Chairman of the

Technical Assistance Board and the Organization(s) concerned that such claims or liabilities arise from the gross negligence or wilful misconduct of such experts, agents or employees." ³³

The agreements for the use of the Mobile Radioisotope Laboratories provide:

"The assistance rendered pursuant to the terms of this Agreement is in the exclusive interest and for the exclusive benefit of the Government and its people. In recognition thereof, the Government shall bear all risks and claims resulting from, occurring in the course of, or otherwise connected with any operation covered by this Agreement, as provided below. The Government shall indemnify and hold harmless the Agency and its experts, employees and agents, against any and all liability, suits, actions, demands, damages, costs or fees on account of death, injuries to person or property, or any other losses resulting from or connected with any act or omission performed in the course of operations covered by this Agreement, provided that the foregoing obligation shall not require the Government to hold harmless an expert, employee or agent of the Agency for any act or omission which is wilful, reckless or grossly negligent, and is outside the scope of his functions with the Agency and violates instructions or rules governing his activity or conduct." ³⁴

The Executing Agency Agreement concluded by the Agency with the Special Fund provides:

"The Executing Agency shall have the status vis-a-vis the Special Fund of an independent contractor, and its personnel shall not be considered as staff members or agents of the Special Fund. Without restricting the generality of the preceding sentence, the Special Fund shall not be liable for the acts or omissions of the Executing Agency or of persons performing services on behalf of the Executing Agency. The Executing Agency shall not be liable for the acts or omissions of the Special Fund or of persons performing services on behalf of the Special Fund." ³⁵

The related agreements which the Special Fund concludes with States provide:

"The Government shall be responsible for dealing with any claims which may be brought by third parties against the Special Fund or an Executing Agency, against the personnel of either, or against other persons performing services on behalf of either under this Agreement, and shall hold the Special Fund, the Executing Agency concerned and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Parties hereto and the Executing Agency that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons." ³⁶

Clauses such as the following are included in agreements under which the Agency carries out hazard evaluations or similar studies for a Member:

"The services of these experts and staff members of the Agency are to be in the exclusive interest and for the exclusive benefit of your Government. The participants and the Agency will have to rely on information supplied by the Yugoslav authorities and thus the Agency is not in a position to vouch for the correctness of the participant's conclusions.

"In recognition thereof it is understood that your Government shall bear all risks and claims resulting from, occurring in the course of or otherwise connected with the conceptual study with respect to which the Agency's experts and officials are consulted.

"It is also understood that your Government will indemnify and hold harmless the Agency and its experts, officials and agents against any and all liability that might arise out of the said safety evaluation and will extend to them the provisions of the Agreement on the Privileges and Immunities of the Agency."³⁷

29. 2. 5. Project and joint programme agreements

Most Project Agreements that merely relate to a supply of materials arranged through the Agency³⁸ contain no liability clause, except possibly one covering the Agency's inspectors. However, those agreements under which the Agency participates in joint programmes usually provide for the exculpation of some of the parties and for the express assumption of liability by the party under whose jurisdiction a particular activity takes place.

The following clause appears in the NORA Project Agreement:

"Neither the Agency nor any person acting on its behalf shall bear any liability in connection with the Joint Programme or the reactor facility and Norway shall hold them harmless against any such liability."³⁹

The following clause appears in the NPY Project Agreement:

"Each operation in implementation of the Co-operative Programme shall be carried out under the responsibility of the Government which makes available the installation concerned, and shall be subject to any relevant laws and treaties of that Government. In connection with such operation or with that portion of the Co-operative Programme to which it relates, neither the Agency nor either of the other Governments nor any person acting on behalf of the Agency or such Governments shall bear any liability."⁴⁰

The IPA Project Agreement contains an essentially similar clause.⁴¹

The following clause appears in the Agreement for Establishing a Middle Eastern Regional Radioisotope Centre (which is an international organization in its own right):

"Save for the obligations expressly provided for in this Agreement, the Agency, the Host State and the Participating States shall have no responsibility for any civil, financial or other obligations in respect of the Centre." ⁴²

The Nordic Emergency Assistance Agreement contains the following elaborate provisions:

"1. The Requesting State shall bear all risks and claims resulting from, occurring in the course of or otherwise connected with, the assistance rendered on its territory and covered by this Agreement. In particular, the Requesting State shall be responsible for dealing with claims which might be brought by third parties against the Assisting Party or personnel. Except in respect of liability of individuals having caused the damage by wilful misconduct or by gross negligence, the Requesting State shall hold the Assisting Party or personnel harmless in case of any claims or liabilities in connection with the assistance.

"2. The Requesting State shall compensate the Assisting Party for the death of, or temporary or permanent injury to, personnel, as well as for loss of, or damage to, non-perishable equipment or materials, caused within its territory in connection with the assistance.

"3. The Assisting State shall bear all risks and claims in connection with damage or injury occurring in its own territory.

"4. The Requesting and the Assisting States shall be released from their obligations under paragraphs 1-3 to the extent that the damage is covered by an operator of a nuclear installation who is liable for nuclear damage under the applicable national law.

"5. The provisions of this Article shall not prejudice any recourse action under the applicable national law, except that recourse actions can be brought against assisting personnel only in respect of damage or injury which they have caused by wilful misconduct or gross negligence." ⁴³

One of the difficulties in concluding a satisfactory world-wide emergency assistance agreement has proved to be the formulation of a liability clause, since that contained in the Nordic Agreement was not acceptable to many Member States.⁴⁴

In February 1960 the Agency concluded an agreement with the Government of Yugoslavia pursuant to which the Agency, with the assistance of several of its Members, carried out a dosimetry experiment with a zero power reactor at Vinča, in which it partially reconstructed a serious accident that had occurred earlier at that reactor.⁴⁵ In that agreement the Yugoslav Government required the Agency: to guarantee not to make any claim on its own behalf or on behalf of its staff members; to compensate all claims of the Yugoslav Institute (including any losses that might have arisen had the work of the Institute been impeded through any excess release of radiation) and of all persons authorized to be present in the experimental area (including Agency staff members); and to take out insurance to cover these liabilities.⁴⁶ The Government merely undertook to compensate any unauthor-

ized person injured in the experimental area, which was to be designated by the Agency but policed by the Yugoslav authorities.

Since the Trieste Centre is purely an Agency activity, no special liability clauses were included in the related agreements.⁴⁷ The same was true of the original Monaco Laboratory Agreement,⁴⁸ but the 1969 Agreement contains a provision exculpating the Agency with respect to personnel, equipment and facilities made available to it by the Monegasque Government or the Oceanographic Institute.⁴⁹

29.2.6. Research Contracts

The following provision is included in the Agency's standard research contracts:

"The Agency shall not be liable for the death of or for injury or damage to any person or property arising out of the conduct of the research project. The Contractor hereby agrees to hold harmless the Agency for any damages the Agency may be required to pay to any third party arising out of the conduct of the research project."⁵⁰

In the standard research agreement for co-ordinated cost-free research,⁵¹ a simple exculpation clause is used consisting of the first sentence of the above-quoted provision.

Similarly, merely a simple disclaimer of liability is included in the Master Contract for U. S. Financing of Agency Research.⁵²

29.2.7. Occupation of property and employment of staff

Aside from the liability that may arise from the Agency's special activities, the Agency might become liable by reason of:

- (a) The occupation and control of property (such as its headquarters seat, its laboratories or the Trieste Centre), where third parties (i. e., not members of its staff) may be injured through some fault attributable to the Agency;
- (b) The employment of staff, who in the course of their official duties may injure third parties.

There is obviously no possibility of concluding any anticipatory exculpatory agreements that would relieve the Agency of these types of liability.

In addition, as an employer, the Agency may become liable to any staff member injured in the course of his official duties. This type of liability is, however, subject to regulation and limitation by the Agency, and to some extent this has been done in Staff Rule 8.04.1⁵³ according to which:

- (i) Staff members in the Maintenance and Operative Services category and certain of those in the General Service category are to be compensated in accordance with the provisions of the Austrian Social Security scheme.
- (ii) All other staff members are to be compensated in accordance with Appendix D to the Staff Rules.⁵⁴

The Commissary Regulations, according to which that service has "no legal personality of its own",⁵⁵ provide:

"The liability of the Commissary towards its participants for goods purchased from the Commissary shall not exceed the liability or warranty of its own suppliers."⁵⁶

29. 3. INSURANCE

One method by which the Agency can secure protection with respect to certain types of liability that it cannot avoid through an exculpation clause or shift to some other party by means of a contractual arrangement, is to obtain insurance. The Agency has in fact obtained several types of coverage,⁵⁷ relating to different types of liability – though mostly only to the types discussed in Section 29. 2. 7:

- (a) General liability insurance providing complete but financially limited coverage for all third-party liability (including for most radiation hazards), except if arising from the operation of automobiles or nuclear reactors. A separate policy covers accidents involving the Agency's cars.
- (b) The liability for service-incurred injuries of its own staff, as defined by Annex D to the Staff Rules,⁵⁸ is covered by a commercial insurance policy. That incurred with respect to staff members not subject to that Rule is covered by the payments the Agency makes with respect to them to the appropriate part of the Austrian Social Security system.⁵⁹

Experience shows that at present it is practically impossible for the Agency to obtain insurance, at sensible rates, covering any activities (e. g. , safeguards) relating to reactors or other nuclear facilities.⁶⁰ In part this is so because many of the Agency's activities in this field relate to reactors located in the less developed countries, where none of the existing nuclear liability insurance pools offer coverage.⁶¹ In part this is also due to the unique and unprecedented nature of the Agency's activities, such as the carrying out of inspections, for which insurance companies are unable to evaluate any realistic risk factors. Finally, until full acceptance, by national law or international conventions,⁶² of the principle of channeling all liability arising from a nuclear incident to the operator of the facility concerned, it will always be difficult to determine in what circumstances such an operator would have to assume full liability and in what cases he might have recourse against the Agency.

The Agency has found it equally difficult to obtain any type of fidelity insurance covering the damage that its inspectors or other officials might cause through the unauthorized disclosure of commercially valuable information.⁶³ Again, the difficulty of evaluating either the chance of injury or its potential extent makes it impossible to receive any realistic insurance quotations.

NOTES

- 1 Chapter 28.
- 2 Section 27, 1. 3. 2.
- 3 Section 27, 3. INFCIRC/15, Part I, Section 50, and INFCIRC/9/Rev. 2, Section 33.
- 4 With respect to the two Conventions sponsored by the Agency itself, see Section 23. 7(i) and (ii). The same is also true of the Paris and Brussels Conventions (Chapter 23, note 17), participation in which is also limited to States.
- 5 Section 23. 1. 4(A) - (F); Section 23. 7(i).
- 6 Section 25. 3. 1.
- 7 Section 25. 6. 1.
- 8 Section 13. 3.
- 9 Sections 28. 2. 2(e) and 28. 2. 3(ii).
- 10 INFCIRC/15, Part I, Section 46.
- 11 Section 16. 4.
- 12 Section 16. 4. 5.
- 13 INFCIRC/5, Part I, Article 7.
- 14 INFCIRC/5, Part II, para. (5).
- 15 INFCIRC/5, Part III, Article III.
- 16 Section 16. 5. 1(a).
- 17 INFCIRC/52, Part I, Article III.
- 18 Section 31. 1. 6.
- 19 INFCIRC/82, Part I, Section 32.
- 20 Section 21. 4. 2. 1. 1.
- 21 Section 21. 5. 5. 2.
- 22 INFCIRC/36, Section 14.
- 23 INFCIRC/110, Section 26.
- 24 For example, INFCIRC/63, Section 26.
- 25 For example, INFCIRC/125.
- 26 For example, INFCIRC/116, Part II, Section 10.
- 27 For example, INFCIRC/118, Section 25.
- 28 Section 22. 3(b).
- 29 INFCIRC/18, para. 21.
- 30 Section 22. 1. 2. 3.
- 31 For example, INFCIRC/52, Part II, Annex B, para. 1; INFCIRC/116, Part II, Section 7.
- 32 For example, INFCIRC/116, Part II, Section 10.
- 33 UN doc. TAB/R. 251, Article I. 6. Section 18. 1. 5. 2.
- 34 For example, Agreement of 31 August 1962 for Use of the IAEA Mobile Radioisotope Laboratory in Brazil (Agency Registration No. 119). The inclusion of these provisions had been the subject of extensive debate in the Technical Assistance Committee of the Board, when that Committee considered the original model agreement covering these Laboratories (Section 18. 3. 6) — as appears from the Report of the Committee submitted on 3 March 1959 and from a Memorandum by the Director General of 4 March 1959.
- 35 INFCIRC/33, Article III. Section 18. 1. 4.
- 36 INFCIRC/33, Appendix, Article II. 2.
- 37 Exchange of Letters of 8 and 14 June 1962 with Yugoslavia regarding the participation of the Agency in discussions of the conceptual study for an international demonstration power plant at Ljubljana (Agency Registration No. 102). See also para. 2 of the Exchange of Letters of 13 and 26 June 1959 with Switzerland regarding assistance in evaluating the health and safety hazards of the research and material testing reactor (DIORIT) at Würenlingen (Agency Registration No. 22).
- 38 Section 17. 2. 1. 2.
- 39 INFCIRC/29, Part II, Section 21. The inclusion of this clause, as well as of the hold harmless clause in the related Supply (Lease) Agreement (INFCIRC/29, Part I, Section 24), delayed the entry into force of these instruments since under Norwegian law these clauses required parliamentary approval as creating a possible unbudgeted financial liability for the Government — and therefore the latter insisted on ratification (see the reservation attached to the Norwegian signature of these Agreements (INFCIRC/29, Parts I and II)). To avoid delaying the start of the Joint Programme (Section 19. 3. 2. 1) the Agency agreed to accept on an

interim basis, under the Agreement for the Provisional Application of the NORA Project Agreement (Agency Registration No. 62, 402 U. N. T. S. 274), a hold harmless clause guaranteed by the Norwegian Institutt for Atomenergie.

- 40 INFCIRC/55, Section 22; see also Annex C, Part 2, para. (c). Section 19.3.2.2.
- 41 INFCIRC/56, Section 12. Section 19.3.2.3.
- 42 INFCIRC/38, Section 24. Section 19.3.1.
- 43 INFCIRC/49, Article IV. Section 23.4.1.
- 44 Section 23.4.4. GC(X)/335, paras. 4-5.
- 45 Section 19.1.4. Infra note 60.
- 46 Article VI of the Agreement for Cooperation in Conducting a Dosimetry Experiment (Technical Reports Series No. 6, STI/DOC/10/6, Annex I).
- 47 Section 19.1.3. INFCIRC/51 and 114.
- 48 Section 19.1.2. INFCIRC/27.
- 49 INFCIRC/129, Article 10.
- 50 Section 19.2.5(f). A hold harmless obligation is imposed because of the remote possibility that the research might be considered inherently dangerous (e. g., the introduction of radioisotopes into a river), so that liability might result not only from the careless conduct of the work but from the mere fulfilment of the contracted for experiments.
- 51 Section 19.2.2.3.
- 52 INFCIRC/89, Article VII. Sections 19.2.2.2 and 25.7.4.1.
- 53 AM, II/1.
- 54 Section 24.5.5.
- 55 Section 24.13.1. AM, VIII/11, Annex I, Regulation 1.2.
- 56 Idem, Regulation 5.7.
- 57 A list of seventeen insurance policies carried by the Agency during 1960 (not all of which afforded liability coverage) was annexed to the Report of the External Auditor for that year (GC(V)/156, Part II).
- 58 AM, II/1. Section 24.5.5.
- 59 Section 24.5.3.
- 60 In the one situation in which the Agency was contractually obliged to obtain such insurance, in connection with the Vinča Dosimetry Experiment (Section 19.3.2.1), it was required to pay a fee calculated as a rate which was only tolerable because of the very short duration of the experiment. For an operation taking less than three weeks, four liability policies costing \$18278 had to be obtained (Report on the Vinča Dosimetry Experiment, Technical Reports Series No. 6, STI/DOC/10/6, para.1.9).
- 61 Section 23.5 and note 80 thereto.
- 62 For example, the Agency-sponsored Conventions discussed in Sections 23.1 and 23.2.
- 63 Section 21.9.2.2.

CHAPTER 30. EMBLEM, SEAL AND FLAG

PRINCIPAL INSTRUMENTS

The Agency's Emblem (INFCIRC/19)

Board decision approving the emblem and seal (1 April 1960)

Circular No. 421 (15 August 1962) of the Bureau of the International Union for the Protection of Industrial Property

One sunny day during the Third General Conference a banner with a strange device was seen fluttering above the line of national flags by the main entrance to the Conference, and also incidentally above that of the United Nations. Soon after the representative of the UN Secretary-General observed this slight, the new standard was removed, never again to be publicly displayed. The prologue and the consequences of this incident are part of the legal history of the Agency.

30.1. GENESIS

The emblem first used by the Agency consisted of three unequal skewed ellipses, with a small circle close to their centre, schematically representing the lithium atom. This design had already appeared on the documents of the Working Level Meeting, and had evidently been chosen by some official of the US State Department or Atomic Energy Commission. Subsequently the same emblem was used on the documentation of the Conference on the Statute, which was produced by the Secretariat of the United Nations. From there it was adopted for the documents of the Preparatory Commission (also printed at UN Headquarters) and later for the documents prepared, now already in Vienna and by the staff of the Agency, for the Board of Governors and for the first two regular sessions of the General Conference. Indeed, the Executive Secretary of the Commission proposed that this emblem become the insignia of the Agency.¹

Sometime in the fall of 1958 it occurred to someone that lithium was allegedly used in the manufacture of H-bombs, and that consequently this atom, even in abstract, schematic form, was not a proper symbol for the Agency. Consequently a fourth ellipse was added in December 1958 to represent inoffensive beryllium.²

Once the process of altering the emblem had started, further suggestions were made and soon a design evolved in which the central circle had been expanded into a global map of the world and five of the eight loops formed by the ellipses contained respectively: a dove of peace with an olive branch; a factory with smoking chimneys and surcharged with a train of three gear wheels; a microscope; two spears of grain; and finally a caduceus, to symbolise respectively the peaceful, industrial, research, agricultural and

medicinal uses of atomic energy.³ The Director General had that emblem, in gold, superimposed on a blue flag and it was this banner whose dominant position, if not striking design, displeased the representative of the United Nations.

30.2. ADOPTION

The incident related at the beginning of this Chapter led to the referral to the Board of the urgent problem of what symbols should represent the Agency. The Director General proposed⁴ the approval of the emblem as described above, of a seal consisting of the emblem surrounded by the words "International Atomic Energy Agency" and of a flag consisting of the emblem appearing on a blue field; inter alia, he requested authority to adopt a flag code to be modeled on that of the United Nations.⁵

At its initial consideration in January 1960, the Board decided that the Agency should have an emblem and seal, but no flag, and that the design of the emblem and seal should be considered later. At its next series of meetings in March the Board was faced with a slightly simplified version of the earlier emblem, submitted by the Secretariat, as well as with two designs informally proposed by a Governor, each of which consisted of a schematic atom surrounded by the crossed olive branches used by the United Nations. The Board, appropriately on the first of April, decided on a simplifying compromise and adopted as the emblem and seal the design then appearing on Agency documents (i. e., the bare schematic beryllium atom) surrounded by the olive branches of the United Nations.⁶

Though not specified either in that decision or the earlier one, it was understood that the Agency would use the UN flag in accordance with the applicable flag code, which permits display by UN related organizations. In particular, the UN flag is regularly flown over the Headquarters buildings and also at the site of significant Agency meetings in other locations.

30.3. PROTECTION

By the same decision adopting the emblem and seal, the Board recommended that Member States "should take such appropriate measures as were necessary to prevent the use; without written authorization by the Director General, and in particular for commercial purposes by means of trade marks or commercial labels, of the emblem and of the official seal of the Agency"; it also requested the Director General to secure the necessary protection for the Agency's name, emblem and seal.⁷

Pursuant to the above charge, the Director General on 15 June 1960 sent a circular letter⁸ to the Members requesting them to take all measures necessary to give effect to the Board's decision. Exactly a year later he sent another circular letter in which he inquired as to the measures each Government had taken or intended to take in this matter.

The substantive responses received by the Agency to these letters can be classified as follows:

- (a) Some States took action to protect the Agency's emblem, seal and name by special legislation or administrative regulation;⁹
- (b) Some States advised the Agency to take steps to register its symbol under procedures prescribed by their national legislation;
- (c) Some States, parties to the Paris Convention on the Protection of Industrial Property (as revised at Lisbon on 31 October 1958),¹⁰ advised the Agency to rely on that Convention;
- (d) Some States indicated that they had taken measures, through their patent, trade mark or copyright offices, to prevent the registration of symbols that might conflict with those of the Agency;
- (e) Some States advised the Agency that no special measures could be taken by the Government but that the Agency had ample protection under existing legal provisions should anyone misuse the Agency's symbols.¹¹

Since several States had advised the Agency that Article 6ter 1(b) of the amended Paris Convention on the Protection of Industrial Property¹² also provided protection to the emblems of intergovernmental organizations, the Agency on 22 November 1960 addressed a request for registration to the Bureau¹³ established by that instrument. Advised that the provision in question was not yet in force, the Agency repeated its request after the necessary ratifications had been obtained by January 1962. Thereupon the Bureau on 15 August 1962 issued its Circular No. 421 notifying all member States of the Paris Union (whether or not they were parties to the Lisbon amendments) of the Agency's emblem. Subsequently the Agency requested the Bureau to take similar action with respect to its name and the abbreviation thereof, in the four working languages.

NOTES

- 1 IAEA/PC/OR.53, pp.7-8.
- 2 Para. 9 of the Director General's Memorandum to the Board of 8 January 1960.
- 3 This description is condensed from the paragraph cited in the preceding note, to which an illustration is annexed.
- 4 In the Memorandum referred to in note 2.
- 5 Issued by the UN Secretary-General on the authority of UNGA/RES/167 (II).
- 6 INFCIRC/19.
- 7 GC (IV)/114, para. 88.
- 8 This and the later circular letter both carried the symbol L/121.
- 9 For example, Austria, Verordnung des Bundesministeriums für Handel und Wiederaufbau vom 13. Feber 1961, womit das Zeichen der Internationalen Atomenergiebehörde von der Registrierung nach dem Markenschutzgesetz 1953 ausgeschlossen wird (BGBl. Nr. 48/1961, Stück 15, 10 March 1961, p. 439); Germany, Bekanntmachung vom 12. September 1963 zu Par. 4 des Warenzeichengesetzes, Teil III, Nr. 1; India, Addition No. 15 (7 October 1961) to Schedule to the Emblems and Names (Prevention of Improper Use) Act, 1950; Iraq, Law No. 126/1960, Official Gazette No. 429 (25 October 1960); Morocco, Dahir No. 1-0-182, of 8 Rebia L. 1380 (31 August 1960), Bulletin Officiel No. 2498 (9 September 1960); New Zealand, International Atomic Energy Agency Name and Emblem Notice of 1961; Pakistan, Notification No. SRO 1019 (K)/61 (20 October 1961), Gazette of Pakistan (3 November 1961) p.418; South Africa, Government Notice No. 945, Government Gazette (22 July 1962).
- 10 13 U. S. T. 1; TIAS 4931.
- 11 For example, the Netherlands referred to Articles 222bis and 4356 of its Criminal Code.
- 12 Supra note 10.
- 13 Bureaux Internationaux Réunis pour la Protection de la Propriété Industrielle Littéraire et Artistique (Geneva).

CHAPTER 31. PATENTS AND COPYRIGHTS

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles VII.F, VIII.B, XI.F.5
Headquarters Agreement with Austria (INFCIRC/15, Part I), Sections 16, 18
Provisional Staff Regulations (INFCIRC/6/Rev.2) 1.06, 1.07
Master Contract for U. S. Financing of Agency Research (INFCIRC/89), Article IV
Project and Supply Agreements, such as:
 Mexican Sub-critical Assembly Project Agreement (INFCIRC/82, Part II) Sections 7, 8
 NORA Project Supply Agreement (INFCIRC/29, Part I), Section 25
 NORA Project Agreement (INFCIRC/29, Part II), Sections 19, 20
Standard Research Contracts, clause: "Rights to Intellectual Property and Publication"
Universal Copyright Convention, Protocol No.2 (216 U. N. T. S. 133, at 190)

31.1. PATENTS

31.1.1. Statutory provisions

Statute Article VIII.B, which is one of the provisions related to the Article III.A.1 function "to foster the exchange of scientific and technical information", reads:

"Each member shall make available to the Agency all scientific information developed as a result of assistance extended by the Agency pursuant to article XI."

Substantially the same provision already appeared in the Negotiating Group draft, but the present wording is that proposed by the Working Level Meeting.

In the latter forum the representative of India proposed the addition of the following paragraph to the same Article:

"In respect of any invention arising out of a project undertaken with the assistance of the Agency, the royalties of the patent shall be divided between the Agency and the country or countries concerned in proportion to their relative financial contribution to the project from which the invention emerges."¹

Since doubt was expressed as to whether such a blanket rule could sensibly be applied to all project arrangements, the Meeting decided² to provide instead, in Article XI.F.5, that each Project Agreement must:

"Make appropriate provision regarding the rights and interests of the Agency and the member or members concerned in any inventions or discoveries, or any patents therein, arising from the project;"¹

The Conference on the Statute adopted this subparagraph unchanged, rejecting an amendment to add the word "directly" after "arising".³

31.1.2. Staff Regulations

Provisional Staff Regulation 1.07,⁴ which is an expanded version of UN Staff Rule 112.7,⁵ provides:

"All right, title and interest, including, without limitation, all copyrights and patents, in and to any material produced and invention developed by any member of the Secretariat on behalf of the Agency during his term of employment by the Agency shall vest in the Agency, and no member of the Secretariat shall have any personal right, title or interest whatsoever therein."

A similar requirement applies to consultants.⁶

31.1.3. Right of the Agency to acquire and hold patents

None of the international conventions concerning patents deals specifically with the rights of international organizations to file for or to hold patents, nor does there appear to be any directly relevant national legislation.

By Statute Article XV.A the Agency enjoys "in the territory of each member such legal capacity...as...necessary for the exercise of its functions". Section 16 of the Headquarters Agreement,⁷ which defines this capacity in Austria, provides:

"The Government recognizes the juridical personality of the IAEA and, in particular, its capacity:

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute legal proceedings."

Section 2 of the Privileges and Immunities Agreement⁸ is substantially identical.

Under these provisions the Agency would seem to have at least the same rights to acquire and hold patents in States parties to these Agreements as is enjoyed by juridical persons organized under the domestic law of the State.⁹ However, up to now this right has only been tested in Austria, which has granted the one patent applied for by the Agency.¹⁰

31.1.4. Patent provisions in agreements with Members

The two statutory provisions quoted in Section 31.1.1 differentiate between two kinds of results that may flow from an Agency assisted project:

- (a) "Scientific information", which must in all cases be made available to the Agency by the Member concerned, but only if developed as a result of the Agency's assistance to the project.

- (b) "Inventions or discoveries, or any patents therein", as to which the rights of the Agency and the Member are to be appropriately regulated in the Project Agreement.

Giving both these provisions a construction through which they do not contradict each other, suggests that "scientific information" be interpreted as meaning only such results as do not constitute an "invention or discovery", that is, mere data rather than any technical development.¹¹ The precise dividing line may in a given instance be difficult to draw: in the one Project Agreement in which an attempt was made to do so, a reference to Statute Article VIII. B was followed by a proviso:

"However, with respect to any information that may be of commercial value, [the Government] may take such steps as it desires to protect such value and the Agency, in view of the degree of its participation in the project, does not claim any right in any inventions or discoveries arising from the project."¹²

This unique provision, which excludes from the scope of "scientific information" any that has "commercial value" (which need not necessarily be a development but might merely consist of some saleable tabulation of data), must be considered in the light of the relatively slight assistance rendered by the Agency to the project in question.¹³

The requirement that "appropriate provision" be made with respect to inventions, discoveries and patents evidently foresees that each Project Agreement reflect the particular relation established with respect to the project. Under Statute Article XI the Agency might become very extensively involved in a project, allocating to it nuclear materials (but not finances from its own resources) and "services", which might consist of the intensive, long-term participation of Agency staff members in the development and operation of the activity; on the other hand the Agency's assistance might merely be that of an intermediary in obtaining a minor item.¹⁴ While in the former case, especially if staff members contribute directly to the development of an invention, it would be appropriate for the Agency to receive a major share of the benefits, in the latter it could assert no such claim. This distinction is actually reflected in the different types of Project Agreements.

Up to now, except with respect to a few joint research projects,¹⁵ the Agency's assistance has always been confined to the performance of brokerage services, sometimes covering the transfer of a reactor and its entire fuel supply, sometimes other major items of equipment for a laboratory or hospital and sometimes merely the supply of very small quantities of nuclear materials.¹⁶ In each Project Agreement relating to any such assistance substantially the following provision has been included:

"In view of its degree of participation, the Agency claims no rights in any inventions or discoveries arising from the execution of the project. The Agency may, however, be granted licenses under any patents upon terms to be agreed."¹⁷

In addition, even though Statute Article VIII, B is directly binding on each Member in relation to projects for which it receives assistance, a reference to this provision is included (mainly as a reminder) in each Project Agreement, substantially as follows:

"In conformity with paragraph B of Article VIII of the Statute of the Agency, [the Government] shall make available to the Agency without charge all scientific information developed as a result of the assistance extended by the Agency." ¹⁸

In view of the nature of the projects so far assisted (which largely related to training facilities or those for the production of isotopes or the performance of minor experiments),¹⁹ the Agency has received little scientific information pursuant to these Agreements and no question involving an invention or discovery has yet arisen.

With respect to joint programmes, such as those to which the NORA and NPY projects relate, the Agency's participation is not restricted to performing brokerage functions. Consequently it seemed appropriate for the Agency to receive more extensive rights to the results of these programmes. However, since they were primarily designed to generate scientific data rather than to develop any technology directly, and in the light of the Agency's current patent policy as described in Section 31.1.5, the following provision (in addition to the standard reference to Article VIII, B) was designed for these joint programmes:

"All results of the Co-operative Programme, including any inventions or discoveries arising out of it, shall be made available for the development and practical application of atomic energy for peaceful uses throughout the world. To this end the parties shall co-operate by prompt and extensive publication and by other appropriate means to prevent restrictions on the free use of such results. Furthermore, any of the parties, and persons under their control, may obtain any patent or similar protection for such results attributable to the party or persons, provided that the owner of such patent undertakes to make the invention freely usable throughout the world without charge or any other restriction. The parties shall assist each other in obtaining any patent or similar protection that any of them may wish to obtain under the above conditions and shall co-operate to avoid any conflicting applications for such patents." ²⁰

However, the IPA Agreement contains only the standard clause used for reactor Project Agreements.²¹ And the Agreement relating to the Fruit Irradiation Project merely provides that the Project Committee "shall work out rules relating to the distribution and utilisation of the scientific and technical information derived from the carrying out of the programme".²²

No patent clauses appear in the Agreements for the Establishment of the Middle Eastern Radioisotope Centre²³ or concerning the Trieste Centre.²⁴ Both the original and the revised agreements relating to the Monaco Laboratory²⁵ contain essentially the patent clause designed for research contracts and described in the next Section.

31.1.5. Research contracts and the evolution of the Agency's patent policy

Unlike most Agency projects up to now, all research contracts are directly designed to develop new information, though not necessarily such as will be of commercial value or of a patentable nature.²⁶ In addition, the Agency's participation in these arrangements, though mainly financial, is still more substantial than in respect of most projects, since the Agency frequently initiates and even more often guides plans for contractual research. Finally, it is in the nature of research contracts arrangements that the grantor of the funds should obtain certain rights to the results. Consequently the Agency's policy with respect to patents has in practice not really developed under the statutory provisions relating to projects but has evolved almost exclusively in relation to its research contracts programme, and to a lesser and derivative extent with respect to work performed in its own Laboratories.

The Agency's (in effect the Secretariat's) initial approach was that upon granting funds to finance a research project it should receive at least some rights to any resulting inventions or discoveries, and in particular to any patents. The difficulty was in deciding how these rights should be shared with the researcher (who after all, even if guided and not only financially assisted by the Agency, usually deserved most of the credit for any significant development), and possibly with any other grantors to the same project. Various formulae were considered providing for distribution of rights according to the respective financial investments in the programme, or geographically (e. g., the researcher retaining primary rights in his own country or region and the Agency exercising them elsewhere in its Member States).²⁷ None of these schemes were satisfactory, in particular since no simple one could be designed that would not discriminate unfairly against researchers located in small, under-developed countries in which the value of the right to exploit a patent would be insignificant compared to the worth of these rights in a large industrialized State.²⁸ An additional complication was introduced when the USAEC undertook to assist the Agency in financing several research contracts,²⁹ for originally the Commission proposed a complicated geographical distribution of patent rights among the USAEC (in the USA), the sub-contractor (in his "country or community [of countries]") and the Agency (in other Member States), with an almost unlimited obligation on each of these parties to grant the others royalty-free, non-exclusive, irrevocable licenses with the right to sub-license for all purposes.³⁰

As a result of work performed on one of the Agency's first research contracts (in Austria), an invention was developed to which the Agency, under its agreement with the researcher, had exclusive patent rights. It thereupon filed for and received a patent in Austria³¹ - which automatically also afforded it a year's protection in all States (then some 45, now about 70) parties to the "1883 Convention of the Union of Paris for the Protection of Industrial Property" as revised, to which Austria is a party.³² However, it was discovered that the cost of securing and maintaining patent protection in all Member States (and it was not clear whether the Agency might discriminate among them by obtaining patents in only the more "important" ones) would be out of all proportion to the limited value of the particular invention. Thus, even though the Board and the General Conference had

authorized a small budgetary appropriation "for literature searches for the Agency by patent attorneys in connexion with patentable results of research where the Agency reserves patent rights",³³ no applications were filed in other countries and the patent already obtained in Austria was permitted to lapse through non-payment of the second annual maintenance fee.

More important than the financial aspect and more basic than the practical problem of how the Agency could conveniently and fairly share patent rights under various types of arrangements, was the question of how the organization could best further its statutory functions, including especially those in Articles III. A. 3 (fostering the exchange of scientific information) and VIII. C (assembling and distributing information). Should this be done by obtaining patents on valuable inventions and sub-licensing them to Member States on the basis of a "scale of charges" (Article XIV. E) - and using the profits to further the work of the Agency?³⁴ Would it be preferable to obtain patents for the purpose of preventing others from securing a restrictive stranglehold on an invention, which the Agency could sub-license freely to Member States? Or would it in most cases be possible to avoid entirely the expense and trouble of obtaining patents, as well as the dangers of failing to do so, by publicising each development with respect to which the Agency had appropriate rights so widely and fully that no other person could obtain a patent on it as his own invention,³⁵ provided that the Agency-subsidized inventor is contractually barred from obtaining any restrictive patents himself?

All in all the third approach seemed the most attractive, especially in relation to projects from which financially important developments were not to be expected; the second approach could be reserved for use in case it seemed desirable to secure a protective patent in particular circumstances. Aside from other advantages,³⁶ this solution made it possible to develop a generally acceptable patent clause for insertion into all routine research contracts, whether financed from the Agency's own budget or from an outside source such as the USAEC. With the latter it was agreed to insert into the Master Contract for U. S. Financing of Agency Research the following clause, which was consistent both with the Agency's new policy and that of the Commission:

"1. The Agency and the Commission hereby agree that all results of any research performed pursuant to this contract and any supplemental agreement thereto, including any inventions and discoveries arising out of it, shall be made available for the development and practical application of atomic energy for peaceful uses throughout the world. To accomplish this purpose it is agreed that the Agency and the Commission shall co-operate by prompt and extensive publication and by other appropriate means to prevent restriction of the free use of such results and further that the Agency, the Commission or any subcontractor concerned may obtain any patent or similar protection for such results, provided that the owner of such a patent undertakes to make the invention freely usable, without charge or any other restriction, throughout the world. Each party hereby waives and releases any and all claims

against the other party for compensation, royalty and award with respect thereto and to licenses and sub-licenses therein.

"2. The Agency and the Commission agree to assist each other in obtaining any patent or similar protection that either may wish to obtain under the conditions stated in paragraph 1 of this Article. Supplementary arrangements may be made to avoid any conflicting application for such patent.

"3. The Agency further agrees that it will include similar provisions in every subcontract with respect to any subcontractor.³⁷

The following clause is now inserted in all research contracts:³⁸

"(c) All results of the research project, including any inventions and discoveries arising out of it, shall be made available for the development and practical application of atomic energy for peaceful uses throughout the world. To accomplish this purpose it is agreed that the Agency and the Contractor shall co-operate by prompt and extensive publication and by other appropriate means to prevent restriction of the free use of such results and further that the Agency, the Contractor [or the USAEC],³⁹ or persons under the control of any of them may obtain any patent or similar protection for such results, provided that the owner of such a patent undertakes to make the invention freely usable throughout the world, without charge or any other restriction. The Agency and the Contractor hereby waive and release any and all claims against each other [and the USAEC] for compensation, royalty and award with respect thereto and to licenses and sub-licenses therein. The Agency and the Contractor shall assist each other [and the USAEC] in obtaining any patent or similar protection that any of them may wish to obtain under the above conditions; supplementary arrangements may be made to avoid any conflicting application for such patents.

"(d) The Contractor undertakes that a copy of the annexed form will be signed by every person who takes part in the research project and will be transmitted to the Agency.⁴⁰

The "annexed form", which must be signed by all persons collaborating in the research, refers to the contract itself and then provides:

"I agree that all results of my work, including any invention or discovery arising out of the research project and all reports submitted to the Agency on such research, shall be treated as provided for in the above-mentioned research contract (including any amendments and extensions thereto that may be executed). In particular, I agree that I will not publish or impart to anyone outside of the Agency and the Contractor any information concerning the results of the research project or any unpublished information received from the Agency, except under the conditions stated in that contract, and that I will apply for patents

or similar protection for any invention or discovery arising out of the research project only for the purpose and under the conditions stated in that contract and will also assist the Agency [and the USAEC]³⁹ in obtaining patents for such purpose."

As mentioned in the previous Section, after this policy regarding inventions and patents was adopted by the Secretariat⁴¹ with respect to research contracts, it has also been reflected in several agreements relating to joint research programmes as well as in those relating to the Monaco Laboratory.

31.1.6. Protective clauses

In some activities the Agency's only concern with respect to patents or other information of commercial value is that the organization should not cause damage (and thereby incur any liability) to the legitimate interests of a Member State or of any of its nationals.

Statute Article VII. F charges the Director General and the staff not to "disclose any industrial secret or other confidential information coming to their knowledge by reason of their official duties for the Agency." This statutory provision is brought directly to the attention of the staff by Provisional Staff Regulation 1.06.⁴²

The possible leakage of commercially valuable information through the Agency has always been a major concern in connection with the exercise of safeguards.⁴³ The Revised Safeguards Document⁴⁴ consequently contains the following provisions:

"13. In implementing safeguards, the Agency shall take every precaution to protect commercial and industrial secrets. No member of the Agency's staff shall disclose, except to the Director General and to such other members of the staff as the Director General may authorize to have such information by reason of their official duties in connection with safeguards, any commercial or industrial secret or any other confidential information coming to his knowledge by reason of the implementation of safeguards by the Agency.

"14. The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of safeguards, . . ."

Both these paragraphs are routinely incorporated by reference into all safeguards agreements.⁴⁵

When the Agency and the USAEC enter into agreements for the lease to a Receiving State of equipment, to which other persons (not parties to the arrangement) might have patent rights, a clause along the following lines is included in the trilateral Lease Contract:

"Unless expressly waived in writing by the Agency and the Commission, [the Government] agrees to indemnify the Agency, the United States,

the Commission, or persons acting on behalf of the Agency or the Commission, against liability, and resultant costs and expenses incurred, for infringement of any patent occurring in the utilization by [the Government] of the supplied material."⁴⁶

31.1.7. Disposition of particular inventions

Over the years, a certain number of inventions or discoveries were made by persons connected with the Agency through employment, contractual or other relationships. Naturally not all of these were patentable, and if some of them were, it is unlikely that any of these developments could have, even if optimally protected and exploited, earned great riches for their owner. In any event, with the single, early exception mentioned below, the Agency has consistently applied its policy of declining to profit from restricting the use of any invention.

(a) Staff member

A member of the Division of Health, Safety and Waste Disposal having made an invention in the course of his work for the Agency, the latter decided not to apply for a patent thereon. This decision was justified as follows in a memorandum by the Legal Division dated 8 November 1962:

"The Agency in order to foster the exchange of scientific and technical information on the peaceful uses of atomic energy, in accordance with Articles III, A. 3 and VIII, C of its Statute has adopted a policy of not seeking patents on inventions. It was felt that by obtaining patents for inventions the Agency would hinder rather than promote the wide use of inventions developed as a consequence of its activities. In addition, the Agency would be involved in considerable expense if it were to seek patents in all its Member States; and it is not the Agency's policy to seek additional income from the commercial exploitation of inventions. The Agency's responsibility to Member States is to ensure that any information developed out of the Agency's programme is freely accessible to all Member States and interested parties. In accordance with the Agency's policy as outlined above no patent protection should be sought on inventions in which the Agency has any rights. Any invention by staff members should rather be published and thus be freely accessible."

(b) Technical Co-operation Expert

A technical assistance expert provided by the Agency to the Korean Atomic Energy Research Institute requested that the Agency apply for a patent on an invention he had developed in the course of his work. In a letter to him, dated 7 October 1964, the Agency declined to do so and advised him of its general policy in this regard; moreover, referring to the technical assistance agreement with the Government, which foresaw consultations about publication, the Agency advised the expert to publish and thus deliberately to "inhibit...patentability".

(c) Consultant

On the basis of an invention developed by a consultant assigned by a Special Service Agreement⁴⁷ as an agricultural radioisotopes adviser in Burma, he applied for a patent from the British Patent Office and received a provisional application; on the termination of his assignment he sought to transfer this to the Agency. In a letter dated 28 September 1962 the Agency explained its refusal to pursue this application in practically the same words as used later in the letter quoted in paragraph (a).

(d) Research contracts

As described in Section 31.1.5, the Agency in August 1961 received an Austrian patent on an invention developed on the basis of one of its early research contracts. However, for the reasons explained above, it immediately permitted this patent to lapse through non-payment of the annual maintenance fee.⁴⁸

An investigator under an Agency research contract with the Hochschule für Bodenkultur asked the Agency whether he could apply for a patent on an invention developed in connection with that research. By a letter of 4 December 1963 the Agency advised him that he could apply, but only for the negative purpose specified in the applicable research contract clause; though the Agency would be prepared to assist in pursuing an application to that end, it would not cover any of the related costs.

In 1964 the Austria SGAE obtained an Austrian patent on an invention that was related to work it had performed under an Agency research contract. However, after a study of this matter, the Agency concluded that the invention had not arisen out of the contractual research and consequently the Agency would not be negligent in declining to assert any claim.

(e) Agency projects

No patentable invention developed under an Agency project has yet been reported to the Agency as required by the standard clause inserted into every Project Agreement.

31.2. COPYRIGHTS

31.2.1. Basic provisions

Though it is implied by the Statute, and in particular by Articles III. A. 3 and VIII. C, that the Agency should have an extensive publications programme,⁴⁹ no explicit provision whatsoever is made with respect to copyrights.

In addition to these only indirectly relevant portions of the Statute, and to the provisions of the Headquarters Agreement, the Privileges and Immunities Agreement and the Provisional Staff Regulations that are quoted or cited in Sections 31.1.2-3 with reference to the Agency's patent rights but which

are also pertinent to copyrights, Section 18 of the Headquarters Agreement⁵⁰ provides:

"(a) The Government recognizes the right of the IAEA freely to publish and broadcast within the Republic of Austria for purposes specified in its Statute.

"(b) It is, however, understood that the IAEA shall respect any laws of the Republic of Austria, or any international conventions to which the Republic of Austria is a party, relating to copyrights."

31.2.2. Need for copyrights

With respect to patents the Agency was able to adopt a general policy of disinterest and waiver, since its work only infrequently leads to the development of an invention whose commercial value would be likely to exceed the cost of securing patent protection. Furthermore most of the defensive functions of patents can be secured through prompt and extensive publication.⁵¹

The pursuit of such a policy is, however, not entirely feasible with respect to copyrights. Though the Agency is usually not interested in protecting its works from unauthorized republication, (except to protect the quality of these works and thus its reputation), if it is to publish directly or through an agent and to distribute its publications, it must make certain (and sometimes be able to prove) that it actually has all the requisite rights to the manuscript in question: to edit and change, to translate, to reproduce, to sell, to import and export.⁵² One problem therefore is to secure, for every work, this bundle of (copy-)rights from the author or derivative owner; another problem is how to certify to others (e. g., to distributors) that the Agency owns these rights and that third parties can thus safely deal with the publication without fear of infringing a superior title. Though the latter problem arises chronologically after the former, in reality the method by which the rights are to be acquired depends primarily on the requirements as to how this acquisition is to be certified - i. e., on the requirements concerning copyrights.

An incidental byproduct of the acquisition of copyrights is the very slight income the Agency earns from royalties secured from other publishers.⁵³

31.2.3. Right of the Agency to acquire and hold copyrights

31.2.3.1. Directly under the Universal Copyright Convention

Protocol No. 2 of the Universal Copyright Convention (UCC)⁵⁴ extends the protection provided for in Article II(1) and (2) of the Convention to "work published for the first time by the United Nations, by the Specialized Agencies in relation therewith, or by the Organisation of American States."

After the UN Legal Counsel had advised that the Agency is not a "specialized agency" within the meaning of the Convention on the Privileges and Immunities of the Specialized Agencies,⁵⁵ the Director General requested the view of UNESCO, under whose sponsorship the UCC had been concluded

and was being administered, on whether the Agency was covered by Protocol 2 and, if not, what steps might be taken to secure equivalent protection.⁵⁶ At the recommendation of UNESCO these questions were submitted to the Intergovernmental Copyright Committee established by UCC, at its fourth session in October 1959. On the assumption that the Agency did not fall under the Protocol, four alternative courses of action were suggested to the Committee - the first three by the Secretariat of the Agency and the last by that of UNESCO:⁵⁷

- (a) Modification of Protocol 2 to cover publications of the IAEA;
- (b) Formulation of a new protocol to the UCC;
- (c) Formulation of an independent copyright agreement to be submitted only to the Members of the Agency;
- (d) A recommendation by the Intergovernmental Committee to the contracting States of UCC that they take the necessary measures, in accordance with their national legislation, to extend the protection of Protocol 2 to the Agency.

The Committee, in its concurrent session with the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union), assumed the validity of the Agency's own statement that it was not a specialized agency and therefore was not covered by the Protocol, and in that light examined the following two questions:

- (i) Who is the original owner of copyright in works published by inter-governmental organizations? It concluded that in view of the great diversity of national legislation it would not be realistic to regulate this question by an international convention.
- (ii) What protection is available for such works under domestic laws and international treaties? It concluded that the works of even those inter-governmental organizations not named in Protocol 2 are, in most instances, effectively protected, in particular by Articles 4 and 5 of the Berne-Brussels Convention and by Article II of the UCC.⁵⁸

In spite of these conclusions, the Committee resolved to recommend "that the possibility of adding the names of other intergovernmental organizations to those mentioned in the present Protocol to the Universal Copyright Convention be considered in connexion with the next revision of said instrument".⁵⁹

Thus the Agency was unable to secure direct coverage by Protocol 2 of the UCC, and up to now no revision of that instrument has been adopted.

31.2.3.2. Under Austrian law

As the Agency has not been able to secure any internationally established copyright status with respect to its publications, it has had to rely on the rights granted to it by national laws - and through them on any applicable international conventions. Since all Agency documents and publications are now issued in Austria, it is the law of that State that is of primary importance to it.

In Austria, under the terms of Section 16 of the Headquarters Agreement, the Agency has sufficient legal status to enable it to secure copyrights on the same basis as juridical persons established by the laws of that country. Though under Austrian law⁶⁰ only a natural person can be regarded as an author and thus secure an "original" copyright, the Agency, like other legal persons, can enjoy a "derivative" copyright which for most purposes is as extensive as an original one.

To obtain such derivative rights, the Agency must obtain either:

- (a) An express and exclusive contractual assignment from the actual author; or
- (b) An implied assignment which, as to third parties, is effected by not indicating the name of the author in the publication (which for instance is true of all corporate publications of the Secretariat and even of most produced by individual staff members), whereupon the publisher or editor is regarded by law as the person competent to administer the copyright on behalf of the anonymous author and to exercise and assign all rights in his name.

Through the sometimes overlapping use of these two devices, i. e., express assignment from authors (as described in Section 31.2.4) but anonymous publication, the Agency receives sufficient protection for its publications within Austria.

31.2.3.3. Derivatively under international conventions

Austria is a party to both the Berne Convention for the Protection of Literary and Artistic Works, as revised at Brussels on 26 June 1948,⁶¹ and to the 1952 Universal Copyright Convention.⁶² Both these treaties provide, in general, that works first published within any of the contracting States are to enjoy in all other such States the same protection as these States accord to works first published in their own territory.

Both Conventions also have special rules concerning publications by nationals of the contracting States - which for some purposes extend and for others (e. g., vis-à-vis the author's own State) restrict the territorial protection. These latter provisions cannot, however, be applied to the Agency: because it is not a "national" of any State, and also because under Austrian law (as well as under the law of many other countries) a juridical person cannot secure an original copyright as an author. Though Protocol 2 of the UCC can be interpreted as securing original copyrights to the inter-governmental organizations covered by it (a question not yet entirely settled), the Agency is not covered by the Protocol.⁶³

In compliance with Article III of the UCC, the Agency uses the circled C symbol, accompanied by its name and the year of first publication, which it precedes or follows by a short legend:

"©IAEA, 19..

"Permission to reproduce or translate the information contained in this publication may be obtained by writing to the International Atomic Energy Agency, Kärntner Ring 11, A-1011 Vienna I, Austria.

"Printed by the IAEA in Austria
.....19.."

This material is included in all publications meant for sale.⁶⁴ It is not used in most publications distributed free of charge (such as information brochures about the Agency), nor in the documents of any Agency organs.

31.2.4. Acquisition of rights

Under Austrian law the contract by which an author assigns the rights deriving from his original copyright need not be in any particular form, though it should explicitly indicate the type of rights assigned. It is the function of the Editing and Publication Unit of the Secretariat to safeguard, in consultation with the Legal Division, the Agency's interest in publication rights.⁶⁵

From staff members, the Agency acquires a copyright to all works produced "on behalf of the Agency during [the] term of employment", by incorporating into all Letters of Appointment⁶⁶ the entire Staff Regulations, which include Provisional Regulation 1.07 (quoted in Section 31.1.2).

With respect to consultants, the Special Service Agreements by which they are employed⁶⁷ provide:

"RIGHTS TITLE AND INTEREST

"All rights, title and interest, including, without limitation, all copyrights and patents, in and to any material produced and invention developed by the subscriber in the performance of his functions under this agreement shall vest exclusively in the Agency (and the subscriber shall have no personal right, title or interest whatsoever therein)."

Participants at Agency meetings whose papers are to be published as part of the proceedings are requested to sign a paper⁶⁸ including the following assignment:

"I hereby assign to the International Atomic Energy Agency the right to publish the above-mentioned paper, and certify that no other rights have been granted which could conflict with the rights hereby granted to the Agency." ⁶⁹

Persons who receive remuneration for preparing a manuscript or translation for the Agency are required to sign the following assignment:

"Title rights

"The title rights, copyright rights and any other rights whatsoever comprised in any material published under the provisions of this Agreement shall be exclusively vested in the Agency."

The Agency's standard research contracts include the following provision:

"(a) The reports required to be submitted to the Agency shall belong to the Agency and the Contractor hereby assigns the right to copy-right these reports exclusively to the Agency. This assignment includes the right of publication of these reports and of any results of the research project in any form and in any language and the right to transfer to third parties any of the rights hereby granted.

"(b) The Contractor and persons on his staff may publish any results of the research project, provided that any such publication shall include an appropriate acknowledgement of the contribution of the Agency [and the USAEC] to the research project. The Contractor shall not publish any unpublished information received from the Agency."⁷⁰

NOTES

- 1 WLM Doc. 2(Add.9). This proposal was an alternative to one suggested by Spain in a communication submitted to the Working Level Meeting (WLM Doc. 3), to the effect that the Agency should be required to license patents to its Members, against appropriate compensation.
- 2 WLM Doc. 12(Rev.1), second part, para.2.D(a); WLM Doc. 14(Rev.1), first part, 3.D.
- 3 IAEA/CS/Art. XI/Amend.5, para.3; IAEA/CS/OR.28, pp.7-10.
- 4 INFCIRC/6/Rev.2. Section 24.1.3.
- 5 IAEA/PC/W.39(S); IAEA/PC/OR.43, p.4, and /OR.44, p.4.
- 6 AM.II/11, para.15; originally SEC/INS/65, para.14. Section 24.3.3.
- 7 INFCIRC/15, Part I; Section 28.2.
- 8 INFCIRC/9/Rev.2; Section 28.3.
- 9 This is also the conclusion reached by Einhorn and Goldman *op. cit.* Annex 5, No.15.
- 10 Section 31.1.5.
- 11 To this effect, Böhm, *op. cit.* Annex 5, No.6 particularly in Part I, pp.541-542. Also, Fischer, *op. cit.* Annex 5, No.20, at pp.620-621. Hay, *op. cit.* Annex 5, No.29, takes a slightly different approach.
- 12 Agreement of 27 June 1963 between the IAEA and Austria for Assistance by the Agency in Furthering a Research Project, Section 7, 490 U. N. T. S. 351 (Agency Registration No. 162).
- 13 This assistance consisted of acting as broker for the sale of 200 grams of ²³⁵U contained in 90% enriched uranium, from the USAEC to the Austrian SGAE.
- 14 Chapter 17.
- 15 Section 19.3.2.
- 16 Sections 17.3, 17.4 and 17.8.
- 17 For example, INFCIRC/82, Part II, Section 8.
- 18 For example, *idem*, Section 7.
- 19 Section 17.2.2.
- 20 NPY Project (Section 19.3.2.2), INFCIRC/55, Section 24. This was based on the NORA Project Agreement (Section 19.3.2.1), INFCIRC/29, Part II, Section 20.
- 21 INFCIRC/56, Section 14; Section 19.3.2.3.
- 22 INFCIRC/64, Article 4(c); Section 19.3.2.4.
- 23 Section 19.3.1; INFCIRC/38.
- 24 Section 19.1.3; INFCIRC/51 and 114.
- 25 Section 19.1.2; INFCIRC/27, para. 8(b) and INFCIRC/129, Article 7(b).
- 26 Section 19.2.1.
- 27 See the various formulae proposed by Böhm, who had previously served as a consultant on this subject to the Agency, at the conclusion of Part III of his study (*op. cit.* Annex 5, No.6).
- 28 Cf. Einhorn and Goldman, *op. cit.* Annex 5, No.15 at p.252.
- 29 Sections 19.2.2.2 and 25.7.4.1.
- 30 See Article IV of the first ad hoc contract of this type concluded between the Agency and USAEC on 16 June 1960 for the conduct of calcium-47 research (Agency Registration No. 23.8).

- 31 No. 216976 of 15 December 1960, Class 85c 1/05, Verfahren zur Herstellung von Ionenaustauschern, insbesondere für die Adsorption von Ionen radioaktiver Elemente, filed 28 April 1960 (A 3228/60), inventors: Dr. Ortwin Bobleter and Dr. Karl Buchtela.
- 32 Austria is a party to the 1911, 1925 and 1934 revisions of the 1883 Convention, to be found respectively in US Treaty Series 579, 74 L. N. T. S. 289 and 192 L. N. T. S. 17.
- 33 GC (IV)/116, para. 417.
- 34 Section 25.7.2.
- 35 This possibility is discussed by Böhm, *op.cit.* Annex 5, No. 6, Part II, p.15.
- 36 Which have, *inter alia*, led the United Nations to adopt a quite similar policy: see Memorandum to the Bureau of Operations and Programming, UNDP, UN Juridical Yearbook 1966 (ST/LEG/SER.C/4), pp.225-226, para. 2.
- 37 INFCIRC/89, Article IV.
- 38 A much simplified version with, however, the same objective, is used for "cost-free" research contracts (Section 19.2.2.3).
- 39 The bracketed words appear only in the sub-contracts relating to USAEC financed research (Sections 19.2.2.2 and 25.7.4.1).
- 40 Section 19.2.5. Aside from this contractual provision, an explanatory paragraph appears in the Section on "Inventions and Discoveries" of the "Information for Project Officers about the Research Contract Programme" as issued by the Division of Research and Laboratories in May 1964.
- 41 Though potentially a most important policy question, the usually jealous and alert Board of Governors has never intervened in or sought to guide the Agency's approach to patents. Nor has the Director General himself formally promulgated this policy, though he has done so implicitly by approving the standard research contract form and by informing the Board, in paras.36 and 37 of his Bi-monthly Report for May-June 1960, of the approach the Secretariat had decided to follow.
- 42 INFCIRC/6/Rev.2.
- 43 Section 21.9.2.2.
- 44 INFCIRC/66/Rev.2. Section 21.4.1.
- 45 For example, INFCIRC/98, Section 21.
- 46 INFCIRC/29, Part I, Section 25.
- 47 Section 24.9.2.1.
- 48 Letter of 20 April 1961 (*i.e.*, before the patent had been formally granted) to the Agency's patent lawyer.
- 49 Section 20.2.
- 50 INFCIRC/15, Part I. The cited provision was briefly discussed at the 8th Meeting of the Board of Governors.
- 51 Section 31.1.5.
- 52 For example, American law restricts the importation into the United States of English language books by an American author printed outside the country (17 U.S.C. Sec:16). Therefore the Agency must make sure that the contributions of Americans to its publications do not result in subjecting these to such restraint.
- 53 For example, the \$130 reported in GC(X)331, Part IV, Statement IV.
- 54 216 U.N.T.S. 133, at p.190.
- 55 Section 28.3.1, note 108.
- 56 Intergovernmental Copyright Committee doc. IGC/IV/12, para.1.
- 57 *Idem*, paras. 4 and 5.
- 58 IGC/IV/18, section XIII; reproduced in UNESCO/CUA/98, section XIII. The Director General reported these conclusions to the Boards of Governors in para. 59 of his Bi-monthly Report for September-October 1959.
- 59 IGC/RES/34(IV), reproduced in UNESCO/CUA/98.
- 60 BGBl.111/1936; BGBl.206/1949; BGBl.106/1953.
- 61 331 U.N.T.S. 217.
- 62 216 U.N.T.S. 133.
- 63 Section 31.2.3.1.
- 64 Section 20.2.3.
- 65 GC (III)/75, para. 124(d).
- 66 Section 24.9.1.1.
- 67 Section 24.9.2.1.
- 68 AM.VII/1, para. 33. Section 20.2.2.
- 69 Guide for the Organization of IAEA Scientific Conferences, Symposia and Seminars, Annex 3, Form Letter "B".
- 70 Section 19.2.5. *Supra* note 39.

PART G.
PROCEDURES

CHAPTER 32. REPORTS

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III.B.4, III.B.5, V.E.4, V.E.6, VI.J, IX.G, XII.C, XVI.B.1
Relationship Agreement with the United Nations (INFCIRC/11, Part I.A), Article III
General Conference Rules of Procedure (GC(VII)/INF/60) 10, 12(g)
Board Rules of Procedure (GOV/INF/60 and /Mod.2) 8(a), 15, 18
General Conference Resolutions:
 Annual Reports to UNGA (GC(IV)/RES/61)
 Annual authorization of report to UNGA (e.g., GC(X)/RES/205)
 Annual Reports to ECOSOC (GC(II)/RES/24)
 Annual authorization of report to ECOSOC (e.g., GC(X)/RES/206)
 Relating to the safeguards system (e.g., GC(IX)/RES/186, para. 3)
Financial Regulations (INFCIRC/8/Rev.1) 9.01, 12.04
Provisional Staff Regulation (INFCIRC/6/Rev.2) 13.02
Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency (GC(IV)/RES/65, Annex), para. 20

32. 1. PERIODIC GENERAL REPORTS

32. 1. 1. Director General's Periodic Reports to the Board

Rule 8(a) of the Provisional Rules of Procedure of the Board originally required the Director General to "report to the Board at least every two months on all major developments in the Agency's work".¹ In June 1964 the Board, in view of its less intensive schedule of meetings, the by then routine nature of most of the Agency operations reported on, and to save the Secretariat from unnecessary work (as well as, though this was not stated, to recognize the improved relations that had been established with the second Director General), amended this Rule to specify merely "not less than four reports each year on developments in the Agency's work".² It was deliberately not provided that the reports (formerly called "Bi-monthly" but henceforth "Periodic")³ be submitted at quarterly intervals, so as to enable the Director General to adjust the periods covered to fit the dates of the series of meetings of the Board. In June 1968 this Rule was once more amended, as an economy measure and in view of the fact that the Board really had only two substantive series of meetings a year; henceforth only "two reports each year..." were called for.⁴

The Board has never given the Director General a list of subjects to be covered in his reports. However, from time to time it has especially instructed him to include some item on an ad hoc or regular basis (e.g., attendance by members of the Secretariat of any outside meeting⁵), or it has asked for information on particular types of transactions (e.g., the supply of small quantities of nuclear materials under the authority it has delegated

to the Director General,⁶ or on safeguards inspections carried out⁷) which he has found it convenient so to include. In addition the General Conference each year requests the Director General to submit to the Board periodic statements of advances made from the Working Capital Fund,⁸ and occasionally it has made other requests which the Director General was able to honour conveniently by using his Periodic Reports. Financial Regulation 9.01⁹ requires the Director General to inform the Board, at the meeting next following any short-term investment of funds, of any such transactions he has made, and this is done in the Periodic Report.¹⁰ Finally, these Reports are also used to communicate to the Board any action relevant to the Agency taken by a UN organ (including recently the reports of the Joint Inspection Unit) or by any other international organization.¹¹

The following items are routinely covered (those marked with an asterisk being almost always included), though recently reports have tended to become more concise:

GENERAL

- New Members
- General Conference
- Credentials of Governors
- External relations*
- United Nations and specialized agencies*
- Relations with intergovernmental organizations

TECHNICAL ASSISTANCE AND TRAINING

- Technical assistance*
- Training*
- Special Fund
- United Nations Development Programme*

NUCLEAR POWER AND REACTORS

- Nuclear power*
- Reactor research*
- Reactor physics
- Reactor safety and economics*
- Nuclear fuels and equipment*
- Desalination

ISOTOPE AND RADIATION SOURCES

- Agriculture*
- Radiation biology
- Hydrology
- Chemistry
- Nuclear medicine*
- Industry

HEALTH, SAFETY AND WASTE MANAGEMENT

RESEARCH AND SERVICES IN THE PHYSICAL SCIENCES

Nuclear data
 The Laboratory*
 Physics
 Chemistry

SAFEGUARDS AND INSPECTION

ORGANIZATION AND ADMINISTRATION

Personnel matters*¹²
 Financial matters*
 Legal matters*
 Public information

ANNEXES

Tentative Schedule of Agency Meetings to be held between _____
 and _____*
 Meetings Attended by Agency Representatives*
 Publications Issued*
 The Agency's Participation in the UN Development Programme for 19__ :
 Changes approved by the Co-administrator of UNDP between _____
 and _____
 Research Contracts: awarded or renewed
 Summary of Work Carried out in the Laboratories
 Financial Matters*
 Advances to the Working Capital Fund as at _____
 Outstanding Contributions to the Regular Budgets for the years 1958-
 19__
 Contribution to the 19__ Regular Budget as at _____
 Voluntary Contributions Pledged to the General Fund for 19__ and
 19__
 Investments held by the Agency on _____

Provisional Procedural Rule 15 of the Board requires that these reports be routinely included in the agenda of each series of Board meetings, and this procedure was specifically reaffirmed by a decision of the Board in September 1962. However, they are only discussed if any Governor wishes to raise a point. The only action taken on the reports themselves is for the Board "to note" them, and even this formality is not observed consistently; occasionally the Board may take action with respect to some specific item referred to. To reflect this situation these reports, which were originally issued in the GOV/... series (consisting of documents on most of which the Board is expected to take action), have since September 1962 been issued in the GOV/INF/... series (comprising documents prepared primarily to provide the Board with information).¹³

Since the reports are issued as documents of the Board, they are marked for "RESTRICTED Distribution" and for "Official Use Only".¹⁴

32.1.2. Board's Annual Report to the General Conference

Statute Article VI. J requires the Board to "prepare an annual report to the General Conference concerning the affairs of the Agency and any projects approved by the Agency". Article V. E. 4 requires the Conference to consider that report.

Except for the statutory requirement that the report shall take account of "any projects approved" (which evidently means Article XI projects),¹⁵ no general requirements for the contents of these reports have been established. However, particular requirements appear in a number of instruments: thus, in each of the three Resolutions the General Conference passed in relation to safeguards it "invited" the Board to include in its future annual reports an account of the application of the control system;¹⁶ in the Regulations for the Registration of Agreements, the Board itself provided that its annual report "shall include a statement on the operation of the provision of Article XXII. B of the Statute";¹⁷ similarly, in the Provisional Staff Regulations the Board has required itself to report annually to the General Conference all amendments the Board has made to the Staff Regulations¹⁸—but this requirement has only once been strictly met.¹⁹ In considering what items to include in the Board's annual report, account is also taken of the fact that this report also serves (with a supplement) as the Agency's report to the General Assembly.²⁰

Statute Article VI. J requires that the Board's annual report be circulated to Members at least one month before each regular session of the General Conference, but Procedural Rule 10 of the Conference²¹ increases this period to at least two months. Since the General Conference is normally convened in September,²² the report must be issued in July, and thus it has proven convenient for the report to cover the period from 1 July to 30 June. The Board itself considers the draft of the report at its series of meetings in June. Since the Board's Provisional Rule 18²³ requires the circulation of this draft "to each Governor as far in advance as possible, and in any case not less than 45 days before the meeting at which [it is] to be considered", the first version is distributed by the Director General in April with tentative data as of the beginning of that month. The report is then completed at the end of June after the Board has considered the Director General's draft and has made or instructed him to make changes. Except for the single intervention of the Board each June, the preparation of the report is thus left to the Secretariat.

In spite of the Secretariat's major role in writing these reports, they are still, technically and actually, products of the Board — and therefore must reflect the consensus of a political body. This in effect precludes the inclusion of critical evaluations, except on entirely non-controversial points, or the admission of the failure or the merely indifferent success of certain projects or indeed entire programmes — such as might, but of course only rarely do, appear in a presentation by an individual heading up the administration of an organization. But aside from this bland style, there are other

grounds on which these reports can be faulted, as not constituting either a useful account of a year's work or a reliable, systematic record of all significant developments. The principal reason for this weakness is that the reports are technically rather than administratively oriented – presumably on the doubtful assumption that they are read more by scientists than by politicians and bureaucrats. Thus important institutional changes or legal developments are often mentioned only in passing, if at all. Since each year's report tends to emphasize different points, it is difficult to compare programmes from year to year, or even to trace the fate of particular projects. These obstacles are accentuated through the lack of a subject-matter index, and the need to make each report straddle two half fiscal years²⁴ so that comparisons with budget estimates are vitiated. In other words, a student restricted to these reports would have difficulty in securing the complete and systematic information about the Agency that he could obtain about the United Nations from the Secretary-General's reports.

Conference Procedural Rule 12(g) requires the inclusion of the Board's annual report in the provisional agenda of the General Conference.²⁵ It is traditionally included under a heading: "General Debate and Report of the Board of Governors for 19..-..". Just before the Second Conference was convened, the Board considered whether it should designate some of its members to present and defend its report and the Board's other proposals; however, this procedure was not adopted and thus no formal presentation or defence of the report is made, though at the past few Conferences the Director General has intervened at the end of the General Debate to comment on some of the points and questions raised, particularly insofar as they related to the work of the Secretariat.²⁶ The General Conference takes no formal action to accept or even to note the report.²⁷

The Board's reports are issued as regular, unrestricted GC(..)/.. documents.²⁸

32.1.3. Director General's statement to the General Conference

Since its second regular session, the agenda of the General Conference has always included a "Statement by the Director General". This item was introduced at the suggestion of the first Board, and it was left to the Director General to determine the scope and content of his presentation. However, it was understood that it should not be a "report" competing with that submitted by the Board.²⁹

The Director General's statement itself is never debated, but it is frequently referred to later during the General Debate.

32.1.4. Agency's Annual Report to the UN General Assembly

Pursuant to Statute Article III.B.4 and to Article III.1(a) of the Relationship Agreement with the United Nations,³⁰ the Agency annually submits a report to the UN General Assembly.³¹ Pursuant to Statute Article VI.J this report is prepared by the Board and according to Article V.E.6 it must either be approved by the General Conference or returned to the Board with recommendations.³²

During its first special session the General Conference, on the recommendation of the Board, authorized the Board "to prepare and submit a report on the activities of the Agency to the General Assembly of the United Nations during its twelfth session [the then current one] and as soon as possible after the entry into force of the relationship agreement with the United Nations".³³ This procedure amounted to a waiver by the Conference of its right, or to a delegation of its responsibility, to approve the report — and thus a frequently followed precedent was established. The Board thereupon submitted a brief report, dealing with the establishment of the Agency and the initial meetings of its organs.³⁴

When the Board was considering the report to be presented to the General Assembly on the Agency's first year of operation, it decided that this should be separate from the report it was required to submit to the General Conference, for the latter would refer to many internal and administrative matters of no interest to the United Nations. However, it decided that the report to the Assembly might be abstracted from the report to the Conference, and appointed an ad hoc committee to advise the Director General on how to do this.³⁵ Through the Resolution by which the Second General Conference approved this report, it authorized the Board to expand the Preface to include information about later developments (i. e., since 30 June 1958) — thus once more delegating a minor part of its duty under Statute Article V. E. 6 to approve the reports to be submitted to the Assembly.³⁶ The Board in turn delegated this task to the Director General,³⁷ that is, it made no provision for reviewing the draft to be prepared by him but authorized him in advance to submit it directly to the United Nations. Substantially the same procedure was repeated with respect to the report for 1958-59, except that no ad hoc Board committee was utilized.³⁸

The Fourth General Conference decided, on the recommendation of the Board:³⁹

"that the Agency's annual report to the United Nations General Assembly shall henceforth normally consist of the Board's annual report to the General Conference together with a supplement dealing with developments, including action taken by the General Conference, that have occurred between the end of the period covered by the Board's report and the end of the session of the General Conference at which it was considered."⁴⁰

Consequently it requested the Board to prepare a supplement to the annual report the latter had submitted to the Conference for 1959-60, which supplement, "together with that report, shall constitute the Agency's report to the United Nations for the same period".⁴¹ This latter request has been repeated each year, and constitutes at the same time the approval of the bulk of the report and a waiver or delegation with respect to the supplement.⁴² In turn the Board regularly, at its first meeting after its annual reconstitution,⁴³ delegates to the Director General the task of preparing the supplement and of submitting it to the United Nations together with the main report.

In the light of this procedure, each of the Agency's reports to the General Assembly consists (except in the first years) of an unrestricted General

Conference document (GC(...)/...) supplemented by an unrestricted Information Circular (INFCIRC/...).⁴⁴

In 1962 the Director General proposed to the Board that the preparation of the annual supplement be discontinued, with the thought that he would present any necessary supplementary information orally when he submitted the report to the General Assembly.⁴⁵ The Board did not accept this proposal.⁴⁶

Though the General Assembly itself has not instructed the Agency as to the contents of its reports, the 1968 Conference of Non-Nuclear-Weapon States invited the Agency to comment in its annual reports on the implementation of the Conference's recommendations.⁴⁷

32.1.5. Agency's Annual Report to ECOSOC

Statute Article III.B.5 requires the Agency to "submit reports to the Economic and Social Council and other organs of the United Nations on matters within the competence of these organs", and pursuant to Article XVI.B.1 this requirement was incorporated almost verbatim into Article III.1(c) of the Relationship Agreement with the United Nations.⁴⁸

The Agency was initially very conscious of its primary and, among international organizations, unique privilege to report to the United Nations through the General Assembly, and exceptionally through the Security Council.⁴⁹ It was therefore thought that its obligation to ECOSOC should be met by means of ad hoc reports on special matters. However, in July 1958 ECOSOC adopted a Resolution reminding the Agency of the Council's obligation to co-ordinate activities among the United Nations and the organizations related to it and hoping that the Agency "will find it appropriate to submit annually for the use of the Council, at its second session each year, a report on matters within the competence of the Council".⁵⁰ The Board took no decision on this request but merely referred it to the General Conference, where it was considered in the Administrative and Legal Committee.⁵¹ In a covering note the Director General stated his view that while the Agency was not legally bound (by its Statute, by the Relationship Agreement or by the ECOSOC Resolution) to submit periodic reports, if the Agency desired to participate effectively in EPTA, in the Special Fund and in ACC, then submission of regular reports would become practically necessary; such a report should, however, not duplicate that submitted to the General Assembly but need merely supplement it, and should concentrate on questions of direct interest to ECOSOC.⁵²

The principal difficulty faced by the Conference in responding favourably to ECOSOC's request arose from a statutory requirement combined with a problem of timing. The Council's second session each year, for which the reports were requested, is usually held in July; thus a reasonably current report to the Council would have to be prepared during the early months of the year - but Statute Article V.E.6 requires the General Conference to "approve reports to be submitted to the United Nations as required by the relationship agreement between the Agency and the United Nations". Though some representatives argued that this was a function that the General Conference could delegate to the Board, others felt that this would create a

dangerous precedent tending to upset the tenuous statutory balance of power between the organs.⁵³ The Conference temporized and, on the advice of its Administrative and Legal Committee, decided in principle that a report to ECOSOC would be submitted each year at its second session — but it only gave the Board authority to submit the report in 1959.⁵⁴ When the Board later considered whether it should request similar authority for 1960,⁵⁵ some Governors proposed that a standing authority be sought; however, this was opposed on the ground that such an initiative should come from the General Conference. The Third Conference itself, responding to a warning that each such grant of authority should be carefully examined lest it constitute a precedent,⁵⁶ again only authorized submission of the 1960 report.⁵⁷ Since then the authorization has been requested and granted each year without further debate.⁵⁸

One argument that was apparently not considered by the General Conference in deciding on the extent to which it is required to intervene in the submission of reports to ECOSOC, is that Statute Article V.E.6 refers only to "reports to be submitted to the United Nations as required by the relationship agreement". Since it is generally agreed that no annual reports to ECOSOC are "required" by that Agreement, it appears that these reports are merely submitted pursuant to a resolution of the General Conference and are therefore not subject to the statutory approval requirement.

As a result of the above-described compromises, the routine steps required for the submission of the Agency's annual report to ECOSOC now consist of:

- (a) A reminder by the Director General to the Board to seek authority to submit next year's report;
- (b) The Board's decision to seek the required authority;
- (c) Consideration and approval of the request by the Plenary of the General Conference;
- (d) Preparation by the Director General of a draft of the report;
- (e) Consideration by the Board of the draft at its series of meetings in February;
- (f) Revision and up-dating of the draft report by the Director General with data up to 31 March;
- (g) Submission of the report to ECOSOC, via the UN Secretariat.

In 1962 the Director General proposed to the Board that the separate report to ECOSOC should be abolished, and that instead the Agency submit the Board's latest report to the General Conference (which would at its consideration by the Council next July be just over a year out of date) with a short supplement bringing the latter up to date with respect to items of particular interest to ECOSOC. The Board did not accept this suggestion.⁵⁹

The Agency's annual reports to ECOSOC cover periods from 1 April to 31 March, and are issued as documents in the unrestricted INFCIRC/. . . series.⁶⁰ Their structure has increasingly been adjusted to meet the requests for standardization addressed by the Council to the various organizations reporting to it;^{60A} however, in 1969 this rather brief analytical summary was supplemented by an illustrated addendum: "Atomic Energy in the Developing Countries: The 1968-69 Programme".^{60B}

32.2. ROUTINE SPECIALIZED REPORTS

32.2.1. Annual report on technical assistance

Paragraph 20 of the Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency⁶¹ requires the Director General to submit to the Board annually a report on all technical assistance furnished by the Agency, either from its own resources or from EPTA (now UNDP/TA).

The Director General⁶² submits this report covering the previous calendar (which is also the Agency's financial) year, for consideration by the Board at its series of meetings in June. In addition to the coverage specified in the Guiding Principles, the report also includes information on Special Fund and funds-in-trust projects.⁶³

Thereafter the Board routinely requests the Director General to transmit the report to the General Conference for information. It is issued as an unrestricted document in the GC(..)/INF/... series.⁶⁴

32.2.2. Materials delivered by Member States

Statute Article IX.G requires the Agency to report periodically to the membership the quantities of nuclear materials delivered by any Member from the amounts that it has notified the Agency it is prepared to make available.

The Secretariat has for some years published this information, at somewhat irregular intervals, as unrestricted document INFCIRC/40. Each time the entire information as to past deliveries has been cumulated and a complete revision of the document issued.⁶⁵

For the reasons indicated in Section 16.3.1, the information on deliveries is not restricted to nuclear materials as to which a formal notification of availability has been made. In addition, data is included on certain non-nuclear materials (heavy radioisotopes) and on nuclear materials not yet delivered but contracted for under agreements in force but not yet executed.

32.2.3. List of agreements registered

Paragraph VI of the Board promulgated Regulations for the Registration of Agreements requires the Director General periodically to supply Member States and the UN Secretary-General with statements of agreements registered, indicating dates and numbers of registration.⁶⁶

Initially these statements were issued in the INFCIRC/... series,⁶⁷ but in 1965 a cumulative list up to 31 December 1964 was published as No. 3 in the Agency's Legal Series, which is updated and re-issued from time to time.⁶⁸ While these lists primarily give data as to registration with the Agency, some information as to registration or filing and recording with the United Nations⁶⁹ is also included.

32.2.4. The Accounts

Financial Regulation 11.04⁷⁰ requires the Director General to submit the annual accounts to the External Auditor(s) and to the Board, not later than

31 March following the end of the financial year (i. e. , the calendar year). Regulation 12.04 requires the External Auditor(s) to transmit a report on these accounts to the Board, and for the latter to transmit this report, together with its observations, to all Member States not less than six weeks before the opening of the annual session of the General Conference.⁷¹

Thus each year a document is published in the unrestricted GC(.)/. . series,⁷² containing:

- (a) The report of the Director General on the accounts for the previous fiscal year, with statements and schedules;
- (b) The report of the External Auditor to the Board;
- (c) The report of the Board to the membership and the General Conference.

32.2.5. Annual staff list

In 1960 the Board requested the Director General to issue annually, in the unrestricted INFCIRC/. . . series, a list of all staff members as of 30 June.⁷³

This list is annually issued as a revision of INFCIRC/22.⁷⁴ It is divided according to the Departments, Divisions and Offices of the Secretariat and indicates, for each staff member, his name, grade and nationality and whether or not he has a permanent or a probationary contract.⁷⁵ Persons holding contracts of six months or less are not listed. Since 1966, the document also includes summary tables showing for those staff members whose posts are subject to geographical distribution,⁷⁶ the number of each nationality in each grade, and similar data for those among them who hold permanent or long (5 years or more) fixed-term appointments.

32.2.6. Annual list of non-governmental organizations with consultative status

Paragraph 13 of the Rules on the Consultative Status of Non-Governmental Organizations with the Agency⁷⁷ requires the Director General to submit annually to the General Conference a list of the organizations to which such status has been granted.

Such lists were issued in the unrestricted GC(.)INF/. . series for the Third, Fourth and Fifth Conferences.⁷⁸ Since then the Board has made no further grants of consultative status and no lists have been published.⁷⁹

32.2.7. Membership list

From time to time the Secretariat issues an up-to-date list of the Members of the Agency, as a revision of the unrestricted document INFCIRC/2.⁸⁰

Approximately once a year the Secretariat issues a cumulative document in the unrestricted INFCIRC/. . . series reporting on all actions taken by States (including Non-members) in connection with the Statute itself and with all amendments approved by the General Conference.⁸¹

32.2.8. Technical activities

Though not required by any specific rule, the Secretariat has since 1964 annually issued a report in the Technical Reports Series, titled IAEA Laboratory Activities,⁸² covering the work of the Laboratories in Vienna and at Seibersdorf, the International Laboratory of Marine Radioactivity in Monaco, the International Centre for Theoretical Physics in Trieste and the Middle Eastern Regional Radioisotope Centre for the Arab Countries in Cairo.⁸³

Each year the Secretariat similarly issues a volume of summary reports on all research contracts⁸⁴ completed during the previous year, including literature references.⁸⁵

32.3. EXTRAORDINARY REPORTS

32.3.1. Non-compliance with safeguards

Statute Article XII. C requires Agency inspectors to "report any non-compliance [with safeguards obligations] to the Director General who shall thereupon submit the report to the Board of Governors".⁸⁶ Paragraph 12 of the Inspectors Document⁸⁷ permits a State that disagrees with the report of the Agency's inspectors "to submit a report on the matter to the Board of Governors". If the Board finds any non-compliance to have occurred, Statute Article XII. C requires it to "report the non-compliance to all members and to the Security Council and General Assembly of the United Nations", and the latter part of this requirement is incorporated into Article III. 2 of the Relationship Agreement with the United Nations.⁸⁸ Unlike other reports required to be submitted to the United Nations,⁸⁹ Statute Article V. E. 6 specifies that these need not be submitted to the General Conference for prior approval.

No reports have as yet been made under any of these provisions.

32.3.2. To the Security Council

In addition to the reports referred to in the previous Section, Statute Article III. B. 4 requires the Agency to submit reports "when appropriate, to the Security Council" and specifies that "if in connexion with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security". Pursuant to Statute Article XVI. B. 1 this requirement is included in Article III. 1(b) of the Relationship Agreement with the United Nations.⁹⁰

The Agency has not promulgated any rules regarding the making of such reports or notifications, and none have yet been made.

NOTES

- 1 GOV/INF/32 or GOV/INF/60. Section 8.4.1.
- 2 GOV/INF/60/Mod.1.
- 3 Designations invented by the Secretariat, and not appearing in the text of any Rule.
- 4 GOV/INF/60/Mod.2, quoted in Section 9.3.2.3.
- 5 Section 9.3.6(f) and note 120 thereto. Also required to be included in early reports were summaries of requests for technical assistance, showing the action taken by the Secretariat on each of them (Board decision of 17 September 1958) - but these were dropped when the processing of such requests was placed on a more regular basis (Section 18.2).
- 6 Section 17.3.
- 7 Section 21.8.2.5(c).
- 8 Section 25.4.1; e.g., GC(XII)/RES/244, para.3.
- 9 INFCIRC/8/Rev.1.
- 10 Section 25.7.5.
- 11 Sections 12.2.2.4 and 25.8.3.
- 12 This portion always includes a tabulation showing, as of the end of the period covered, the number of staff members and their contractual status, as well as the number of nationalities represented on the staff (Section 24.7.3.1).
- 13 Section 34.2.4.
- 14 Section 34.4.
- 15 Section 17.1.
- 16 For example, GC(IV)/RES/71, para.4. Section 21.4.1.1.1.
- 17 INFCIRC/12, para. VII; Section 26.6.1.1.2. This requirement has been honoured largely in the breach; in the Reports presented in 1966-1968 a numerical summary of the agreements registered during the past twelve months as well as a cumulative figure was presented (see e.g., GC(X)/330, para.242).
- 18 INFCIRC/6/Rev.2, Regulation 13.02.
- 19 GC(III)/73, Annex III. Instead, soon after any amendment to the Staff Regulations is adopted, the Director General circulates to all Member States an appropriate revision of or modification to the text of the Regulations in document INFCIRC/6.
- 20 Section 32.1.4.
- 21 GC(VI)/INF/60.
- 22 Section 7.3.2.1.
- 23 GOV/INF/60.
- 24 Financial Regulation 2.01 (INFCIRC/8/Rev.1).
- 25 Section 7.3.4.
- 26 Chapter 10, note 45.
- 27 However, since the Board's report to the General Conference constitutes the principal portion of the Agency's report to the UN General Assembly (Section 32.1.4), the General Conference in fact annually approves the text of the report submitted to it, insofar as it is to serve that other purpose.
- 28 A list of the Reports appears in Annex 2.3.
- 29 Section 10.2 and notes 41-43 thereto.
- 30 INFCIRC/11, Part I. A.
- 31 Section 12.2.2.7.1.
- 32 Section 10.1.
- 33 GC, 1(S)/RES/16.
- 34 GC(II)/INF/11.
- 35 Committee on the Agency's Second Report to the United Nations General Assembly (GOV/COM.4/...). The draft report appears in GC(II)/40 and /Corr.1.
- 36 GC(II)/RES/19.
- 37 GC(III)/INF/20, para.2.
- 38 GC(III)/RES/40, INFCIRC/10, the Preface to which constitutes the supplementary material added by the Director General.
- 39 GC(IV)/111.
- 40 GC(IV)/RES/61.
- 41 GC(IV)/RES/62.

- 42 For example, GC(X)/RES/205.
- 43 Section 8.4.4(i).
- 44 For example, GC(X)/330 and INFCIRC/87. A list of these reports and supplements appears in Annex 2.3.
- 45 Proposals made on 23 May 1962. The Director General had already in previous years presented, and continued to present, the Agency's report orally to the General Assembly (Section 12.2.2, 7.1).
- 46 Discussed at 289th and 294th Meetings. At the former, Hungary proposed that the Director General should always submit to the Board in advance the text of his remarks to the General Assembly.
- 47 CNNWS Resolution H, Part VI, in UN doc. A/7277, para.17. The General Assembly itself, in its Resolution concerning CNNWS, merely invited inter alia the Agency to report to the Secretary-General (UNGA/RES/2457(XXIII), para. A.4) - which the Agency did in GC(XIII)/INF/110, circulated to the Assembly as an Annex to A/7677.
- 48 INFCIRC/11, Part I. A.
- 49 Section 12.2.1.1(iv).
- 50 ECOSOC/RES/694(XXVI), para. E.1.2, which is quoted at greater length in Section 12.2.2.7.2.
- 51 GC(II)/65.
- 52 GC(II)/51.
- 53 GC(II)/COM.2/OR.12, paras. 6-14.
- 54 GC(II)/RES/24.
- 55 GC(III)/78.
- 56 GC(III)/OR.33, paras. 11-12.
- 57 GC(III)/RES/41.
- 58 For example, GC(X)/RES/206.
- 59 Supra notes 45 and 46.
- 60 For example, for 1968-69, INFCIRC/126. A list of these reports appears in Annex 2.3.
- 60A INFCIRC/139, para. 1.
- 60B See INFCIRC/126, fn. 1 or INFCIRC/139, fn. 8; this supplement was published as UN doc. E/4650/Add.1. For 1970 the issue of a similar supplement was announced, on "Atomic Energy and the Human Environment".
- 61 GC(IV)/RES/65, Annex; Sections 18.1.2, 1-2.
- 62 Within the Secretariat the preparation of this report is assigned to the Committee on Technical Assistance, AM.I/7, Appendix F, para. (e).
- 63 Sections 18.2.4 and 18.2.6.
- 64 For example, The Provision of Technical Assistance by the Agency, with Special Reference to 1968, GC(XIII)/INF/111. A list of these reports appears in Annex 2.3.
- 65 For example, report up to 30 June 1969, INFCIRC/40/Rev. 6.
- 66 INFCIRC/12; Section 26.6.1.1.2.
- 67 INFCIRC/21 and /Add.1.
- 68 The Second Edition, issued in 1968 (STI/PUB/180), covers the period up to 31 December 1966.
- 69 Section 26.6.2.
- 70 INFCIRC/8/Rev. 1.
- 71 Section 25.8.2.4.
- 72 For example, The Agency's Accounts for 1968, GC(XIII)/406. A list of the Accounts appears in Annex 2.3.
- 73 Section 24.7.3.1.
- 74 For example, The Staff of the Agency: List of 30 June 1969, INFCIRC/22/Rev. 9.
- 75 Sections 24.6.1 and 24.6.3.
- 76 Section 24.7.3.
- 77 INFCIRC/14.
- 78 For example, GC(V)/INF/43.
- 79 Section 12.6.2.3.
- 80 For example, The Members of the Agency: List of 15 April 1969, INFCIRC/2/Rev. 23.
- 81 For example, Action Taken by States in Connection with the Statute: Information received by the Secretariat up to 30 June 1968. INFCIRC/42/Rev. 5. The earliest version of this list appeared in INFCIRC/16.
- 82 For example, Fifth Report (describing the work during 1967), Technical Reports Series No. 90 (STI/DOC/10/90); Section 19.1.5.
- 83 Sections 19.1.1-3 and 19.3.1.
- 84 Section 19.2.
- 85 For example, Eighth Annual Report, Technical Reports Series No. 85 (STI/DOC/10/85).

- 86 Section 21. 7. 2. 4.
- 87 GC(V)/INF/39, Annex; Section 21. 4. 2.
- 88 INFCIRC/11, Part I. A.
- 89 Sections 32. 1. 4 and 32. 1. 5.
- 90 INFCIRC/11, Part I. A.

CHAPTER 33. LANGUAGES

PRINCIPAL INSTRUMENTS

IAEA Statute, Article XXIII

General Conference Rules of Procedure (GC(VII)/INF/60) 89-91

Board Rules of Procedure (GOV/INF/60) 51-54

Secretariat Instruction on "Correspondence and Communications" (AM,VIII/2), para.16

Protocols to relationship agreements (e.g., that concluded with the United Nations, INFCIRC/11, Part 1.B)

Revised Safeguards Document (INFCIRC/66/Rev.2), paras.34, 38

Policy on languages of publications (GC(IV)/116, para.377)

Strictly speaking the Agency has not adopted any "official" language or languages,¹ However, various of its organs have either formally selected or have informally settled on particular combinations of official and/or working languages² for themselves and for particular Agency activities. The fact that these linguistic selections are often relatively extensive reflects political and public relations factors rather than the countervailing ones of efficiency and economy.³

33.1. THE STATUTE

33.1.1. The formulating organs

The Negotiating Group left no formal records,⁴ but presumably worked primarily in English and perhaps partially in French.

The records of the Meetings of 6 Governments on IAEA safeguards⁵ were kept in English, French and Russian.

In accordance with Procedural Rule 7 of the Working Level Meeting,⁶ the official and working languages were English, French and Russian. Since the basic draft of the Statute considered by the Meeting was that prepared by the Negotiating Group,⁷ that instrument is thus also available in those three languages.

Though the Working Level Meeting designed the Rules of Procedure of the Conference on the Statute to follow the pattern of those of the UN General Assembly, the Soviet representative at the Meeting proposed that Russian be added to the working languages of the Conference in view of the importance of his country in the atomic energy field.⁸ Consequently Procedural Rule 12 of the Conference⁹ provided for Chinese, English, French, Russian and Spanish to be the official languages, and English, French, Russian and Spanish to be the working languages. All important documents (including amendments) were prepared in the five official languages, but the verbatim records were only drawn up in the four working languages except insofar as translations of particular records into Chinese were specifically requested.¹⁰

33.1.2. The text

The Negotiating Group had left blank the provision in the draft Statute in which the authentic languages of the instrument would be specified – though, perhaps significantly, only three blank spaces were indicated.¹¹ Subsequently the Chinese Government suggested that the languages of the Statute be the same as those of the UN Charter.¹² Nevertheless, the Working Level Meeting did not decide this point and merely left two blanks in the draft Statute it forwarded to the Conference on the Statute.¹³

When the Main Committee of the Conference on the Statute was considering Article XXIII, the Chairman stated his assumption that the five official languages of the Conference should be inserted into the blanks in the text.¹⁴ This suggestion was adopted and consequently the authentic languages of the Statute are: Chinese, English, French, Russian and Spanish.¹⁵

The representative of Syria in the Main Committee requested the preparation of a "semi-official" translation into Arabic.¹⁶ The Secretary General of the Conference indicated that this could only be done with some delay.¹⁷ Some months after the adjournment of the Conference, the UN Secretariat issued document IAEA/CS/13 (the text of the Statute) in Arabic.

During 1958 the three Members of the Agency having German as at least one of their official languages (Austria, the Federal Republic of Germany and Switzerland) jointly prepared a German translation of the Statute¹⁸ which, having been published in the appropriate national official journals, is authentic for these States.¹⁹

In notifying Member States of proposed amendments to the Statute²⁰ the Secretariat has communicated the text in only one of the authentic languages (English), or in four (omitting Chinese) or in all five. In notifying Members of the one amendment to the Statute approved up to now by the General Conference, the Secretariat's communication included the text in each of the five authentic languages of the Statute.²¹

33.2. THE REPRESENTATIVE ORGANS

Procedural Rule 44 of the Preparatory Commission specified English, French, Russian and Spanish as the "working" languages.²² The Chairman of the Commission indicated his understanding that these four languages were also the "official" languages of the Commission.²³

Procedural Rule 89 of the General Conference²⁴ specifies Chinese, English, French, Russian and Spanish as the official languages and English, French, Russian and Spanish as the working languages. Procedural Rules 51 and 52 of the Board of Governors²⁵ establish the same lists for that organ. For both Conference and Board, and for their subsidiary bodies, all documents and records are prepared in the four working languages and all speeches are interpreted from and into them;²⁶ only for some Board committees is Spanish occasionally omitted if no Governor from a Spanish-speaking country requires it. The designation of Chinese as an official language of both organs appears to have no practical consequence whatsoever, for the Rules of Procedure assign no privileges to that category as compared to languages not so listed.

All documents and records of the Scientific Advisory Committee²⁷ are prepared in English and Russian only.

Procedural Rule 50 of the 1963 Vienna Conference on Civil Liability for Nuclear Damage²⁸ specified English, French, Russian and Spanish as the official and working languages. These were also the languages in which the authentic texts of the Final Act, of the Vienna Convention on Civil Liability for Nuclear Damage and of the Optional Protocol were signed.²⁹

33.3. THE SECRETARIAT

Information Circulars (INFCIRC/...), which are issued by the Director General for the information of all Member States,³⁰ are almost always published in English, French, Russian and Spanish.³¹ Press Releases are normally published in English, French, German, Russian and Spanish.

The Administrative Manual, in establishing rules for "Correspondence and Communications" states:

"The Agency's written communications are in English or French and the correspondence sheet for each Member State and each organization ... shows which of these two languages must be used in communications with the State or organization concerned. However, a Spanish or Russian translation must be attached to any official communication to a Member State which is shown in the Correspondence Sheet to be Russian- or Spanish-speaking. German is not an official language, but as a courtesy it may be used in communications with authorities, firms or persons in Austria. Individual staff members may also correspond informally in Russian or Spanish but, to make the keeping of records easy, they should place on file an English or French translation of any such correspondence."³²

Within the Secretariat, formal communications are almost always in English.³³ Thus Secretariat circulars (SEC/INS/... and SEC/NOT/..., and the Administrative Manual which has largely superseded them)³⁴ are issued in English only. Semi-official German translations of some of the instruments most important to the staff (e. g., the Staff Regulations and Rules) have been prepared.

The Staff Assembly³⁵ conducts its business in the "working languages of the Agency" (presumably meaning the four working languages of the representative organs) and in German.³⁶ The Staff Council³⁷ conducts its business in English and German;³⁸ however, its records are drawn up only in English, unless the Council itself requests a German translation.³⁹ The Council's annual report to the membership is published in English, with a German translation.⁴⁰

The Agency has not established any formal linguistic requirements for recruitment,⁴¹ though obviously knowledge of at least one of the four working languages of the Board is essential for any Professional and for all but the lowest placed General Service staff members (for whom German might suffice in Vienna or Italian in Trieste); however, linguistic qualifications are con-

sidered in granting long-term appointments. Of course, without a reasonable knowledge of English (or perhaps French) it is difficult for an official to contribute effectively to the work of the Agency, and the organization's liberal policy therefore surely reduces efficiency.

33.4. AGREEMENTS

The Agency's second treaty, the Headquarters Agreement with Austria, is authentic in six languages: Chinese, English, French, German, Russian and Spanish.⁴² This gaudy panoply was evidently the result of following the path of least controversy,⁴³ but no later agreement provides such a large linguistic selection.⁴⁴

The Agency has no set policy concerning the languages in which it concludes agreements. However, except for general instruments, such as the Agreement on Privileges and Immunities, the tendency has been to reduce the number of authentic languages – but always to include either English or French⁴⁵ as one of them since in practice these are the languages in which the Secretariat drafts and negotiates almost all texts, with English enjoying a considerable edge. In particular, the Secretariat prefers to conclude agreements in either English or French only, if that is agreeable to the other parties; if these desire an authentic text in Russian or Spanish, then one of these is used, together with English. The use of other languages is resisted, except that in several exchanges of letters supplementing the Headquarters Agreement the communications of the Austrian Government were written in German while the Agency wrote in English.⁴⁶

A clause was frequently included in the signature clause of agreements signed in two or more languages, reciting the languages used and stating that the texts in each of these are equally authentic.⁴⁷ More recently this latter statement has been omitted,⁴⁸ unless specifically requested by the other parties.

A special problem arises for those agreements that enter into force without signature: the relationship or co-operation agreements with other intergovernmental organizations that simply provide for automatic entry into force on approval by the General Conference of the Agency and by a designated organ of the other organization.⁴⁹ None of these instruments indicates the language in which it is to be authentic. The Agency's General Conference of course acts on the basis of the document submitted to it, which invariably is issued in all four of its working languages; however, the other organization usually has a different linguistic selection. Since these agreements thus enter into force without any authenticated copy being in existence from which both the agreed languages and the commonly agreed texts in each of them is apparent, the Director General of the Agency concludes with the executive head of the other organization a "protocol" certifying as "true texts" two copies of the agreement written in certain of the common languages of the organizations (usually English and French,⁵⁰ but for the agreement with ICAO⁵¹ also Spanish and for that with IANEC⁵² only English and Spanish), which thereby become the authentic languages of the instrument.

The Agreement on the Privileges and Immunities of the Agency⁵³ was promulgated by a resolution of the Board – which of course was automatically

adopted in the four working languages of that organ; however, neither the text of the Agreement nor the resolution indicates which should be the authentic language(s). Subsequently the Director General prepared and transmitted to all Member States certified copies of the agreement in all four languages and later he registered it with the United Nations in all of them.⁵⁴

33.5. REPORTING REQUIREMENTS

Paragraph 38 of the Revised Safeguards Document⁵⁵ requires that "unless otherwise provided in the applicable safeguards agreement, reports shall be submitted in one of the working languages of the Board"; however, as to the records to be maintained by safeguarded facilities, paragraph 34 provides that if they "are not kept in one of the working languages of the Board, the State shall make arrangements to facilitate their examination by inspectors". These paragraphs are among those always incorporated by general reference into safeguards agreements,⁵⁶ and no exception as permitted by paragraph 38 has ever been accepted.

Even before paragraph 38 was included in the Safeguards Document, similar provisions were inserted into most Project Agreements.⁵⁷ Since these clauses were so formulated as to apply also to other required reports (e. g., those relating to health and safety controls⁵⁸) and to the submission of information (e. g., on any scientific data developed as a result of the Agency's assistance⁵⁹), they have been maintained even in the agreements concluded pursuant to the Revised Safeguards Document.⁶⁰

In each research contract⁶¹ the language in which reports are to be submitted is specified - usually one of the four working languages of the Board or, occasionally, German.

33.6. PUBLICATIONS

Throughout the early years of the Agency there was considerable controversy about the languages in which the Agency should issue its scientific and technical publications; this subject was raised in the Preparatory Commission, the Board, the General Conference and even the Scientific Advisory Committee. The policy which evolved, for balancing the desiderata of maximum utility against the financial limitations, was stated as follows in the Programmes and Budgets submitted by the Board to the General Conference in a number of successive years:

"It is desirable that all publications of the Agency should be published in the four working languages, but for technical and financial reasons this may not always be possible. For instance, in connection with the proceedings of seminars, symposia and conferences, it is planned to publish the scientific papers in the original language in which they are submitted with abstracts in all four languages. Certain specialized publications which are directed towards a limited audience may be published in one or two working languages only, the language or languages

being chosen so as to provide for the most effective use appropriate to the content. Other types of publications such as manuals on safety and safeguards procedures will be published in all working languages.⁶²

This statement still largely represents the policy actually followed by the Agency in its publications programme, though in 1966 the Director General decided that henceforth abstracts should only be published in the original language and in English. In practice almost all publications appear at least in an English text, except that papers in the "Proceedings Series" are published only in the original language with abstracts in the original language and in English.⁶³

NOTES

- 1 Though the term "official languages [of the Agency]" often appears in a loose sense in informal publications, it is properly avoided or qualified (e.g.: "official languages of the Board") in most legal instruments. One of the few exceptions is a provision of the Provisional Staff Regulations authorizing language allowances (Section 24.4.1.2.3) for "proficiency in the use of...two or more official languages" (INFCIRC/6/Rev.2, Annex II, para.B.4).
- 2 The terms "official language" and "working language" have no precise meaning, either in the practice of international organizations in general or of the Agency in particular. Usually these expressions appear in the procedural rules of particular organs, in which they are also defined. Though sometimes the two terms overlap completely, generally an organ has fewer working than official languages, and requires that most of its business (speeches, documentation) be transacted in that more restricted linguistic circle.
- 3 On 30 June 1969 the Agency employed as Professional officers 42 interpreters and translators, who thus constituted some 13% of the total professional staff of 333. Additional linguistic specialists were employed in the Division of Publications, and free-lance interpreters were also employed for larger meetings.
- 4 Section 34.1.2.
- 5 Section 34.1.3.
- 6 WLM Doc.1(Rev.1), Section 34.1.4.
- 7 WLM Doc.2.
- 8 WLM Doc.27(Rev.1), para.3.
- 9 IAEA/CS/2.
- 10 Idem, Rule 13.
- 11 WLM Doc.2, Article XXIII.
- 12 WLM Doc.3.
- 13 WLM Doc.31, Annex III and IAEA/CS/3, Article XXIII.
- 14 IAEA/CS/OR, 35, p.87.
- 15 Statute Article XXIII.
- 16 IAEA/CS/OR, 35, pp.88-90. Though all five languages are authentic, small differences in meaning do arise: Thus the words "any military purpose" in Article III.A.5 are given in French as "des fins militaires" (Section 15.1.2); Article XIV.A in English requires the submission of an "annual budget", while the French requires the submission "chaque année" of a draft budget (Section 25.2.5).
- 17 IAEA/CS/OR, 36, p.38.
- 18 Preparation of the joint text is mentioned in the Austrian "Regierungsvorlage zum Amtszabkommen", 376 der Beilagen zu den Stenographischen Protokollen des Nationalrates, VIII GP, "Erläuternde Bemerkungen", Part II, Besonderer Teil, Zum Titel, p.85.
- 19 The common translation is identical in all respects, except that in the text used by Germany the phrase "privileges and immunities" in Article XV is translated as "Vorrechte und Befreiungen", while Austria and Switzerland use "Privilegien und Immunitäten"; fortunately, it was possible to agree on the word "Organisation" for the name of the Agency itself, which the Austrians and Germans had originally rendered as "Behörde" and the Swiss as "Agentur". The Agency published the common version in a booklet issued in December 1967.
- 20 Section 5.3.3.2.

- 21 Section 5.3.3.5.
- 22 IAEA/PC/6; Section 3.2.1.1. It had been decided that the Commission should have the same working languages as the Conference on the Statute that established it (IAEA/PC/OR.2, p.3).
- 23 IAEA/PC/OR.8, p.7.
- 24 GC(VII)/INF/60; Section 7.3.1.
- 25 GOV/INF/60; Section 8.4.1.
- 26 Though the Rules of Procedure of both the Conference and the Board permit speeches to be made in other than a working language if the speaker provides for interpretation into one working language, little use of this privilege has been made by any representative: At the Ninth General Conference in Tokyo the Prime Minister of the host government gave an address in Japanese (GC(IX)/OR.91, paras.12-18); some speakers have occasionally used Portuguese, after requesting the Secretariat to provide for interpretation at the representatives' expense. The External Auditor has addressed both organs in German and on these occasions the Secretariat has provided the necessary interpretation at the Agency's expense, since the Auditor is considered to be serving the organization. At the Conferences in Vienna the Austrian Government generally provides for interpreting the proceedings of the Plenary into German, at its own expense (e.g., GC(XII)/INF/102, para.20).
- 27 Section 11.1.
- 28 CN-12/6, reproduced in Legal Series No.2, IAEA, Vienna (1964), pp.27-37, Section 23.1.4.
- 29 Respectively CN-12/48; CN-12/46, Article XXIX; CN-12/47, Article IX, all reproduced *op.cit.* supra note 28, pp.497-514.
- 30 Section 34.2.2.
- 31 Information Circulars, as well as all General Conference and Board documents, indicate the "original" language of the texts reproduced therein. When these are prepared by the Secretariat, this is usually English.
- 32 AM, VIII/2, para.16.
- 33 No instrument formally specifies whether the usage should be British or American. However, the Secretaries' Manual issued during the term of the first Director General specified that spelling be in accordance with Webster's Dictionary; subsequently the Manual was changed to provide for reference to the Oxford Dictionary. This is confirmed in Chapter 2, para.1 of the Style Manual for English Publications and Documents (July 1967), which refers to The Concise Oxford Dictionary, 4th ed., for guidance in spelling, but also advises that for scientific terms Webster's New International (or Collegiate) Dictionary should be consulted. Consequently the Agency now uses largely British spelling, though the vocabulary itself tends to be American (heavily tinged by UN bureaucratic jargon).
- 34 Sections 24.1.6 and 34.2.5.
- 35 Section 24.12.3.2.
- 36 Rules of Procedure of the Staff Assembly, Rule 7 (Statutes and Rules of the Staff Association of the International Atomic Energy Agency).
- 37 Section 24.12.3.4.
- 38 Though Rule 7 of the Council's Rules of Procedure (*op.cit.* supra note 36) also permits the Council to use French, this has not been done.
- 39 *Idem*, Rule 8. The Rule originally also provided for French records, but this requirement was eliminated by the Council on 4 October 1968.
- 40 Section 34.2.7.
- 41 For reasons similar to those explained by the UN Secretary-General in UN doc.A/6860, Part V. Unlike the General Assembly in UNGA/RES/2480B (XXIII), neither the General Conference nor the Board of Governors have directed any change in this procedure.
- 42 INFCIRC/15, Part I, signature clause.
- 43 The first draft submitted to the Preparatory Commission by its Executive Secretary specified only English and German (IAEA/PC/W.51(S), p.29). The Commission first decided to add its other three working languages (IAEA/PC/OR.56, p.11) and later accepted a Soviet proposal to add Chinese (IAEA/PC/OR.57, p.20; /OR.59, pp.15-16).
- 44 Of course the 1969 amendment to the Headquarters Agreement (Section 28.2.2) also had to be concluded in the six languages of the original instrument.
- 45 A Mobile Radioisotope Laboratory Agreement (Section 18.3.6) that the Agency concluded with Mexico on 13 April 1960 (Agency Registration No.37), in Spanish only, appears to constitute one of very few exceptions. In addition, the Agency has become a party, without the intervention of the Secretariat, to certain EPTA Standard Agreements concluded in Spanish only by the UNDP representative acting for all

- participating organizations (see, e.g., the exchange of letters extending the Revised Standard Agreement with Nicaragua to the Agency (418 U.N.T.S. 372; Agency Registration No.79).
- 46 For example, INFCIRC/15, Part IV; Section 28.2.4.3.
- 47 For example, INFCIRC/37, Part II.
- 48 For example, INFCIRC/106, Part I.
- 49 Sections 12.2.1.1(A-B), 12.3.2.2(h), 26.5.2.1.
- 50 For example, INFCIRC/11, Part I.B.
- 51 INFCIRC/20, Part V.B.
- 52 INFCIRC/25, Part II.B.
- 53 INFCIRC/9/Rev.2; Section 28.3.1.
- 54 374 U.N.T.S. 147.
- 55 INFCIRC/66/Rev.2; Section 21.4.1.1.4.
- 56 Sections 21.5.4, 7 and 21.7.1.1-2. E.g., INFCIRC/110, Section 20.
- 57 For example, INFCIRC/37, Part III, Section 11.
- 58 Section 22.3.1.2.
- 59 Section 17.2.1.2(i).
- 60 Sections 17.2.1.2(j) and 21.5.5.5. E.g., INFCIRC/116, Part II, Section 13.
- 61 Section 19.2.5.
- 62 GC(V)/155, para.304.
- 63 For some years the abstracts were published in the four working languages of the Board, but in the late 1960s the reduction indicated in the text above was introduced.

CHAPTER 34. DOCUMENTATION

PRINCIPAL INSTRUMENTS

Board decision of 19 March 1958 on "The distribution of the Board's Documents"

Board decisions of 25 April 1958 on "The availability for general consultation of the records of the Working Level Meeting on the Draft Statute and of the documents of the Preparatory Commission"

Series and Symbols of Agency Documents (PM/Pt. 9/1(Rev. 1), Annex III)

INFCIRC/1, 30, 44

The major difficulty faced by any student of the Agency, particularly by one working outside the organization, is in determining what documentation may be available on certain questions and organs – and then in gaining access to such papers in view of a diversity of incompletely defined classification rules. This final Chapter is intended as a guide through this thicket. Such a guide is particularly necessary since the Agency, unlike the United Nations, has not issued any documentation check lists, and most of the few lists and indices that are issued are intended primarily to aid government librarians in maintaining complete files rather than to assist scholars in performing research.

The first group of lists below covers the special correspondence and the ad hoc conferences that were devoted to the formulation of the Statute – and thus does not include the debates in the General Assembly of the United Nations,¹ which of course are readily accessible. The second group includes the principal documentation of the Agency itself, covering thoroughly the political and administrative papers and only briefly the technical series relating to various scientific panels and several aborted series designed only for internal Secretariat use, as well as the Agency's regular publications. The third group relates to the documentation of the several special organs established to formulate multilateral treaties in the nuclear field.

34.1. PRE-STATUTORY

34.1.1. USA/USSR Correspondence

Thirteen pieces of correspondence exchanged by the United States and the Soviet Union between 11 January and 23 September 1954² were published in UN Document A/2738 (reproduced in UNGA Official Records, Annexes, 9th Session, Agenda Item 67). Fifteen further communications exchanged between 3 November 1954 and 27 January 1956³ were published in US Department of State Press Release No. 527, dated 6 October 1956.

These 28 published items apparently contain the entire formal correspondence between the two Governments relating to the establishment of the Agency.

On beginning the exchange of each of the two series of communications, the parties agreed to treat them as confidential ("private"). At the end of each series they agreed to publication.⁴

34. 1. 2. Negotiating Group⁵

Apparently no formal documentation was issued for or by the 8-Nation Negotiating Group which met in Washington during the early months of 1955. The draft of the Statute prepared by it was published as a document of the Working Level Meeting.⁶

34. 1. 3. Meeting of 6 Governments⁷

(a) Document series

Distribution and Classification

R⁸ PV/1/Rev. 1 to /5/Rev. 1 Revised verbatim records

(b) List or index

No list or index to these documents has been published.

(c) Scope

The existing documents cover the proceedings of the 5 meetings that were held. The supporting documentation does not appear to be available.

34. 1. 4. Working Level Meeting⁹

(a) Document series

Distribution and Classification

CC Doc.¹⁰ 1 to 32 Documents and abbreviated records
CC INDEX (Rev. 1)

(b) List or index

A complete list of the 32 documents appears in the special WLM INDEX (Rev. 1)

(c) Scope

The 32 numbered documents include, without distinction as to type but arranged roughly chronologically, material submitted to the Working Level Meeting, the summary records of its 21 formal "sessions" (each consisting only of an outline of the discussions and a record of the decisions taken; the

verbatim texts of some statements are annexed to the records), and certain reports approved by the Meeting.

These documents do not include:

- (i) Any record of the Preparatory Meeting on 14 November 1955¹¹ – (since apparently no formal record was issued);
- (ii) A revised draft of the Statute circulated by the United States on 18 February 1956, which was not considered by the Meeting;¹²
- (iii) The records of any of the meetings of the subsidiary bodies (since apparently no records were kept) or the papers prepared by them for the parent body; these latter include:
 - (A) SC/1/Rev. 2 – report of the Scientific Committee;¹³
 - (B) WP/1 to 4 – papers of the Advisory Level Group.¹⁴
- (d) Classification

Though almost all these documents were originally marked "CONFERENCE CONFIDENTIAL", the Board of Governors on 25 April 1958 decided "to reclassify the records of the Working Level Meeting on the Draft Statute. . . so as to make them generally available for consultation" subject to the consent of the one participant in the Meeting not then a member of the Board – which consent was subsequently obtained.¹⁵

34.1.5. Conference on the Statute¹⁶

(a) Document series

Distribution and Classification

G IAEA/CS/1 to /13
 G IAEA/CS/Agenda/1 to /4
 G IAEA/CS/OR. 1 to /40

Unrevised verbatim records of the 16 meetings of the Plenary and of the 24 meetings of the Main Committee, in chronological sequence, without distinguishing between these organs;¹⁷ apparently no revised texts were ever prepared

G IAEA/CS/Art.../Amend.1 to /... }
 G IAEA/CS/New Art. /1 }

A separate document was issued for every amendment or group of amendments formally proposed to any Article of the draft Statute (as well as for the draft of an additional Article) by a State or group of States within the time limit set by Procedural Rule 24¹⁸

G IAEA/CS/INF/1 to /4
 G IAEA/CS/COORD/1 to /2
 G IAEA/CS/COORD/Agenda/1 }
 G IAEA/CS/COORD/OR. 1 }
 G IAEA/1-57 }

Documents of the Co-ordination Committee¹⁹
 Press Releases

(b) List or index

No complete list of the documents of the Conference on the Statute has been issued. A list of all the amendments formally proposed and appearing as separate documents (in the series IAEA/CS/Art.../Amend...) appears in document IAEA/CS/INF. 4/Rev. 1.

(c) Scope

The above-mentioned series contain almost all the documents that were issued at the Conference. The following items are unavailable:

- (i) The Conference Room Papers, numbering at least 22, containing the texts of compromise or otherwise revised proposals formulated after the deadline for the submission of amendments.²⁰
- (ii) The records of all but the first of the meetings (total number unknown) of the Co-ordination Committee – during which the text agreed by and other recommendations of the Main Committee were considered and the final text of the Statute was established;²¹ probably no records of these meetings were kept. The Working Papers used by the Committee were not published as Conference documents, but numbers 1 to 4 are available in the Agency's Library.

34.2. POST-STATUTORY

34.2.1. Preparatory Commission²²

(a) Document series

Distribution and
Classification

R	IAEA/PC/1 to /16	Largely consisting of resolutions adopted and of regulations or rules promulgated by the Commission
R	IAEA/PC/W. 1 to /81	Working Papers of the Commission; those with an "(S)" following the number were Secretariat drafts ²³
R	IAEA/PC/OR. 1 to /65	Unrevised summary records of the Commission's meetings
R	IAEA/PC/WG. 1 to /12	Papers of the Working Group of the Whole ²⁴

(b) List or index

Document IAEA/PC/16 contains an almost complete list of the official documents of the Preparatory Commission.

(c) Scope

The above-mentioned series contain almost all the documents used by the Commission. The following items are unavailable:

- (i) Conference Room Papers occasionally used by the Commission, usually containing some intermediate draft of the paper under consideration;
- (ii) Records of the proceedings (if any were kept) of the Working Group of the Whole, which was charged with preparing the draft of the initial Programme and Budget of the Agency;²⁵
- (iii) The administrative instructions issued by the Executive Secretary of the Commission to his staff. Of at least five such instructions apparently issued, only numbers 1 and 2²⁶ are available in the Agency's Library.

Most of the reports and recommendations prepared by the Commission for the General Conference and the Board were not issued in their final form as Commission documents, but rather immediately as documents for those organs; most of these reports are listed in document GC.1/INF/1-GOV/INF/1.

(d) Classification

Although most of the Commission's documents (with the exception of some in which it was thought the public had a legitimate immediate interest – such as the Rules of Procedure and the Financial and Staff Regulations of the Commission) were marked for RESTRICTED distribution, the Board of Governors on 25 April 1958 decided "to reclassify. . . the documents of the Preparatory Commission so as to make them generally available for consultation",²⁷ subject to the consent of two members of the Commission who were not then members of the Board – which consent was subsequently obtained.

34.2.2. Agency-General

(a) Document series

Distribution and
Classification

G INFCIRC/1 to 140+²⁸

Information Circulars used to communicate matters of general interest to all Members of the Agency;²⁹ this series contains, inter alia, the texts of most of the significant international agreements of the Agency,³⁰ miscellaneous regulations promulgated by the Board or the General Conference, and reports by the IAEA to various UN organs³¹

- PR-.../1--

Press Releases, in annual series (designated by the last two digits of the year following the symbol: "PR-")

- -

Circular Letters to Member States issued on an ad hoc basis, to communicate directly with States rather than merely with representative organs; they are not numbered in any systematic fashion

(b) List or index

A cumulative index to the subject matter of all Information Circulars (INFCIRCs) is published approximately annually as a revision of INFCIRC/1. This list also indicates which of these documents are still current.

(c) Scope

Neither the Information Circulars nor the Press Releases systematically cover the work of the Agency or constitute a complete documentation of any aspect of it. The INFCIRCs contain considerable material of legal interest not otherwise available at all, or sometimes only in restricted documents; they include most of the principal agreements of the Agency, which in this form are issued much sooner than the appearance of the text in the UN Treaty Series.³⁰

34.2.3. General Conference³²

(a) Document series³³

Distribution and Classification

G GC(..)/1 to /428+

Documents presented to the Conference for action in connection with a particular agenda item; some of the most important are the Annual Reports of the Board,³⁴ the Programmes,³⁵ and the Budgets³⁶

G GC(..)/OR.1 to /134+

Summary records of each Plenary meeting³⁷

G GC(..)/INF/1 to /118+

Documents presented to the Conference for information

G GC(..)/RES/1 to /261+

A separate document is issued for each Resolution of the Conference³⁸

- GC(..)/RESOLUTIONS/(19..) This booklet supersedes all the GC(..)/RES/... documents for the indicated Conference, and also contains the only texts of the "Decisions" ³⁸
- GC/RES/INDEX/1957- Cumulative subject matter index of all Conference Resolutions and Decisions, published annually ³⁹
- G GC(..)/DOCS/1 to /89+ Non-cumulative lists of Conference documents
- R GC(..)/DOCS/.../Add. 1 Incomplete series, listing Restricted documents
- R GC(..)/GEN/1 to /36+ } General Committee ⁴⁰
- R GC(..)/GEN/OR. 1 to /17+ } Credentials Committee ⁴¹ (only document issued)
- G GC(III)/CRE/1 } Programme, Technical and Budget Committee ⁴²
- G GC(..)/COM. 1/1 to /112+ } Subcommittee on Contributions and Initial Financing ⁴³
- G GC(..)/COM. 1/OR. 1 to /88+ } Subcommittee on the Scale of Member's Contributions ⁴³
- G GC.1(S)/COM. 1/SUB.1/1 to /4 } Subcommittee on Contributions ⁴³
- G GC(II)/COM. 1/SUB. 2/1 to /3 } Administrative and Legal Committee ⁴⁴
- G GC(III)/COM. 1/SUB. 3/1 } Special Committee on Pledges of Voluntary Contributions to the General Fund ⁴⁵
- G GC(III)/COM.1/SUB.3/OR.1 to /2 } Committee for Pledges of Voluntary Contributions to the General Fund (3rd to 7th Conferences) ⁴⁵
- G GC(..)/COM. 2/1 to /48+ } Conference Journal
- G GC(..)/COM. 2/OR. 1 to /50+ } Separate Press Release series for each Conference
- G GC(II)/COM. 3/1 }
- G GC(II)/COM. 3/OR. 1 }
- G GC(..)/COM. 4/1 to /5 }
- G GC(..)/COM. 4/OR. 1 to /5 }
- JOURNAL No. 1 to 132+
- C/... /1-

(b) List or index

Lists of all General Conference documents issued during a given period are published from time to time, at intervals whose length is related to the proximity of a session, in the series: GC(..)/DOCS/... Frequently a Restricted supplement (marked: /Add. 1) is published to such a list, covering any Restricted documents published during the period (i. e., the documents of the General Committee).⁴⁶

All Resolutions and Decisions ⁴⁷ of a given session are listed and published in a booklet marked GC(..)/RESOLUTIONS/(19..). Cumulative subject matter indices of all Resolutions and Decisions are published in booklets marked GC/RES/INDEX/19.. -.. (at present one booklet covers 1957-66 and an annually augmented supplement covers 1967-, all of which are eventually to be superseded by a 1957-1971 15-year cumulation).

(c) Scope

The above-mentioned series constitute the entire documentation of the General Conference. No Conference Room or other un-numbered Papers are issued. Summary records are prepared and issued for all formal meetings, except for those of the Credentials Committee; these records appear first in a limited circulation PROVISIONAL version on blue paper and, after revision by the Secretariat and the delegations concerned, in a final one on white paper.

34.2.4. Board of Governors⁴⁸(a) Document series⁴⁹Distribution and
Classification

R-OUO GOV/1 to /1376+	Documents presented to the Board for action, usually in connection with a particular agenda item
R-OUO GOV/OR. 1 to /417+	Summary records of each meeting ⁵⁰
R-OUO GOV/INF/1 to /215+	Documents presented to the Board for information
R-OUO GOV/DEC/(I)1 to /60(XIII)+	Texts or summaries of all decisions taken by the Board at the indicated series of meetings ⁵¹
R-OUO GOV/DEC/INDEX/1 to /7+	Cumulative, selective subject matter index of all Board decisions
R-OUO GOV/DOCS/1 to /157+	Non-cumulative lists of Board documents
L-OUO GOV/DOCS/18/Add. 1 to /157+ /Add. 1	Non-cumulative lists of limited distribution Board documents
PO-OUO GOV/COM. 1/1 to /8	Committee to Advise the Director General on Negotiations with Specialized Agencies ⁵²
PO-OUO GOV/COM. 1/OR. 1 to /10	
PO-OUO GOV/COM. 2/1 to /6+	Committee to Advise the Director General on Permanent Headquarters ⁵³
PO-OUO GOV/COM. 2/OR. 1 to /2+	
PO-OUO GOV/COM. 3/1	Committee on the Programme and Budget for 1959 ⁵⁴
PO-OUO GOV/COM. 4/1 to /3	Committee on the Agency's Second Report to the United Nations General Assembly ⁵⁵
PO-OUO GOV/COM. 5/1 to /22	Committee on Agreements for the Supply of Fissionable, Source and Other Materials ⁵⁶
PO-OUO GOV/COM. 5/OR. 1 to /10	
PO-OUO GOV/COM. 6/1 to /6	Ad hoc Committee on Rules Regarding the Acceptance of Volun-
PO-OUO GOV/COM. 6/OR. 1	

		tary Contributions to the General Fund and the Acceptance of Services, Equipment and Facilities ⁵⁷
PO-OUO	GOV/COM. 7/1 to /45	} Committee on Non-Governmental Organizations ⁵⁸
PO-OUO	GOV/COM. 7/OR. 1 to /10	
PO-OUO	GOV/COM. 8/1 to /39+	} Technical Assistance Committee ⁵⁹
PO-OUO	GOV/COM. 8/OR. 1 to /28+	
PO-OUO	GOV/COM. 9/1 to /84+	} Administrative and Budgetary Committee ⁶⁰
PO-OUO	GOV/COM. 9/83 to /100+	
PO-OUO	GOV/COM. 10/1 to /13	} Ad hoc Committee on the Agency's Privileges and Immunities ⁶¹
PO-OUO	GOV/COM. 10/OR. 1 to /5	
PO-OUO	GOV/COM. 11/1 to /2	Ad hoc Committee on Appraisals ⁶²
PO-OUO	GOV/COM. 12/1 to /7	Special Working Group of Expert Representatives on Safeguards ⁶³
PO-OUO	GOV/COM. 13/1 to /14	Ad hoc Committee on the Agency's Inspectors ⁶⁴
PO-OUO	GOV/COM. 14/1 to /23	} Working Group to Review the Agency's Safeguards System ⁶⁵
PO-OUO	GOV/COM. 14/OR. 1 to /32	
PO-OUO	GOV/COM. 15/1 to /2	Working Group on the Extension of the Agency's Safeguards System (1965) to Reprocessing Plants ⁶⁶
PO-OUO	GOV/COM. 16/1 to /10	} Committee of the Whole on Emergency Assistance in the Event of Nuclear Radiation Accidents ⁶⁷
PO-OUO	GOV/COM. 16/OR. 1 to /5	
PO-OUO	GOV/COM. 17/1 to /4	} Ad hoc Committee of the Whole to Review the Agency's Activities ⁶⁸
PO-OUO	GOV/COM. 17/OR. 1 to /5	
PO-OUO	GOV/COM. 18/1 to /12	} Working Group on the Extension of the Agency's Safeguards System to Plants for Processing or Fabricating Nuclear Materials ⁶⁹
PO-OUO	GOV/COM. 18/OR. 1 to /8	
PO-OUO	GOV/COM. 19/1 to /2	Committee of the Whole on the Tentative Programme and Budget Proposals ⁷⁰
R-OUO	GOV/COM. 20/1 to /11+	} Ad hoc Committee of the Whole to Review Article VI of the Statute ⁷¹
R-OUO	GOV/COM. 20/OR. 1 to /7+	
R-OUO	GOV/COM. 21/1 to /3+	} Ad hoc Committee on the Use of Nuclear Explosions for Peaceful Purposes ⁷²
R-OUO	GOV/COM. 21/OR. 1+	
R-OUO	GOV/COM. 22/5+	Safeguards Committee (1970) ^{72A}

(b) List or index

Monthly lists of all the Board documents issued during the indicated period appear in: GOV/DOCS/. . . . A "LIMITED" distribution Addendum to almost every one of these lists (marked: /Add. 1) covers the documents whose circulation is particularly restrained (i. e., the provisional issues of the summary records of the Board and the documents of the Board's Committees).

A cumulative subject matter index of all decisions⁷³ is published annually in a booklet marked: GOV/DECS/INDEX/... This list is selective, covering mainly "references to primary decisions of principle or of policy and... subsidiary decisions of continued application... if there is still likely to be occasion to refer to it.."; "[W]ith regard to subjects in respect of which the Board each year takes... analogous decisions" only the most recent ones (usually those of the past five years) are indexed.

(c) Scope

The above-mentioned series constitute the entire documentation of the Board. No Conference Room or other Papers are used.⁷⁴

Summary records are prepared and issued for all formal meetings of the Board (but not for the informal consultations between the Director General and Governors relating to senior staff appointments⁷⁵). As to the Board's Committees, the practice differs: for a few no records at all have been issued, for some only very abbreviated summaries, while still others have summary records of the same kind as are prepared for the Board itself; some of the standing Committees have varied their record keeping requirements over the years.⁷⁶

34.2.5. Secretariat-Staff Administration⁷⁷

(a) Document series

Distribution and
Classification

G	SEC/INS/1 to /140	Administrative Instructions (now discontinued) ⁷⁸
G	SEC/NOT/1 to /188+	Notices to the Staff ⁷⁹
L	PM	Provisional Administrative Manual (now superseded by the Administrative Manual) ⁸⁰
G	PM/Pt..../.....	Individual documents in the Provisional Manual were marked to show both which of the 11 (numbered 0 to 10) Parts (Pt) they belong to, and their sequence within that Part
G	PM/TS/1 to ?	Transmittal Sheets, communicating new parts of or changes in the Provisional Manual
-81	AM	Administrative Manual ⁸²
-81	AM.... /...	Individual documents in the Manual are marked with a Roman numeral to indicate the Part (I to IX, plus Contents, Intro. and Index) followed by an Arabic

-81 AM/TS/1 to /12+

numeral to indicate the Section within that Part⁸³
Transmittal Sheets, communicating new parts of or changes in the Manual⁸⁴

(b) List or index

Document PM/Index (inserted in the Provisional Administrative Manual) contained a subject matter index of the entire Manual. A similar index is foreseen for the Administrative Manual, which already has a table of contents (AM. Contents).

(c) Scope

The SEC/INS series was originally designed for all general administrative instructions and for notices covering items of general information to be addressed to the staff as a whole.⁸⁵ In January 1960 the SEC/NOT series was established for notices to the staff, while the SEC/INS series was thenceforth restricted to administrative instructions.⁸⁶ In May 1963 the Provisional Administrative Manual was established to codify all administrative instructions and the SEC/INS series was discontinued - those of its documents that remained valid being transformed into Parts of that Manual. The Provisional Manual was superseded by the Administrative Manual in August 1967.⁸⁵

In addition to these instructions and notices, all of which "are issued under the authority of the Director General",⁸⁷ a number of instructions, notices, etc. are issued by other Secretariat officials, sometimes to the staff at large but usually only to a specific group. These papers do not have any particular symbol or any uniform format, and no attempt has been made to keep systematic files of them.

34.2.6. Scientific Advisory Committee⁸⁸

(a) Document series

Distribution and
Classification

PO SAC/1 to /100+	Documents presented to SAC for action
PO SAC/OR. 1 to /18+	Summary record of all meetings of the indicated series, prepared by the Secretariat and approved by SAC
PO SAC/INF/1 to /20+	Documents presented to SAC for information

(b) List or index

No list or index of the documents of the Scientific Advisory Committee (SAC) has been issued.

(c) Scope

In addition to the documents in the above-mentioned series, the only other papers used by or prepared for SAC are those marked "Conclusions by the Scientific Chairman of SAC, . . . th meeting"; these are now published for the information of the Board in the GOV/INF series, under a Note by the Director General entitled "Matters Discussed by the Scientific Advisory Committee".⁸⁹

34. 2. 7. Staff Association⁹⁰(a) Document series⁹¹Distribution and
Classification⁹²

- A/INF/1 to /400+	General Notices to members of the Staff Association
- SA/EL. 66 ^a /1-	Notices by Polling Officers ⁹³
- A/66 ^a /1-	Documents for the Staff Assembly ⁹⁴
- SA/OR. 1/- 9+	Summary records of each Staff Assembly
- S. 64 ^a /OR. 1-	Summary records of the Staff Council ⁹⁵
- SC(VIII) ^b /OR. 1-	Summary records of the Staff Council
- C. 64 ^a /Ag. 1-	Agendas of the Staff Council
- C. 64 ^a /WP/1-	Working Papers of the Staff Council

(b) List or index

No list or index of the documents of the Staff Association has been issued.

(c) Scope

The above-mentioned series contain all the numbered documents issued for the members of the Staff Association, and most of the principal ones of the Council. However, the latter also uses a number of special series, not arranged entirely systematically.

^a A new series is started in each calendar year, whose last two digits are indicated.

^b A new series is started each year, which since 1965 indicates (in Roman numerals) the number of the Staff Council (re-constituted each year) to which it relates.

34.2.8. Publications

(a) Document series

Distribution⁹⁶

- GEN/PUB/1 to /... +	General publications
- STI/PUB/1 to /200+	Scientific and technical publications, including: the Proceedings Series, the Panel Proceedings Series; the Safety Series (each part of which also has a Serial No., from 1 to 30+); Technical Directories; Bibliographical Series (marked STI/PUB/21/1 to /35 +); Review Series (marked STI/PUB/15/1 to 27+); Legal Series; Scientific Periodicals
- STI/DOC/10/1 to 95+	Scientific and technical documents, the Review Series
- EP/1 to 7	Engineering Papers (a discontinued series)
- SP/1 to 3	Scientific Papers (a discontinued series)
- PUB/CAT/19.. /..	Publications Catalogue, issued biannually, with a supplement in the intermediate year, each catalogue containing a list of all publications currently available. (The final letter of the symbol indicates the language.)

(b) List or index

The Publications Catalogues (PUB/CAT/19.. /..) biannually list all the publications (by title - arranged by subject matter, as well as by Series) available at the time the Catalogue (entitled: "Publications in the Nuclear Sciences 19..") is issued.

(c) Scope

The series listed above include all the items issued within the publications programme of the Agency.⁹⁷

34.2.9. Miscellaneous

(a) Document series

Distribution and
Classification

PO	CN-.../...	Working papers of scientific conferences ⁹⁸ (each Conference is identified by an Arabic numeral following the hyphen)
PO	SM-.../...	Working papers of scientific symposia and seminars ⁹⁸ (each Meeting is identified by an Arabic numeral following the hyphen)
PO	PL-.../...	Working papers of panels ⁹⁸ (each Panel is identified by an Arabic numeral following the hyphen)
-	M-.../...	Papers issued for technical assistance missions ⁹⁹ (each Mission is identified by an Arabic numeral following the hyphen)
-	WP/...	Working Paper for the Secretariat
-	ICTA/...	Working Paper of the Interdepartmental Committee for Technical Assistance ¹⁰⁰

34.3. SPECIAL ORGANS RELATING TO CONVENTIONS

The documents series listed below relate to the special organs established or convened by the Agency from time to time to consider or to formulate general conventions in the nuclear energy field.¹⁰¹ They do not include documents of the General Conference or the Board relating to the indicated instruments, since these are included in the regular document series listed in Sections 34.2.3 and 34.2.4.

34.3.1. Vienna Convention¹⁰²

(a) Document series

Distribution and
Classification

L	ALS/LA/1-/4	Working Documents prepared by the Secretariat ¹⁰³ in anticipation of the Panel of Experts
PO-LOUD	DG/PL/1 to /18	Documents of the Panel of Experts on Civil Liability and State Responsibility for Nuclear Hazards (1959) ¹⁰⁴

R-PO	CCL/1 to /11	Documents of the Inter-Governmental Committee on Civil Liability for Nuclear Damage ¹⁰⁵
-	CN-12/1 to /48 ^{**c}	Documents presented to the Vienna Intergovernmental Conference on Civil Liability for Nuclear Damage ¹⁰⁶
-	CN-12/OR.1 to /7 ^{*c}	Summary records of the plenary meetings of the Vienna Conference
-	CN-12/INF/1 to /9 ^{**}	Information documents for the Vienna Conference
-	CN-12/CW/1 to /114 [*]	Committee of the Whole of the Vienna Conference
-	CN-12/CW/OR.1 to /24 [*]	
-	CN-12/CW/INF/1 to /12 [*]	
-	CN-12/CW/SC.2/1 to /3	
-	CN-12/CW/SC.2/INF/1	
-	CN-12/CW/SC.3/1 to /3	Sub-Committee on Relations with other Intergovernmental Agreements of the Committee of the Whole of the Vienna Conference
-	CN-12/CW/SC.3/1 to /3	Sub-Committee on Execution of Judgments of the Committee of the Whole of the Vienna Conference
-	CN-12/CW/FC/1 to /7	Committee on Final Clauses of the Vienna Conference
-	CN-12/CW/DC/1 to /3	Drafting Committee of the Vienna Conference
-	CN-12/SC/1-/10+	Documents of the Standing Committee of the International Conference on Civil Liability for Nuclear Damage ¹⁰⁷

(b) List or index

No list or index of the documents of the Panel of Experts, of the Intergovernmental Committee or of the Standing Committee exists. With respect to the Conference, pages 517-520 of the Official Records (IAEA Legal Series No. 2) contains an "Index of Articles with Related Documentation".

(c) Scope

Except for some working papers of the Panel of Experts and of the Intergovernmental Committee, all documents relating to the development of the Vienna Convention are included in the above-mentioned series.

^c All documents in the series marked (*) and most in those marked (***) are reproduced in the Official Records of the Conference, Legal Series No. 2, IAEA, Vienna (1964).

34. 3. 2. Brussels Convention¹⁰⁸

(a) Document series

Distribution and
Classification

PO	DG/SL/1 to /10	Documents of the Panel of Legal Experts on Liability for Nuclear Propelled Ships ¹⁰⁹
-	Document No. 3, etc.	Documents of the Diplomatic Conference on Maritime Law (11th Session). ¹¹⁰ The relevant documents of the indicated series, as well as the verbatim records of the meetings, are reproduced in "Conférence Diplomatique de Droit Maritime, Onzième Session" (Bruxelles, 1961)
-	CONF/NUC/P. 1-	
-	CONF/NUC. 1-	
-	NUC/L. 67, etc.	
-	NUC/INF. SUBC/1	
-	SC/Obs. 1	Documents of the (first) Standing Committee of the Conference on Maritime Law ¹¹¹
-	SC/Amend.1 to 14	
-	SC/SUBC/1 to /4	
-	CN-6/1 to /133	
-	CN-6/SC/1 to /13+	Documents of the Diplomatic Conference on Maritime Law (11th Session, resumed). ¹¹² The relevant documents of the indicated series, as well as the verbatim records of the meetings, are reproduced in "Conférence Diplomatique de Droit Maritime, Onzième Session (2 ^e phase)" (Bruxelles, 1962)
-	CN-6/SC/1 to /13+	Documents of the (second) Standing Committee of the Diplomatic Conference on Maritime Law ¹¹³

(b) List or index

No list or index of these documents has been prepared. An Analytical Index of the Provisional Records of the debates at the first part of the 11th Session of the Diplomatic Conference is presented in document CN-6/2.

(c) Scope

The above-mentioned series include practically all significant documents, except those of the IAEA's Group of Scientific Advisers which met in June 1960 to assist the IAEA's Legal Panel.¹¹⁴

34.3.3. Waste disposal into the sea ¹¹⁵

(a) Document series

Distribution and Classification

L	TO/HS/7-13, 21	Documents of the Ad hoc Scientific Panel ¹¹⁶
-	STI/PUB/14 (Safety Series No. 5)	Final ("Brynielsson") Report of the Scientific Panel
PO	DG/WDS/L. 1-19 (prov.)	Documents of the Panel on the Legal Implications of the Disposal of Radioactive Waste into the Sea ¹¹⁷
R	DG/WDS/L. 19	Final Report of the Legal Panel
R	PL-25/1/Rev. 1.	Document of the Scientific/Legal Panel ¹¹⁸

(b) List or index

A list of the principal documents relating to this subject (including all the documents of the Legal Panel) is annexed to document DG/WDS/L. 19.

(c) Scope

The above-mentioned series include all the documents of the Legal Panel, but only some of the working papers of the Scientific Panel and none of those of the Scientific/Legal Panel.

34.3.4. Emergency assistance ¹¹⁹

(a) Document series

Distribution and Classification

R	ECEA/1	Expert Committee on Emergency Assistance in the Event of Radiation Accidents ¹²⁰
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(b) List or index

No list or index of the documents in the above series has been prepared.

(c) Scope

The documents in the above-mentioned series do not include any Board or General Conference documents on this subject, nor those of the Committee of the Whole [of the Board] on Emergency Assistance in the Event of Nuclear

Radiation Accidents (GOV/COM. 16).¹²¹ No records were kept of the proceedings of the Expert Committee or of the Working Group,¹²² and for the latter no separate documentation at all was prepared.

34. 4. DISTRIBUTION AND CLASSIFICATION

Almost all Agency documents, as well as some of those of the pre-statutory organs, are marked with one of four "distribution" legends, which in the "Document series" tables in Sections 34. 1-3 were given letter abbreviations as follows:

GENERAL	- G
RESTRICTED	- R
LIMITED	- L
PARTICIPANTS ONLY	- PO

In addition, certain Agency documents (in particular those of the Board, by virtue of a decision taken on 24 October 1957) carry the caution: "FOR OFFICIAL USE ONLY" abbreviated in the tables as OOU.¹²³ Most documents of the Working Level Meeting were marked: "CONFERENCE CONFIDENTIAL", abbreviated as CC in the tables.

Though these various distribution and cautionary legends have been used for years, they do not by any means have unambiguous meanings. Only as applied to a particular document series is it possible to determine a consistent practice. Thus the distribution GENERAL, when applied to INFCIRCS or to General Conference papers means that the document is to be sent automatically to all Member States and to certain international organizations (according to the Agency's agreements with them),¹²⁴ and is to be freely available to the public on request; however, as applied to Secretariat documents (such as SEC/NOTs) the same distribution symbol means circulation to all members of the staff. The legend PARTICIPANTS ONLY, when applied to documents of Committees of the Board, means that these documents are routinely distributed to the members of the Committee and to all Secretariat officials who normally receive Board documents - and on request other members of the Board may receive them; the same legend applied to SAC documents means that only members of the Committee and those members of the Secretariat immediately concerned with its work¹²⁵ receive copies.

Though not all documents that call for other than GENERAL distribution also carry the cautionary words FOR OFFICIAL USE ONLY (which are printed on all standard Board documents), the "distribution" symbols RESTRICTED, LIMITED or PARTICIPANTS ONLY by themselves also imply a certain restriction on permissible dissemination.¹²⁶ However, no precise rules have ever been promulgated as to the extent of these restrictions or as to whether the addition of the words "OFFICIAL USE ONLY" is to be given any special effect. The informal "classification" principles, which have always been administered on a rather liberal, common-sense basis, can be summarized as follows:

- (a) An attempt is made to avoid citing any "classified" document (i. e. , identifying it by its symbol number or exact title) or to give direct quotations from such documents in any GENERAL distribution document.¹²⁷
- (b) If requests are received for such a document from an organization not automatically entitled to receive it or from a Non-member State, the request must be justified and transmission must be authorized by a senior Agency official.
- (c) Requests from individuals (and particularly from news-media) for such documents are generally refused.
- (d) These documents are generally available for consultation in the Agency's library, and serious scholars have been granted access to them — usually with a request that the restriction on citing or quoting from "classified" documents be observed,¹²⁸ Many of these documents are also available for consultation in the UN Headquarters libraries in New York and Geneva and in the official libraries of some Member States, and the Agency has never issued guide-lines to these institutions requesting any limitation of access to these materials.
- (e) Within the Secretariat these documents (with the exception of those of SAC) are circulated quite freely and no attempt is made to secure any of them.

PARTICIPANTS ONLY is used primarily as a paper-saving device to reduce circulation even further than would be allowed by the applicable "classification", by arranging that certain working or provisional documents should receive automatic distribution only on a need-to-know basis, i. e. , to those delegations and staff members that participated in a particular meeting.

34. 5. SYNTAX OF DOCUMENT SYMBOLS

The Agency's document symbols are based, with minor modifications, on the system used by the United Nations. In general the symbols can be analyzed into as many as four parts, which in sequence are:

- (a) A designation of the organ or sub-organ, e. g. :
 - (i) GC(II)/...
 - (ii) GC(V)/GEN/...
 - (iii) GC(II)/COM. 1/SUB. 2/...
 - (iv) GOV/COM. 3/...
 - (v) SAC/...

In General Conference documents, the Roman numeral indicates the sequential number of the regular session¹²⁹ (though the documents of the first regular and special sessions were marked GC. 1 and GC. 1(S) respectively). In recognition of the continuity of the work on the Board, its documents are generally not marked to indicate the "number" of the body they pertain to (though this could conveniently be done for the official records);¹³⁰ such a number is used only on the Summaries

of the Decisions of the Board – these documents being numbered serially (by an Arabic numeral) according to the series of meetings to which they pertain, which is followed by a parenthetical (Roman numeral) designation of the Board (having the same number as that of the regular session of the General Conference at whose adjournment the Board in question was constituted).¹³¹

(b) A designation of the type of document:¹³²

- (i) .../INF/...: documents for information only and not for action
- (ii) .../DOCS/...: a list of documents of the organ in question
- (iii) GC(..)/RES/...: Resolutions of the General Conference
- (iv) GOV/DEC/...: decisions of the Board
- (v) .../OR....: official records – which in the Agency always consist of summary records for the Plenary and Main Committee meetings of the General Conference and for meetings of the Board, of more abbreviated records for most other meetings and of very short notes for SAC and some Board Committees

If no "type" designation at all appears (e. g., GOV/...), then the document is a regular working document of the indicated organ – usually presented for consideration in connection with a specified agenda item.

- (c) The serial number of the document – which is invariably an Arabic numeral following the "organ" and any "type" designations. (In the case of the GOV/DECs series, that number indicates the sequence of the series of meetings at which the decisions were taken and is followed by a Roman numeral designating the "number" of the Board.¹³³)
- (d) Optional modifiers, any one or more of which may be added after the serial number (and any previous modifiers) to indicate that the document in question in some way changes a previously issued document (with the same, unmodified symbol and number) and should be read and filed together with it. These modifiers are:¹³⁴

- (i) .../Add..., which means that the document in question adds material to the previous document
- (ii) .../Corr..., which means that the document in question corrects a mistake in the previous document
- (iii) .../Rev..., which means that the document in question entirely supersedes the previous document and all its modifiers
- (iv) .../Mod..., which means that only a part of the document in question is superseded (though not primarily as the result of the correction of a mistake); it is used when the portion to be revised is not extensive enough to warrant the re-issue of the entire document as a .../Rev.¹³⁵

Each of these symbols is followed by an Arabic numeral, indicating the sequence of that particular type of modifying document with respect to the original document. As indicated, the modifying documents may be cumulated: thus to the document GOV/INF/000/Rev. 2 an addition may be published with the symbol GOV/INF/000/Rev. 2/Add. 1, which in turn may be corrected by document GOV/INF/000/Rev. 2/Add. 1/

Corr. 1; however, if GOV/INF/000/Rev. 3 is published, all previous revisions and the additions and corrections thereto can for most purposes be disregarded.

With the exception of a few papers that only indicate the month and year of issue (e. g. , the Board's Annual Reports to the General Conference), all Agency documents are supplied with a precise date, which indicates the day of issue. Since, however, that date may be different in the several linguistic versions, that date should generally not (and need never) be used to identify the document (unless the language of the particular version is also indicated).

NOTES

- 1 Sections 2. 3 and 2. 6.
- 2 Section 2. 2. 1.
- 3 Section 2. 2. 2.
- 4 Chapter 2, note 14.
- 5 Section 2. 4.
- 6 WLM Doc. 2.
- 7 Section 2. 5.
- 8 The symbols used in this and the subsequent lists to indicate "distribution" and "classification" are defined and explained in Section 34. 4.
- 9 Section 2. 7.
- 10 Though not actually marked this way, for convenience these papers are referred to as "WLM Doc."s throughout this study.
- 11 Section 2. 7. 1.
- 12 Chapter 2, note 48.
- 13 Section 2. 7. 2(A).
- 14 Section 2. 7. 3.
- 15 A proposal to this effect had first been made by the Netherlands at the Conference on the Statute (IAEA/CS/OR. 39, pp. 17-20), and was repeated by the United States in the Preparatory Commission (IAEA/PC/OR. 3, p. 12; /OR. 4, pp. 6-7); the Commission, however, only authorized the release of these documents to its own members and Executive Secretary (IAEA/PC/OR. 6, pp. 7-8; /OR. 7, p. 19). Before the Board of Governors finally agreed to their declassification, it discussed the matter at its 4th and 5th series of meetings.
- 16 Section 2. 8.
- 17 Section 2. 8. 3.
- 18 IAEA/CS/2; Section 2. 8. 4(b).
- 19 Section 2. 8. 3.
- 20 Section 2. 8. 4(b).
- 21 Section 2. 8. 4(e) and (f).
- 22 Chapter 3.
- 23 IAEA/PC/W. 9(S), para. 2.
- 24 Section 3. 2. 1. 2. 3(a).
- 25 Sections 3. 3. 2. 3 and 15. 3. 1. 1.
- 26 Chapter 3, notes 37 and 43.
- 27 After discussions at the 4th and 5th series of meetings of the Board.
- 28 The use of a "+" sign indicates that the series is not a complete one, i. e. , that further documents may be added.
- 29 INFCIRC/1 (marked "Information Circular No. 1"; however every subsequent document in the series thus introduced has been marked "INFCIRC/...").
- 30 Section 26. 6. 1. 2. 4. See Annex 2. 2.
- 31 Sections 32. 1. 4-5. See Annexes 2. 1 and 2. 3.
- 32 Chapter 7.

- 33 The first list appeared in SEC/INS/7. The numbering system was further explained in GC(II)/INF/9. A recent, comprehensive list appears in PM/Pt. 9/1(Rev.1), Annex III, which will presumably be replaced by AM.VIII/4.
- 34 Section 32.1.2. Listed in Annex 2.3.
- 35 Section 15.3.2. Listed in Annex 2.3.
- 36 Section 25.2.2.3. Listed in Annex 2.3.
- 37 Sections 7.3.3.1 and 7.3.5.1.
- 38 Section 7.3.7.
- 39 See sub-Section (b) below.
- 40 Section 7.3.3.2.
- 41 Sections 7.3.3.3 and 7.3.5.4.
- 42 Sections 7.3.3.4 and 7.3.5.2.
- 43 Sections 7.3.3.6 and 25.3.2.
- 44 Sections 7.3.3.4 and 7.3.5.3.
- 45 Sections 7.3.3.5 and 25.5.2.
- 46 Because of the rule stated in Section 34.4(a).
- 47 Section 7.3.7.
- 48 Chapter 8.
- 49 PM/Pt. 9/1(Rev.1), Annex III - to be replaced by AM.VIII/4.
- 50 Section 8.4.4.
- 51 Section 8.4.8.
- 52 Sections 12.3.2.2 and 12.6.2.1.
- 53 Section 28.2.4.2.
- 54 Section 25.2.2.2.
- 55 Section 32.1.4.
- 56 Section 16.4.
- 57 Sections 16.8 and 25.5.1.2.
- 58 Section 12.6.2.3.
- 59 Section 18.2.1.
- 60 Section 25.2.2.2.
- 61 Section 28.3.1.
- 62 Section 15.3.1.2.
- 63 Section 21.4.1.1.1.
- 64 Section 21.4.2.1.1.
- 65 Section 21.4.1.1.4.
- 66 Section 21.4.1.1.5.
- 67 Section 23.4.4.
- 68 Section 15.4.
- 69 Section 21.4.1.1.5.
- 70 Sections 25.2.2.1-2.
- 71 Section 8.2.1.2.2.
- 72 Section 17.5.
- 72A Section 21.3.2.3 (final paragraph).
- 73 Section 8.4.8.
- 74 Should a hurriedly produced paper be required and issued (usually only in English), it is later reissued as a regular document of the Board or at least incorporated into the text of an appropriate summary record.
- 75 Section 24.1.4.1. These informal consultations technically do not constitute meetings of the Board.
- 76 For example, after no records of its proceedings had been issued for many years, the Administrative and Budgetary Committee decided to do so from its 83rd meeting in 1967.
- 77 Section 24.1.6.
- 78 SEC/INS/1; /7; /99, paras. 2 and 3(a); /99/Add.1; /139; /140.
- 79 SEC/INS/99, para. 3(b); SEC/NOT/137, para. 5; AM,Intro., para.14.
- 80 SEC/INS/139 and /140 (PM/contents).
- 81 AM, Intro., paras. 5-7. Transmittal sheets are addressed to "Manual holders".
- 82 SEC/NOT/137; AM, Intro.
- 83 AM, Intro., paras. 8-10, 13.

- 84 AM.Intro., paras. 11-12.
- 85 SEC/INS/1, Section 24.1.6.
- 86 SEC/INS/99, para. 3.
- 87 AM.Intro., para. 1 – though actual authority is vested in the DDG for Administration (id., para. 2).
- 88 Section 11.1.
- 89 Section 11.1.4.
- 90 Section 24.1.2.
- 91 Supra note 49.
- 92 Though no distribution or classification symbols are used on Staff Association documents, those whose symbols begin with A or SA are generally distributed to all staff members; those marked C, S or SC, though not classified, are generally circulated only to members of the Staff Council.
- 93 Section 24.12.3.6.
- 94 Section 24.12.3.2.
- 95 Section 24.12.3.4.
- 96 Section 20.2.3.
- 97 Section 20.2.
- 98 Section 20.1.
- 99 Section 18.3.7.
- 100 Section 18.2.1(D).
- 101 Chapter 23.
- 102 Section 23.1.
- 103 Section 23.1.1.
- 104 Section 23.1.2.
- 105 Section 23.1.3.
- 106 Section 23.1.4.
- 107 Section 23.1.5.
- 108 Section 23.2.
- 109 Sections 23.2.2 and 23.2.4.
- 110 Section 23.2.8. The Diplomatic Conference on Maritime Law was administered by the Belgian Government, the senior co-sponsor. The irregular documentation series used do not correspond to IAEA practice.
- 111 Section 23.2.9.
- 112 Section 23.2.10. See supra note 110.
- 113 Section 23.2.11.
- 114 Section 23.2.3.
- 115 Section 23.3.
- 116 Section 23.3.1.
- 117 Section 23.3.2.
- 118 Section 23.3.3.
- 119 Section 23.4.
- 120 Section 23.4.3.
- 121 Section 23.4.4.
- 122 Sections 23.4.2-3.
- 123 The background of that decision is presented in Section 8.4.10. In effect, once the Board had decided on the one hand that its meetings should generally be private and its documents consequently restricted, and on the other that Members of the Agency not serving on the Board should be kept informed of its and on the other that Members of the Agency not serving on the Board should be kept informed of its activities, it hoped that the "For Official Use Only" legend would impress on the officials of such other Members the obligation to keep the Board's documents from the press and public.
- 124 Section 12.2.2.6. Specialized agencies and regional intergovernmental organizations with which the Agency has concluded co-operation agreements (Section 12.5.2) are, in this respect, treated similarly to the United Nations.
- 125 Section 11.1.5.1.
- 126 Distribution of most Board documents to all Member States and to certain international organizations is provided for on the one hand in the decision of 19 March 1958 referred to in Section 8.4.10 and on the other in Board Procedural Rule 16 (GOV/INF/60).
- 127 The only place where this is stated, even collaterally, as a rule, is in connection with the reports that the External Auditor (Section 25.8.2.4) is to make to the Board and the General Conference (INFIRC/8/

- Rev. 1, Annex, para. 4) – and even there it is likely that the classified information referred to means primarily information obtained from Member States, rather than Agency-generated documents. Though in the early days of the Agency the principle of not citing restricted Board documents in General Conference publications was occasionally violated, it has thereafter been strictly observed – and when it becomes desirable to make such citations, the Board is asked to "declassify" the documents in question (e. g. , GOV/OR. 414/Add. 1, paras. 37-38 – resulting in the citations appearing in GC(XII)/408).
- 128 These restrictions are not always observed; see, e. g. , Stoessinger, *op. cit.* Annex 5, No. 59, at p. 396, footnotes 4 and 5 – though probably the author, working in the early days, was not informed of the evolving restrictions.
- 129 GC(II)/INF/9.
- 130 However, because of the continuous nature of the activities of the Board, no marking of documents of the GOV/... or GOV/INF/... series according to series of meetings is practical, since consideration of these documents may be held over from one series of meetings to the next, or they may even be issued without any initial decision as to the series of meetings at which they will be considered.
- 131 Section 8.4.4.
- 132 First explained in SEC/INS/7.
- 133 Section 8.4.4.
- 134 INFCIRC/30.
- 135 Though in its use of the other "modifiers" the Agency is following established UN practice, the .../Mod... was introduced to supplement those existing symbols (INFCIRC/30).

ANNEXES

ANNEX 1

CONCORDANCE OF DRAFTS OF IAEA STATUTE
AND REFERENCES TO ITS PROVISIONS

<u>First US Sketch</u> ¹	<u>Negotiating Group</u> ³	<u>Working Level Meeting</u> ⁴	<u>Conference on the Statute</u> ⁵ (Final Text)	<u>Referred to in this Study</u>
Memo to USSR 19 March 1954 (A/2738, No.8) ²	Draft of 22 Aug. 1955 WLM Doc.2	WLM Doc.22 (Final) WLM Doc.31, Annex III IAEA/CS/3	IAEA/CS/13 AM.1/2	Chapters and Sections
(1)	(2)	(3)	(4)	(5)
I; II.A	I	I	I	4, 5.2.1
	III	II	II	5.2.2, 15.1.2, 16.4.6, 21.1.1, 21.2.1*-3, 21.13, 23
	II.A:	III.A:	III.A:	15.1.1, 15.1.2.2
I.A; III.C(iv)	II.A.1	III.A.1	III.A.1	12.3.1, 15.1.2.2, 18.1.1.1, 19.2, 31.1.1
I.B; III.C(iv)(c)-(g)	(2	(2	(2	18.1.1.1
I.A; III.C(hii)	(3	(3	(3	12.3.1, 18.1.1.1, 20, 31.1.5, 31.1.7, 31.2.1
III.C(iv)(a)		(4	(4	12.3.1, 18.1.1.1, 18.3.4
		(5	(5	13.1.4-5, 13.3, 13.3.2, 16.5.1, 17.2.1.3, 21.1.1, 21.2.1*-3, 21.3.2.2-3, 21.6.2.3.3.6, 21.11.2.1, 21.11.3.2, 21.13, 22.1.1.2-3

(1)	(2)	(3)	(4)	(5)
III.C(iv)(b)	III.B.2; XIV	(6	(6	12.3.1* ^v , 13.1.5, 13.3, 13.3.2, 14.3, 16.5.1,
		(	(	17.2.1.3, 21.1.1, 22, 22.1.1.1 ^{v-3} , 22.1.2.2,
		(	(	22.2.1*, 22.2.2.1, 22.2.4, 22.2.4.1, 22.2.4.4,
	IV.A,B; X.I	(7	(7	22.3
				19.1.1.1**
	III.B:	III.B:	III.B:	
	III.B.1	III.B.1	III.B.1	12.2.1.1-2, 15.1.2.2-3, 17.5, 21.2.2,
		(	(	21.3.2.2-3
		((
		(2	(2	21.1.1
		((
	III.B.3	(3	(3	12.2.1.3, 18.1.1.1
		((
II.G		(4	(4	5.1.5.1, 12.2.2.7.1, 12.2.2.7.3, 32.1.4, 32.3.2
		((
		(5	(5	12.2.1.1, 12.2.2.7.2, 32.1.5
		III.C	III.C	12.2.1.3, 13.1.4
		III.D	III.D	13.1.1*, 13.1.13, 13.3, 17.1, 21,2.1.4,
				21.5.1, 26.1
II.B	V.A	IV.A	IV.A	6.1.1-2, 6.2.3.1-2
	V.B	IV.B	IV.B	6.1.1, 6.1.3, 6.2.1, 8.3.2.1
		IV.C	IV.C	6.1.1 *, 12.2.1.3, 13.1.1*
	VI.A	V.A	V.A	4.1, 7.3.2, 9.3.1, 10, 13.1.9, 13.1.13
	VI.B	V.B	V.B	7.3.8, 13.1.9, 13.2.1.1

(1)	(2)	(3)	(4)	(5)
	VI.C	V.C	V.C	7.3.6, 13.1.9
	VI.E.1	V.E.1	V.D	7.2.1, 10.1-2, 13.1.6, 21.4.1.1.1, 21.12.1, 21.12.8, 22.2.2.2.1
	VI.D:	V.D:	V.E:	7.1 ^v , 7.2.1, 21.12.1
	VI.D.1	V.D.1	V.E.1	[8.2.2.4.7]
	(((
	(2	(2	(2	[6.1.3]
	(((
	(3	(3	(3	[21.7.2.4], 21.12.5
	(((
	(4	(4	(4	7.3.2.1, 32.1.2
	(((
	(5	(5	(5	10.1, 25.1.1.2.1, 25.2.2.3-4, 25.2.3, 25.4.2
	(((
	(6	(6	(6	8.3.4.1, 10.1, 12.2.2.7.1-3, 26.1, 32.1.4-5, 32.3.1
	(((
	(((
	(7	(7	(7	10.1, 12.3.2.2, 12.5.2, 12.6.2.2, 18.1.3.3, 18.1.4, 26.1, 26.5.1
		((
		(8	(8	10.1, 25.1.1.2.1, 25.2.4.2.1, 25.5.1.1.-2, 25.6.1
		((
		(9	(9	[5.3.3.3-4]
			(
			(10	9.2.1 ^v
	VI.E:	V.E:	V.F:	7.2.1
	VI.E.2	V.E.2	V.F.1	7.2.2, 8.3.5, 10.1, 18.1.3.3, 21.4.1.1.1, 21.12.1, 22.2.2.2.1, 25.1.2.3, 25.2.1, 25.2.3, 25.4.2, 25.8.2.2, 26.5.1, 28.2.2

(1)	(2)	(3)	(4)	(5)
		(3	(2	21.12.8
II.C(i)	VII.A:	VI.A:	VI.A:	5.3.2.4, 8.2.1 ^v , 8.2.2.1 [*] , 8.2.3
	VII.A.1, B.1; [Annex II.1]	VI.A.1	VI.A.1	3.3.1.2, 8.2.2.4.6, 13.1.9, 13.1.13, 24.7.3.3
	(2, B.2; [Annex II.2]	(2	(2	3.3.1.2, 5.3.2.3, 8.2.1.2.2 ^v , 8.2.2.2 ^{*-3*} , 13.1.9, 13.1.13
	(3, C; [Annex II.3]	(3	(3 ⁶	5.3.2.1 ^v , 5.3.3.8 [*] , 8.2.1.2.2 ^v , 8.2.2.4, 8.4.10, 13.1.9
	VII.D	VI.B	VI.B	5.3.2.4, 5.3.3.8, 8.2.2.1.4, 8.2.2.2.3, 8.2.2.3.4
	VII.E	VI.C	VI.C	4.1, 5.3.2.4, 5.4, 8.2.2.1.3, 8.2.2.2.2, 8.2.2.3.3
	VII.E	VI.D	VI.D	4.1, 5.3.2.4, 7.3.2.1, 8.2.2.4.2
II.C(ii)	VII.G	VI.E	VI.E	6.1.3, 8.4.3, 9.2.2
II.C(i)	VII.H	VI.F	VI.F	8.3.1 ^{**v} , 15.3.2.4, 18.1.3.3, 21.5.6, 21.12.1, 21.12.8, 22.2.2.2.2, 25.1.2.3, 26.2.5.3, 26.5.1
	VII.I	VI.G	VI.G	[8.4.4]
	VII.J	VI.H	VI.H	8.4.5
	VII.K	VI.I	VI.I	8.4.5.2
	VII.L	VI.J	VI.J	12.2.2.7.1-2, 13.1.11, 17.7, 32.1.2, 32.1.4

(1)	(2)	(3)	(4)	(5)
II.D	VIII.A	VII.A	VII.A	8.3.4.2, 9.2.1 ^{*v} , 9.2.4, 9.3 ^v , 9.3.1 [*] , 10.1, 24.1.2
II.D	VIII.C	VII.B	VII.B	8.3.4.2, 9.3.1 ^{**} , 9.3.2.1, 9.3.3, 9.4.1, 10.2 ^{v-3} , 15.3.2.4, 21.8.1.1, 21.12.1, 21.12.8, 24.1.1-2, 24.1.4.1, 25.1.2.3, 25.2.4.1.2
II.D	VIII.B	VII.C	VII.C	24.1.1-2, 24.6.1.1 ^{**v}
	VIII.E	VII.D	VII.D	13.1.7, 13.3.5, 24.1.1-2, 24.3.2.1, 24.7.1 ^{v-2} , 24.7.3.4
	VIII.D	VII.E	VII.E	10.1, 24.1.1-2 ^{*v-3}
	VIII.F	VII.F	VII.F	10.1 ^v , 13.1.7, 21.4.3.2, 21.9.2.2, 24.1.1-2, 31.1.6
		VII.G	VII.G	24.3.2.1, 24.7.3.4
III.C(I),(II)(b),(c)	VIII.A (s.2)	VIII.A	VIII.A	13.1.3, 19.2.2.3, 20
III.C(II)(a)	VIII.A (s.1)	VIII.B	VIII.B	13.1.4, 17.2.1.2-3, 20, 31.1.1 ^{**v} , 31.1.4
III.C(III)	VIII.B, C	VIII.C	VIII.C	14.2, 17.2.1.3, 20, 31.1.5, 31.1.7, 31.2.1
III.A(i), (II)	X.A, G	IX.A	IX.A	13.1.3, 14.1-2, 16.2.1 ^v , 16.2.2.1-2 ^{*-3} , 16.2.2.5, 17.5, 26.1
III.A(i), (ii)	X.B	IX.B	IX.B	13.1.3, 14.1, 16.2.1 ^v , 16.2.2.1-2, 16.2.2.5, 26.1
	X.C	IX.C	IX.C	13.1.3, 16.2.2.1 ^{**} , 16.3.1, 16.4
		IX.D	IX.D	13.1.3, 16.2.1 ^v , 16.2.2.1, 16.2.2.3-5, 26.4.5

(1)	(2)	(3)	(4)	(5)
	X.D	IX.E	IX.E	16.2.1 ^v , 16.2.2.1
	X.E	IX.F	IX.F	13.1.3, 16.2.1 ^v , 16.2.2.1, 16.3.1, 16.4
III.A(iii), B(iv)	X.F(s.1 & 2)	IX.G	IX.G	13.1.11, 16.2.1 ^v , 16.2.2.4, 16.5.3, 17.7, 32.2.2
III.A.(iii)	X.F(s.3 & 4)	IX.H	IX.H	16.2.1 ^v , 16.2.2.2, 16.5.1, 21.1.1
II.H:	IV.C; X.H:	IX.I:	IX.I:	16.2.2.2, 16.5.1
II.H(i)	X.H.1	IX.I.1	IX.I.1	16.2.2.2 ^v
((((
((ii)	(2	(2	(2	21.1.1
((((
(	( 3	(3	(3	22.1.1.2 ^{**} , 22.1.2.2, 22.2.1
((((
((iii)	(4	(4	(4	19.1.1.1 ^{**} , 21.7.2.5
((((
((iv)	(5	(5	(5	24.1.1
	X.K	IX.J	IX.J	13.1.3, 16.2.2.3, 16.7
III.C(iv)(c)-(g)	XI.A, B.1, 2	X	X	13.1.3, 14.1, 16.1, 16.8, 17.5, 18.2.2, 19.2.2.3, 20.3.1, 25.5.1.2, 26.1
	XII.A, B	XI.A, B	XI.A	13.1.4, 13.3.1, 17.1-3, 17.5, 18.1.1.2, 21.5.3, 25.7.2, 26.4.5
III.C(iv)(h)			XI.B	17.1, 17.8, 18.1.1.2, 25.1.1.2.2, 26.4.5
III.C(iv)(c)-(g)	XI.A	XI.C	XI.C	13.1.4, 16.2.2.1, 16.2.2.3, 16.5.1, 16.6, 16.8, 17.1, 17.5

(1)	(2)	(3)	(4)	(5)
	XII.C	XI.D	XI.D	13.1.4, 17.1-2, 17.5, 24.1.1, 24.3.2.3, 26.4.5
III.B(i):	XIII.A:	XI.E:	XI.E:	8.3.2.1, 13.1.4, 17.1-3, 17.5, 17.8, 18.1.1.2, 18.2.4, 19.3.1.2
III.B(i)(a)	XIII.A.1	XI.E.1	XI.E.1	17.2.1.1
((((
((b)	(2	(2	(2	17.2.1.1
((((
((c)	(3	(3	(3	17.2.1.1, 22.1.1.1-2, 22.1.2.2, 22.2.1, 22.3, 22.3.1.1
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((((
((4	(4	(4	17.2.1.1
((((
((d)	(5	(5	(5	17.2.1.1, 17.8
	(((
	(((6	17.2.1.1, 17.8
	(((
	(6	(6	(7	17.2.1.1
	XIII.B:	XI.F:	XI.F:	13.1.4, 16.5.1, 17.1, 17.2.1.2, 17.2.2.2, 17.5, 18.1.1.2, 18.1.5.1-2, 21.5.2, 26.1, 26.2.1.5, 26.4.5
	XIII.B.1	XI.F.1	XI.F.1	17.2.1.2
	(((
	(2	(2	(2	16.5.1, 17.2.1.2, 22.1.1.2, 22.1.2.2, 22.2.1, 26.4.5
	(((
	(((
III.B(ii)	(4,5	(3	(3	16.2.2.1, 16.5.1, 16.8, 17.2.1.2, 26.2.5.2, 26.4.2, 26.4.5
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	(((

(1)	(2)	(3)	(4)	(5)
	(3, 6	(4	(4	13.1.5-6, 15.1.2.2, 17.2.1.2, 18.1.1.2,
	(((18.1.5.2, 21.1.1, 21.2.1 ^v -3, 21.5.1, 21.5.4.1,
	(((21.7.2.4, 21.13, 22.1.1.3, 22.3, 22.3.1.2
	(((
	(	( 5	(5	17.2.1.2, 18.1.5.2, 20, 31.1.1 ^{*v} , 31.1.4
	(((
	(	(	( 6	17.2.1.2, 18.1.5.2, 21.10, 27.1.3.1 ^{*v} -2
	(((
	(7	(6	(7	17.2.1.2
	XII.D	XI.G	XI.G	17.1, 17.2.1.3
	XIII.C:	XII.A:	XII.A:	5.1.5.2, 13.1.4-5, 13.3.2, 16.4.6, 17.2.2.1,
				21.1.1, 21.2.1 ^v -3, 21.5.1, 21.7, 21.11,
				22.1.2.3, 22.3, 26.4.2
III.B(iii)	XIII.C.1	XII.A.1	XII.A.1	[21.7.1.1], 21.7.2.6, 22.1.1.2 [*] , 22.1.2.2,
(	(	(	(	22.2.1
((((
(	( 2	(2	(2	13.1.6, 22.1.1.1-2 [*] , 22.1.2.2, 22.2.1,
((((
(	( 3	(3	(3	21.2.1.4 ^v -5 ^v , [21.7.1.2]
((((
(	( 4, D	(4	(4	[21.7.1.3], 22.1.1.3
((((
(	( 5	(5	(5	13.1.5, 13.1.13, 21.2.1.4 ^v -5 ^v , 21.7.2.1-3,
(	(	(	(	22.1.1.2 [*] , 22.1.2.2, 22.2.1
((((
(	XIII.D (s.1 & 3)	(6	(6	13.1.5-6, 13.1.13, 14.3, 21.2.1.4 ^v -5 ^v , 21.2.2,
(		(	(	[21.7.1.4], 21.8, 21.8.2.2, 21.8.2.4, 21.10,
(		(	(	21.11.3.2, 22.1.1.2 [*] , 22.1.2.2, 22.2.1, 22.4.1,
(		(	(	26.1
(	XIII.D(s.6)	(7	(7	21.2.2, 21.7.2.4, 22.1.1.3, 22.3.1.2

(1)	(2)	(3)	(4)	(5)
	XIII.D (s.2)	XII.B	XII.B	21.1.1, 21.2.2-3, 21.8, 21.8.1.1, 22.1.1.2*, 22.1.2.2, 22.2.1, 22.4.1-3, 24.1.1, 24.3.2.2
	XIII.D (s.4-7)	XII.C	XII.C	5.1.5.2, 9.3.1, 12.2.2.7.3, 13.1.5, 13.1.11, 13.1.13, 21.2.1 ^v -3, 21.7.2.4, 21.12.5, 22.1.1.2, 22.1.2.2, 22.2.1, 22.3.1.2, 22.4.1-2, 26.1, 26.4.2, 32.3.1
	XV	XIII	XIII	13.1.3, 13.1.13, 16.2.2.5, 16.8, 17.5, 18.2.2, 25.5.1.2, 26.1, 26.5.1
	XVI.A, B	XIV.A	XIV.A	8.3.4.1, 9.3.1*, 9.4.1, 15.3.2.1, 25.2.2-3, 25.2.5, 25.4.2
		XIV.B:	XIV.B:	5.3.2.2, 19.1.1.5, 25.1.1.1.1 ^v *2 ^v , 25.2.1, 25.2.4.1.1, 25.8.2.3
II.E(i)		XIV.B.1	XIV.B.1	12.2.1.1, 17.8, 18.2.5.1-3, 18.3.7, 19.2.2.1, 20, 20.1.5, 20.2.4, 21.1.1, 21.2.1.4 ^v , 21.2.2, 21.9.1 ^v , 22.1.1.3, 24.1.1
II.E(ii)	XVI.C	(2	(2	18.2.1, 19.1.1.5, 25.7.2, 26.1
		XIV.C	XIV.C	13.1.5, 21.2.1.4 ^v , 21.2.2, 21.5.1, 21.7.2.4, 21.9.1 ^v , 22.1.1.3, 26.1
II.E(i)	XVI.B	XIV.D	XIV.D	13.1.2, 24.7.1, 25.1.1.1.1 ^v , 25.3, 25.3.1.1.1 ^v * ^v -2, 25.4.2, 29.1
II.E(ii); III.B(ii)	XVI.D,E	XIV.E	XIV.E	8.3.2.1, 13.1.4, 16.2.2.5, 16.4.2, 16.5.1, 16.7, 17.5-6, 18.2.1, 19.1.1.5, 25.1.1.1.1 ^v , 25.5.1.1, 25.7.2, 31.1.5
	XVI.E	XIV.F	XIV.F	17.6, 18.2.1, 25.1.1.1.1 ^v , 25.1.1.2.1-2, 25.2.4.2.1-2, 25.5.1.1-2

(1)	(2)	(3)	(4)	(5)
	XVI.F	XIV.G	XIV.G	13.1.2, 25.1.1.1.1 ^v , 25.5.1.1-2, 25.6.1 ^v , 29.1
	XVI.B	XIV.H	XIV.H	7.3.6, 8.4.3, 25.1.1.1.1 ^v , 25.1.4.7, 25.2.2.2-4, 25.3.2
	XVII.A	XV.A	XV.A	13.1.8, 28.1.1 ^v -2, 28.3.1, 28.3.5, 31.1.3
	XVII.B	XV.B	XV.B	13.1.8, 13.2.1.2, 24.1.1, 24.4.6, 28.1.1 ^v -2, 28.3.1, 28.3.5
	XVII.C	XV.C	XV.C	9.3.1 ^{**} , 13.1.8, 26.1, 26.5.1, 28.1.1 ^v -2, 28.2.2, 28.2.4.3, 28.3.1, 28.3.4-5
II.G	XVIII	XVI.A	XVI.A	12.3.2.2, 12.5.2, 12.6, 12.6.2.2, 18.1.3,3, 18.1.4, 26.1, 26.2.3, 26.5.1
		XVI.B:	XVI.B:	5.1.5.1, 12.1.1 ^v , 26.1
II.G		XVI.B.1	XVI.B.1	12.2.2.7.1-3, 32.1.5, 32.3.2
		((
		(2	(2	12.2.2.4, 24.2.2
	XIX.E (s.1-2)	XVII.A	XVII.A	13.1.10, 27.1.1.1.1 ^v -3, 27.1.3.1, 27.2.1.1
	XIX.E (s.3)	XVII.B	XVII.B	10.1, 12.1.4.1, 12.2.1.1, 13.1.10, 27.1.1.2, 27.1.2.1 ^{**v} -3, 27.1.3.1, 27.2.1.2
	XIX.A	XVIII.A	XVIII.A	5.3.3.1-2, 9.3.1, 13.1.9
			XVIII.B	5.4 ^{**v} , 7.2.1
	XIX.B	XVIII.B:	XVIII.C:	5.3.1 ^{**v}
		XVIII.B(i), (ii)	XVIII.C(i)	5.3.3.3-4
		((
		((iii)	((ii)	5.3.3.5-6, 10, 13.1.9, 13.1.13

(1)	(2)	(3)	(4)	(5)
	XIX.C	XVIII.C	XVIII.D	5.1.5.4, 6.3.1-2, 13.1.12-13, 13.3
	XIX.D	XVIII.D	XVIII.E	6.3.1, 13.1.2, 13.1.12, 13.3.2-3, 17.2.1.2, 21.2.3, 25.3.3.2.3, 25.3.4.5
	XX (s.1)	XIX.A	XIX.A	7.2.1, 13.1.2, 13.1.9, 13.1.13, 25.3.5.1 ^{v-4}
	XX (s.2)	XIX.B	XIX.B	6.3.1, 13.1.13, 21.7.2.4, 21.12.5, 26.1
		XX:	XX:	15.1.2, 16.1
	X.A	XX.1	XX.1	8.3.3, 16.4.8, 21.6.1.1
		((
		(2	(2	8.3.3, 21.6.1.1
		((
		(3	(3	21.6.1.1
	XXI.A	XXI.A	XXI.A	5.1.2, 6.1.1
	XXI.B	XXI.B	XXI.B	[6.1.2, 6.1.4]
	XXI.C	XXI.C	XXI.C	5.1.3, 6.1.4
	XXI.D	XXI.D	XXI.D	[6.1.2-4]
	XXI.E	XXI.E	XXI.E	3.1, 5.1.4
	XXI.F	XXI.F	XXI.F	5.3.3.6-7, 13.1.11, 13.3.7
	XXI.G		XXI.G	3.1*, 5.1.4
	XXII.A	XXII.A	XXII.A	5.3.3.6
	XXII.B	XXII.B	XXII.B	12.2.2.7.4, 13.3.4, 26.1*, 26.2.5.3, 26.6.1.1.1 ^{v-2} , 26.6.2.1*, 27.1.4, 32.1.2

(1)	(2)	(3)	(4)	(5)
	XXIII	XXIII	XXIII	5.1.3, 33.1.2 ^v
	Annex I (s.1)	Annex I.A	Annex I.A	3.1
			Annex I.B	3.2.3.1
		Annex I.B:	Annex I.C:	
			Annex I.C.1	3.2.1.1
			(
			(2	3.2.2.1
			(
		Annex I.B.1	(3	3.3.1.1, 3.3.2.1, 4.1, 7.3.1, 12.5.1,
		(	(	12.6.1, 28.2.1
		((
		(2	(4	3.3.1.2
			(
	Annex I (s.2)		(5	3.3.2.3-6, 4.5 ^{*v} , 15.3.1.1, 24.1.1-2, 24.1.3.2.1
			(
			(6	3.3.2.4, 26.1, 28.2.2 ^{**}
			(
			(7	3.3.2.7, 12.2.1.1 [*] , 12.3.2.1 [*] , 12.6.2.2, 26.1
II.F ⁷			-	
II.H(v) ⁸			-	
	VI.F ⁹		-	
	VII.F ¹⁰		-	
	X.J ¹¹		-	

NOTES TO ANNEX 1

- 1 Section 2.2.1(b).
 - 2 Reprinted in UNGA Off. Rec. (9th sess.), Annexes, Agenda Item No. 67, pp.4-6.
 - 3 Section 2.4.
 - 4 Section 2.7.2.
 - 5 Section 2.8.4(g).
 - 6 An amendment to this Article appears in INFCIRC/41. Sections 5.3.2.1 and 8.2.1.2.2.
 - 7 Location of the headquarters of the Agency (Section 4.4). Now covered in GC.1(S)/DEC/11.
 - 8 Agency facilities for education and training, research and development, fuel fabrication and chemical processing (Sections 19.1.1.4, 19.1.2.2, 19.1.3.2).
 - 9 Limit on length of sessions of the General Conference (Section 7.3.2.1). This subject is now regulated in accordance with General Conference Procedural Rule 8 (GC (VII)/INF/60).
 - 10 Appointment of Governors, alternates and advisers (Section 8.4.2) and cost of their attendance (Section 8.4.9). The first subject is now covered by Board Procedural Rule 1 (GOV/INF/60).
 - 11 Criteria for the contribution of materials and equipment to the Agency.
- * Quoted in part.
** Quoted in full.
~ Historical derivation given.

ANNEX 2

LISTS OF PRINCIPAL INSTRUMENTS AND DOCUMENTS

ANNEX 2.1

REGULATIONS AND RULES

The Agency, unlike several other international organizations, has not issued any manual of basic documents, for the convenience of representatives to its political organs or of its staff. If it were to do so, the following instruments might be included:

<u>Subject Title</u>	<u>Agency Document ¹</u>	<u>Described in this study Chapter or Section</u>
<u>Statute</u>	Unnumbered booklet AM.I/2 Legal Series No.1, p.49 IAEA/CS/13 with INFCIRC/41 ²	5
<u>Rules of Procedure:</u>		
General Conference	GC(VII)/INF/60	7.3.1
Board of Governors	GOV/INF/60 and /Mod.2	8.4.1
<u>Financial:</u>		
Regulations	INFCIRC/8/Rev.1 AM.V/2	25.1.2
Interim Rules	AM.V/3	25.1.3
Working Capital Fund	GC.1(S)/RES/7	25.4.1
Guiding Principles for the Assessment of Contributions	GC(II)/RES/33 and GC(III)/RES/50	25.3.1.1.2
<u>Staff:</u>		
Provisional Regulations	INFCIRC/6/Rev.2 AM.II/1	24.1.3
Rules	AM.II/1	24.1.5
<u>Privileges and Immunities:</u>		
Headquarters Agreement	INFCIRC/15, Part I AM.II/8	28.2
Agreement on the Privileges and Immunities of the IAEA	INFCIRC/9/Rev.2	28.3
<u>Relationship with United Nations:</u>		
Agreement	INFCIRC/II, Part I.A	12.2.1
Reports to General Assembly	GC(IV)/RES/61	32.1.4
Reports to ECOSOC	GC(II)/RES/24	32.1.5

<u>Subject Title</u>	<u>Agency Document</u> ¹	<u>Described in this study Chapter or Section</u>
<u>Non-Governmental Organizations:</u>		
Rules on Consultative Status	INFCIRC/14 GC(II)/RES/20, Annex	12.6.2.1
<u>Control Functions:</u>		
Safeguards Document	INFCIRC/66/Rev.2	21.4.1
Health and Safety Document	INFCIRC/18	22.1.2
Inspectors Document	GC(V)/INF/39, Annex	21.4.2
<u>Technical Assistance:</u>		
Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency	GC(IV)/RES/65, Annex	18.1.2.1-2
Special Fund Executing Agency Agreement	INFCIRC/33	18.1.4
<u>Registration of Agreements:</u>		
Regulations	INFCIRC/12	26.6.1.1.2
<u>Voluntary Contributions to the Agency:</u>		
Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities	INFCIRC/13, Part I	16.8
Rules Regarding the Acceptance of Voluntary Contributions of Money to the Agency	INFCIRC/13, Part II GC(III)/RES/42, Annex	25.5.1.2
<u>Emblem and Seal</u>	INFCIRC/19	30.2

¹ The document symbols are explained in Sections 34.1.5 and 34.2.2-5.

² For additional sources of the text of the Statute, see Chapter 5, note 1.

The treaties concluded by the Agency are listed in the cumulative publication "Agreements Registered with the International Atomic Energy Agency",¹ IAEA Legal Series No.3,² and consequently the reproduction of a necessarily partial list in this study could not be justified. Moreover an analysis of the various types of agreements concluded by the Agency appears in Section 26.2, the footnotes to which, directly or by reference to other Sections, contain citations of all the principal agreements as well as of representative examples of all categories of other agreements (e.g., Project Agreements; Safeguards Transfer Agreements). However, these citations, as well as most of the others throughout this study, do not contain complete information about the instruments, but for the sake of brevity in most instances only specify the INFCIRC³ or Agency Registration Number;⁴ to assist the reader in using these citations, the following table contains a list of all the agreements so cited.

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series		Described in this study Section
				Vol.	page	
3, Part I	14	Agreement between the IAEA ⁶ and the Government of Canada for the Supply by Canada of Uranium to the Agency [Supply Agreement]	24 Mar. 1959	339	315	16.5.1(a)(1)(A) 16.5.3(d) 17.2.2.1
3, Part II	15	Agreement between the IAEA and the Government of Japan for Assistance by the IAEA to the Government of Japan in Supplying Uranium for the Research Reactor Project JRR-3 [Project Agreement]	24 Mar. 1959	339	327	17.2.2.1
5, Part I	17	Agreement between the IAEA and the Government of the Union of Soviet Socialist Republics on the Making Available of Special Fissionable Materials [General Supply Agreement]	11 May 1959	339	341	16.4

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series		Described in this study Section
				Vol.	page	
5, Part II	18	[Exchange of Letters Constituting an Agreement between the IAEA and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Supplying of Special Fissionable Materials to the Agency] [General Supply Agreement]	11 May 1959	339	351	16.4
5, Part III	24	Agreement for Co-operation between the IAEA and the United States of America [General Supply Agreement]	7 Aug. 1959	339	359	16.4
9/Rev. 2	44	Agreement on the Privileges and Immunities of the IAEA [IAEA, Finland, Germany, etc.]	originally 9 July 1960	374 396 399 412 456 463 556 570 588	147 352 296 353 502 362 194 329 327	28.3
11, Part I	1	Agreement Governing the Relationship between the United Nations and the IAEA [Relationship Agreement] [UN, IAEA]	14 Nov. 1957	281	369	12.2.1
11, Part II	6	Administrative Arrangement on Use of the United Nations Laissez-Passer by Officials of the IAEA [UN, IAEA]	26 June 1958			12.2.2.1
11, Part III	8	Agreement for the Admission of the IAEA into the United Nations Joint Staff Pension Fund [UN, IAEA]	1 Oct. 1958	313	232	12.2.2.1 24.5.2.1

11/Add.1	188	Special Agreement Extending the Jurisdiction of the Administrative Tribunal of the United Nations to the IAEA, with Respect to Applications by Staff Members of the IAEA Alleging Non-observance of the Regulations of the United Nations Joint Staff Pension Fund [UN, IAEA]	18 Oct. 1963	480	484	12.2.2.1 27.3.2.3.
15, Part I	2	Agreement between the IAEA and the Republic of Austria regarding the Headquarters of the IAEA [Headquarters Agreement]	1 Mar. 1958	339	152	28.2
15, Part II	3	[Exchange of Letters Constituting a Supplemental Agreement on Currency Exchange Facilities for the Purpose of Implementing Article IX, Section 23 of the Agreement Regarding the Headquarters of the IAEA] [IAEA, Austria]	1 Mar. 1958	339	236	25.1.4.9 28.2.4.1
15, Part III	5	Supplemental Agreement to the Agreement regarding the Headquarters of the IAEA [IAEA, Austria]	3 June 1958	339	240	28.2.4.2
15, Part IV and /Mod.1	4	[Exchange of Letters Constituting a Supplemental Agreement on Turnover Taxes for the Purpose of Implementing the Provisions of Article VIII, Section 22(b) of the Agreement regarding the Headquarters of the IAEA] [IAEA, Austria]	1 Mar. 1958	339	261	28.2.4.3
15, Part V and /Add.1	7	[Exchange of Notes Constituting a Supplemental Agreement on the Establishment of an Agency Commissary for the Purpose of Implementing Article XV, Section 38(j)(iii) of the Agreement regarding the Headquarters of the IAEA] [IAEA, Austria]	15 Aug. 1958	339 425	278 360	24.13.1 28.2.4.4

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series		Described in this study	
				Vol.	page	Section	
15, Part VII	10	Agreement between the IAEA and the Republic of Austria Concerning the Regulation of Pension Insurance for Officials of the IAEA	1 Oct. 1958	339	294	24.5.3 28.2.4.5	
15, Part VI and /Add.3	12	Agreement between the IAEA and the Federal Government of the Republic of Austria Concerning the Social Insurance of Officials of the IAEA	1 Jan. 1959	339	282	24.5.3 28.2.4.5	
15/Add. 2	299	Supplemental Agreement on the Scope of Section 1(o) of the Agreement between the IAEA and the Republic of Austria Regarding the Headquarters of the IAEA	1 Mar. 1965	556	186	28.2.4.6	
20, Part I	9	Agreement between the IAEA and the United Nations Educational, Scientific and Cultural Organization [Relationship Agreement]	11 Oct. 1958	339	373	12.3.2	
20, Part II	11	Agreement between the IAEA and the International Labour Organisation	21 Nov. 1958	328	273	12.3.2	
20, Part III	21	Agreement between the IAEA and the World Health Organization	28 May 1959	339	387	12.3.2	
20, Part IV	25	Agreement between the IAEA and the World Meteorological Organization	12 Aug. 1959	341	341	12.3.2	
20, Part V	26	Agreement between the IAEA and the International Civil Aviation Organization	1 Oct. 1959	361	193	12.3.2	
20, Part VI	32	Agreement between the IAEA and the Food and Agriculture Organization of the United Nations	18 Nov. 1959	361	211	12.3.2	

20/Add.1	74	Agreement between the IAEA and the Inter-Governmental Maritime Consultative Organization	5 Oct. 1961	425	281	12.3.2
24, Part I	55	Contract between the IAEA, the United States Atomic Energy Commission Acting on Behalf of the Government of the United States of America, and the Government of Finland Concerning the Transfer of Enriched Uranium for a Research Reactor [Supply Agreement]	30 Dec. 1960	395	241	16.5.1(a)(ii) 16.5.3(a)(1) 17.2.2.2
24, Part II	56	Agreement between the IAEA and the Government of Finland for Assistance by the Agency to Finland in Establishing a Research Reactor Project [Project Agreement]	30 Dec. 1960	395	257	17.2.2.2
24/Add.2	413	Contract for the Transfer of Enriched Uranium for a Research Reactor in Finland [Second Supply Agreement] [IAEA, Finland, USA]	8 July 1966	572	283	17.2.2.2
24/Add.3	544	Contract for the Transfer of Enriched Uranium for a Research Reactor in Finland [Third Supply Agreement] [IAEA, Finland, USA]	5 Nov. 1967	630		17.2.2.2
25, Part I	48	Agreement between the IAEA and the Organisation for European Economic Co-operation, Relating to Co-operation with the European Nuclear Energy Agency [Co-operation Agreement]	30 Sept. 1960	396	273	12.5.2 12.5.3.1
25, Part II	54	Agreement between the IAEA and the Inter-American Nuclear Energy Commission [Co-operation Agreement]	21 Dec. 1960	396	285	12.5.2 12.5.3.3
25/Add.1 [superseded by 25/Add.2]	211	Agreement between the IAEA and the Commission for Technical Co-operation in Africa	6 Feb. 1964	501	285	12.5.2 12.5.3.4

INFCIRC/	IAEA Reg. No. ⁴⁵	Title ⁵	Entry into force	UN Treaty Series Vol. page		Described in this study Section
25/Add.2		Co-operation Agreement between the IAEA and the Organization of African Unity	26 Mar. 1969			12.5.2 12.5.3.4
27 and /Add.1 [superseded by 129]	59 205	Agreement between the IAEA, the Government of the Principality of Monaco and the Oceanographic Institute Concerning Research on the Effects of Radioactivity in the Sea	10 Mar. 1961	396 255 490 483		19.1.2.1
29, Part I	65	Contract between the IAEA, the Government of Norway, and the United States Atomic Energy Commission Acting on Behalf of the Government of the United States of America for the Lease of Enriched Uranium [Supply Agreement]	15 June 1961	402 281		16.5.1(a)(ii) 16.5.3(a)(ii) 17.2.2.4
29, Part II	66	Agreement between the IAEA and the Government of Norway Relating to an Agency Project for Co-operation in Carrying Out a Joint Program of Research in Reactor Physics with the Zero Power Reactor "NORA" [Project Agreement; Joint Programme Agreement]	15 June 1961	402 255		17.2.2.4 19.3.2.1
29/Add.1	120	Supplementary Agreement to Amend the Contract for the Lease of Enriched Uranium for the NORA Reactor [IAEA, Norway, USA]	3 Sept. 1962	456 506		17.2.2.4
29/Add.2, Part I	222	Agreement to Extend and Revise the First Contract for the Lease of Enriched Uranium for the NORA Reactor [First Supply Extension Agreement] [IAEA, Norway, USA]	8 Apr. 1964	501 368		17.2.2.4
29/Add.2, Part II	224	Contract for the Lease of Enriched Uranium for the NORA Reactor [Second Supply Agreement] [IAEA, Norway, USA]	8 Apr. 1964	501 221		17.2.2.4

29/Add.2, Part III	223	Agreement between the IAEA and the Government of Norway Relating to the Extension of the Agency Project for Co-operation in Carrying Out a Joint Program of Research in Reactor Physics with the Zero-Power Reactor "NORA" [Project Extension Agreement]	8 Apr. 1964	501	360	17.2.2.4 19.3.2.1
29/Add.3	481	Agreement Relating to the Extension of the Agency Project for Co-operation in Carrying Out a Joint Programme of Research in Reactor Physics with the Zero-Power Reactor "NORA", and to the Extension of the Second Contract for the Lease of Enriched Uranium for the "NORA" Reactor [Project Extension Agreement and Second Supply Agreement] [IAEA, Norway, USA]	10 Apr. 1967	603		17.2.2.4 19.3.2.1
32, Part I and /Add.1	72	Contract for the Transfer of Enriched Uranium for a Research Reactor [Supply Agreement] [IAEA, USA, Yugoslavia]	4 Oct. 1961	412 556	209 198	16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.5
32, Part II	73	Agreement between the IAEA and the Government of the Federal People's Republic of Yugoslavia for Assistance by the Agency to Yugoslavia in Establishing a Research Reactor Project [Project Agreement]	4 Oct. 1961	412	255	17.2.2.5
32/Add.2	569	Contract for the Transfer of Enriched Uranium for a Research Reactor in Yugoslavia [Second Supply Agreement] [IAEA, USA, Yugoslavia]	20 Feb. 1968	650		17.2.2.5
33	78	Executing Agency Agreement between the United Nations Special Fund and the IAEA	29 Nov. 1961	415	407	18.1.4
34, Part I	92	Contract for the Transfer of Enriched Uranium and Plutonium for a Research Reactor [Supply Agreement] [IAEA, Pakistan, USA]	5 Mar. 1962	425	3	16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.7

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series		Described in this study Section
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34, Part II	93	Agreement between the IAEA and the Government of Pakistan for Assistance by the Agency to Pakistan in Establishing a Research Reactor Project [Project Agreement]	5 Mar. 1962	425	17	17.2.2.7
34/Add.1	538	Contract for the Transfer of Enriched Uranium for a Research Reactor in Pakistan [Second Supply Agreement] [IAEA, Pakistan, USA]	19 Oct. 1967	630		17.2.2.7
36 [superseded by 57]	101	Agreement between the IAEA and the Government of the United States of America for the Application of Agency Safeguards to Four United States Reactor Facilities [Safeguards Submission Agreement]	1 June 1962	442	49	21.5.2(d) 21.5.5.3
37, Part I	104	Agreement between the IAEA, the Government of Belgium and the Government of the Congo (Leopoldville) for the Transfer of Title to Enriched Uranium [Title Transfer Agreement]	27 June 1962	463	3	16.5.1(a)(ii) 16.5.3(e) 17.2.2.8
37, Part II	105	Contract for the Transfer of Enriched Uranium for a Research Reactor [Supply Agreement] [IAEA, Congo (L), USA]	27 June 1962	463	17	16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.8
37, Part III	106	Agreement between the IAEA and the Government of the Congo (Leopoldville) for Assistance by the Agency to the Congo in Continuing a Research Reactor Project [Project Agreement]	27 June 1962	463	31	17.2.2.8
37/Add.1	429	Agreement between the IAEA and the Government of the Democratic Republic of the Congo for Additional Assistance by the Agency to the Congo in Continuing a Research Reactor Project [Project Extension Agreement]	27 Sept. 1966	588	337	17.2.2.8

38	135	Agreement for the Establishment in Cairo of a Middle Eastern Regional Radioisotope Centre for the Arab Countries [IAEA, UAR, Iraq, Kuwait, Yemen, Lebanon, Libya, Tunisia]	29 Jan. 1963	494	219	19.3.1.1
47 [superseded by 119]	191	Agreement between the IAEA, the Government of Japan and the Government of the United States of America for the Application of Safeguards by the Agency to the Bilateral Agreement between those Governments Concerning Civil Uses of Atomic Energy [Safeguards Transfer Agreement]	1 Nov. 1963	488	99	21.5.2(b) 21.5.5.3
49	237	Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents [IAEA, Denmark, Finland, Norway, Sweden]	19 June 1964	525 556	75 202	23.4.1
51 [superseded by 114]	566	Agreement between the IAEA and the Government of Italy Concerning the Establishment of an International Centre for Theoretical Physics at Trieste	5 Feb. 1968	639		19.1.3.1 28.2.7
52, Part I	203	Contract for the Transfer of Enriched Uranium for a Research Reactor in Mexico [Supply Agreement] [IAEA, Mexico, USA]	18 Dec. 1963	490	383	16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.9
52, Part II	202	Agreement between the IAEA and the Government of the United Mexican States for Assistance by the Agency to Mexico in Establishing a Research Reactor Project [Project Agreement]	18 Dec. 1963	490	361	17.2.2.9
53, Part I	169	Agreement between the IAEA and the Government of Finland for Assistance by the Agency in Establishing a Sub-Critical Assemblies Project [Project Agreement]	30 July 1963	490	413	16.5.1(b) 17.2.2.3

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series		Described in this study Section
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55	225	Agreement between the IAEA and the Governments of Norway, Poland and Yugoslavia Concerning Co-operative Research In Reactor Physics [NPY Agreement]	10 Apr. 1964	501	245	19.3.2.2
56	253	Agreement for Conducting under the Auspices of the IAEA a Regional Joint Training and Research Programme Using a Neutron Crystal Spectrometer [IPA Agreement][IAEA, India, Philippines, etc.]	31 Aug. 1964	525	61	19.3.2.3
57	246	Agreement between the IAEA and the Government of the United States of America for the Application of Safeguards to United States Reactor Facilities ["Yankee" Safeguards Submission Agreement]	1 Aug. 1964	525	3	21.5.2(d) 21.5.5.3
62, Part I	272	Contract for the Transfer of Title to Enriched Uranium for a Research and Isotope Production Reactor [Title Transfer Agreement] [IAEA, Argentina, USA]	2 Dec. 1964	525	51	16.5.1(a)(ii) 16.5.3(a)(iii) 17.2.2.11
62, Part II	271	Agreement between the IAEA and the Government of the Argentine Republic for Assistance by the Agency to Argentina in Establishing a Research and Isotope Production Reactor Project [Project Agreement]	2 Dec. 1964	525	29	17.2.2.11
62/Add.1	378	Contract for the Transfer of Title to Enriched Uranium for a Research and Isotope Production Reactor [Second Title Transfer Agreement] [IAEA, Argentina, USA]	30 Dec. 1965	557	3	17.2.2.11

63	328	Agreement between the IAEA, the Government of the Kingdom of Denmark and the Government of the United Kingdom of Great Britain and Northern Ireland for the Application of Safeguards in Respect of the Agreement between those Governments Concerning Co-operation in the Promotion and Development of the Peaceful Uses of Atomic Energy [Safeguards Transfer Agreement]	23 June 1965	548	241	21.5.2(b) 21.5.5.5
64	283	Agreement for Collaboration in an International Programme on Irradiation of Fruit and Fruit Juices [IAEA, SGAE, ENEA]	1 Jan. 1965			19.3.2.4
67, Part I	348	Contract for the Lease of Enriched Uranium and for the Transfer of Special Fissionable Material and Certain Equipment for a Research Reactor in Uruguay [Supply Agreement] [IAEA, USA, Uruguay]	24 Sept. 1965	556	141	16.5.1(a)(ii) 16.5.3(a)(ii) 17.2.2.12
67, Part II	349	Agreement between the IAEA and the Government of the Oriental Republic of Uruguay for Assistance by the Agency to Uruguay in Establishing a Reactor Project [Project Agreement]	24 Sept. 1965	556	117	17.2.2.12
69 [superseded by 120]	352	Agreement between the IAEA, the Government of the Republic of the Philippines and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	24 Sept. 1965	555	205	21.5.2(b) 21.5.5.3
70 [superseded by 98]	360	Agreement between the IAEA, the Government of the Republic of South Africa and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	8 Oct. 1965	556	69	21.5.2(b) 21.5.5.3

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72	365	Agreement between the IAEA, the Government of the Republic of China and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	29 Oct. 1965	555	227	21.5.2(b) 21.5.5.3
74	350	Project Agreement between the IAEA and the Royal Government of Morocco Concerning Arrangements for the Delivery of Radiotherapy Equipment [Project Agreement]	24 Sept. 1965	556	109	17.4
75	357	Agreement between the IAEA, the Government of Mexico and the Government of the United States of America for a Preliminary Study of a Nuclear Electric Power and Desalting Plant	7 Oct. 1965	556	175	11.2.8
76	373	Agreement between the IAEA, the Government of the Republic of Austria and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	13 Dec. 1965	555	183	21.5.2(b) 21.5.5.3
77 and /Corr.1	374	Agreement between the IAEA, the Government of Portugal and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	15 Dec. 1965	556	47	21.5.2(b) 21.5.5.3
79 [superseded by 130]	393	Agreement between the IAEA, the Government of the Argentine Republic and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	1 Mar. 1966	572	229	21.5.2(b) 21.5.5.3

82, Part I	408	Contract for the Lease of Natural Uranium and for the Transfer of Plutonium for a Sub-critical Facility in Mexico [Supply Agreement] [IAEA, Mexico, USA]	20 June 1966	573	41	16.5.1(a)(ii) 16.5.3(a)(ii) 17.2.2.10
82, Part II	409	Agreement between the IAEA and the Government of the United Mexican States for Assistance by the Agency to Mexico in Establishing a Sub-critical Assembly Project [Project Agreement]	20 June 1966	573	25	17.2.2.10
83, Part I	390	Master Agreement between the IAEA and the Government of Turkey for Assistance by the Agency in Furthering Projects for the Supply of Materials [Master Project Agreement]	8 Feb. 1966	573	75	17.3
83, Part II	391	Supplementary Agreement No.1 to the Master Agreement between the IAEA and the Government of Turkey for Assistance by the Agency in Furthering Projects by the Supply of Materials [Supply Agreement]	8 Feb. 1966			17.3
83, Annex A	116	Master Contract for Sales of Research Quantities of Special Nuclear Materials [IAEA, USA]	20 Aug. 1962	456	447	16.4.12 16.5.3(a)(iv)
83, Annex B		Supplemental Contract No.10 of Sale of Research Quantities of Special Nuclear Materials [IAEA, USA]	4 Feb. 1966			16.4.12 16.5.3(a)(iv)
84	405	Agreement between the IAEA, the Government of Israel and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	15 June 1966	573	3	21.5.2(b) 21.5.5.3

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series Vol. page	Described in this study Section
85	407	Agreement between the IAEA, the Government of Canada and the Government of Japan for the Application of Agency Safeguards in Respect of the Bilateral Agreement between those Governments for Co-operation in the Peaceful Uses of Atomic Energy [Safeguards Transfer Agreement]	20 June 1966	572 289	21.5.2(b) 21.5.5.5
85/Mod.1		[Exchange of Letters to Amend the Agreement between the IAEA, the Government of Canada and the Government of Japan for the Application of Agency Safeguards in Respect of the Bilateral Agreement between those Governments for Co-operation in the Peaceful Uses of Atomic Energy] [IAEA, Canada, Japan]	12 Nov. 1969		21.5.4.8
86, Part I	422	Agreement between the IAEA and the Government of the United Kingdom of Great Britain and Northern Ireland for the Application of Safeguards with Regard to the Bradwell Nuclear Power Station [Safeguards Submission Agreement]	1 Sept. 1966	588 289	21.5.2(d) 21.5.5.5
86, Part II	423	Agreement between the IAEA and the Government of the United Kingdom of Great Britain and Northern Ireland Supplementary to the Agreement between the IAEA and the Government of the United Kingdom of Great Britain and Northern Ireland for the Application of Safeguards with Regard to the Bradwell Nuclear Power Station [Supplementary Safeguards Agreement]	1 Sept. 1966	588 284	21.5.7.2

88, Part I	431	Contract for the Transfer of Enriched Uranium for a Research Reactor in the Philippines [Supply Agreement] [IAEA, Philippines, USA]	28 Sept. 1966	589	41	16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.13
88, Part II	430	Agreement between the IAEA and the Government of the Republic of the Philippines for Assistance by the Agency to the Philippines in Continuing a Research Reactor Project [Project Agreement]	28 Sept. 1966	589	25	17.2.2.13
88/Add.1		Contract for the Transfer of Enriched Uranium for a Research Reactor in the Philippines [Second Supply Agreement] [IAEA, Philippines, USA]	23 Aug. 1968			16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.13
89	41 315	Master Contract for U.S. Financing of Agency Research [IAEA, USA]	30 June 1960	374 556	133 190	19.2.2.2 25.7.4.1
94, Part I	439	Master Agreement between the IAEA and the Government of India for Assistance by the Agency in Furthering Projects by the Supply of Materials [Master Project Agreement]	9 Dec. 1966	603		17.3
97, Part I	499	Contract for the Transfer of Enriched Uranium and Plutonium for a Research Reactor in Iran [Supply Agreement] [IAEA, Iran, USA]	7 June 1967	614		16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.14
97, Part II	498	Agreement between the IAEA and the Government of Iran for Assistance by the Agency to Iran in Establishing a Research Reactor Project [Project Agreement]	10 May 1967	614		17.2.2.14
98	510	Agreement between the IAEA, the Government of the Republic of South Africa and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	26 July 1967	614		21.5.2(b) 21.5.5.5

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series Vol. page	Described in this study Section
99, Part I	505	Contract for the Lease of Enriched Uranium for a Research Reactor in Spain [Supply Agreement] [IAEA, Spain, USA]	23 June 1967	614	16.5.1(a)(ii) 16.5.3(a)(ii) 17.2.2.17
99, Part II	504	Agreement between the IAEA and the Government of Spain for Assistance by the Agency to Spain in Establishing a Zero Energy Fast Reactor Project [Project Agreement]	23 June 1967	614	17.2.2.17
101	518	Project Agreement between the IAEA and the Government of the United Mexican States Regarding Arrangements for the Transfer of Radiodiagnostic Equipment	18 Aug. 1967	614	17.4
102, Part I	521	Contract for the Lease of Natural Uranium and for the Transfer of Plutonium for a Sub-critical Facility in Mexico [Supply Agreement][IAEA, Mexico, USA]	23 Aug. 1967	614	16.5.1(a)(ii) 16.5.3(a)(i), (ii) 17.2.2.10
102, Part II	522	Agreement between the IAEA and the Government of the United Mexican States for Assistance by the Agency to Mexico in Establishing a Sub-critical Assembly Project [Project Agreement]	23 Aug. 1967	614	17.2.2.10
106, Part I	535	Contract for the Transfer of Enriched Uranium for a Research Reactor in Viet-Nam [Supply Agreement][IAEA, USA, Viet-Nam]	16 Oct. 1967	630	16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.15
106, Part II	536	Agreement between the IAEA and the Government of the Republic of Viet-Nam for Assistance by the Agency to Viet-Nam in Connection with a Reactor [Project Agreement]	16 Oct. 1967	630	17.2.2.15

107, Part I [superseded by 125]	526	Agreement between the IAEA, the Government of Japan and the Government of the United Kingdom of Great Britain and Northern Ireland for the Application of Agency Safeguards in Respect of the Bilateral Agreement between those Governments for Co-operation in the Peaceful Uses of Atomic Energy [Safeguards Transfer Agreement]	26 Sept. 1967	633	21.5.2(b) 21.5.5.5
107, Part II	527	Agreement between the IAEA and the Government of Japan Supplementary to the Agreement between the IAEA, the Government of Japan and the Government of the United Kingdom of Great Britain and Northern Ireland for the Application of Agency Safeguards in Respect of the Bilateral Agreement between those Governments for Co-operation in the Peaceful Uses of Atomic Energy [Supplementary Safeguards Agreement]	26 Sept. 1967	637	21.5.7.2
108	548	Agreement between the IAEA, the Government of Iran and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	4 Dec. 1967	637	21.5.2(b) 21.5.5.3
110	617	Agreement between the IAEA, the Government of the United States of America and the Government of the United States of Brazil for the Application of Safeguards [Safeguards Transfer Agreement]	31 Oct. 1968		21.5.2(b) 21.5.5.5
112	572	Agreement between the IAEA, the Government of the Kingdom of Denmark and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	29 Feb. 1968	637	21.5.2(b) 21.5.5.5

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series Vol. page	Described in this study Section
114		Agreement between the IAEA and the Government of the Republic of Italy Concerning the Seat of the International Centre for Theoretical Physics			19.1.3.1 28.2.7
115	524	Project Agreement between the IAEA and the Government of Israel Regarding Arrangements for the Transfer of Irradiation Equipment	31 Aug. 1967	650	17.2.2.16
116, Part I	592	Contract for the Transfer of Enriched Uranium for a Nuclear Power Reactor in Pakistan [Supply Agreement][IAEA, Pakistan, USA]	17 June 1968	650	16.5.1(a)(ii) 16.5.3(a)(i) 17.2.2.18
116, Part II	593	Agreement between the IAEA and the Government of Pakistan for Assistance by the Agency to Pakistan in Connection with the Establishment of a Nuclear Power Reactor Project [Project Agreement]	17 June 1968	650	17.2.2.18
117	594	Agreement between the IAEA and the Government of the Socialist Republic of Romania Relating to the Application of Safeguards [Safeguards Submission Agreement]	27 June 1968	650	21.5.2(d) 21.5.5.5
118	604	Agreement between the IAEA and Mexico for the Application of Safeguards Under the Treaty for the Prohibition of Nuclear Weapons in Latin America [Safeguards Submission Agreement]	6 Sept. 1968	650	21.3.2.2 21.5.2(d) 21.5.5.5
119 and /Corr.1	596	Agreement between the IAEA, the Government of Japan and the Government of the United States of America for the Application of Safeguards by the Agency to the Bilateral Agreement Between those Governments Concerning Civil Uses of Atomic Energy [Safeguards Transfer Agreement]	10 July 1968	650	21.5.2(b) 21.5.5.5

120	598	Agreement between the IAEA, the Government of the Republic of the Philippines and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	19 July 1968	650	21.5.2(b) 21.5.5.5
123		Agreement between the IAEA, the Government of Turkey and the Government of the United States of America for the Application of Safeguards [Safeguards Transfer Agreement]	5 June 1969		21.5.2(b) 21.5.5.5
125	613	Agreement between the IAEA, the Government of Japan and the Government of the United Kingdom of Great Britain and Northern Ireland for the Application of Agency Safeguards in Respect of the Agreement between those Governments for Co-operation in the Peaceful Uses of Atomic Energy [Safeguards Transfer Agreement]	15 Oct. 1968		21.5.2(b) 21.5.5.5
129		Agreement between the IAEA, the Government of the Principality of Monaco and the Oceanographic Institute of Monaco Concerning Developmental Studies on the Effects of Radioactivity in the Sea	21 May 1969		19.1.2.1
132		Agreement between the IAEA and the United Nations Educational, Scientific and Cultural Organization Concerning the Joint Operation of the International Centre for Theoretical Physics at Trieste	1 Jan. 1970		12.3.4.3 19.1.2.3
133		Agreement between the IAEA and the Government of the Republic of China for the Application of Safeguards to the Taiwan Research Reactor Facility [Safeguards Submission Agreement]	13 Oct. 1969		21.5.2(d) 21.5.5.5

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series Vol. page	Described in this study Section
135		Agreement between the Government of the Islamic Republic of Pakistan, the Government of Canada and the IAEA for the Application of Safeguards [Safeguards Transfer Agreement]	17 Oct. 1969		21.5.2(b) 21.5.5.5
138		Agreement between the IAEA and the Government of Sweden Relating to Co-operation in the Provision of Assistance to Developing Countries	18 Jan. 1970		18.2.7 25.7.4.2
-	13	Exchange of Letters Constituting an Agreement for the Provision of Technical Assistance by the IAEA to Thailand [IAEA, Thailand]	18 Mar. 1959	339 307	18.1.5.2(A) 28.4.2(a)
-	16	[Exchange of Letters Concerning the Conduct of a Seminar on Atomic Energy and its Educational Problems, Saclay, France, 6-10 July 1959] [Host Agreement][IAEA, France]	5 May 1959		20.1.2 28.4.2(c)
-	22	[Exchange of Letters Concerning Assistance to Switzerland in Evaluating the Health and Safety Hazards of the Research and Material-Testing Reactor (DIORIT) at Würenlingen] [IAEA, Switzerland]	26 June 1959		17.8(a)
-	23.8	Definitive Contract between the IAEA and the United States Atomic Energy Commission Acting on Behalf of the Government of the United States of America Regarding the Conduct of Research Leading to the Development of Methods for the Enrichment of Calcium-46 for the Production of Calcium-47 for Biological and Medical Purposes	16 June 1960		19.2.2.2

-	28	[Agreement between the IAEA and the Principality of Monaco Concerning a Scientific Conference on the Disposal of Radioactive Wastes, Monaco, 16-21 November 1959] [Host Agreement]	20 Oct. 1959	20.1.2 28.3.5.3
-	29	[Exchange of Letters between the IAEA and the Government of France Concerning a Scientific Conference on the Disposal of Radioactive Wastes, Monaco, 16-21 November 1959]	20 Oct. 1959	20.1.2 28.3.5.3
-	30	[Exchange of Letters Concerning Assistance to Switzerland in Evaluating Health and Safety Hazards Connected with the SUIATOM, KONSORTIUM and ENUSA Power Reactors] [IAEA, Switzerland]	4 Nov. 1959	17.8(a)
-	35	[Exchange of Letters Concerning Participation by the IAEA in Studies on the Application of Nuclear Power in Finland][IAEA, Finland]	5 Mar. 1960	17.8(a)
-	37	Letter of Agreement [for the Purpose of the Operation of the Mobile Isotope Laboratory in Mexico] [IAEA, Mexico]	13 Apr. 1960	18.3.6
-	49	[Exchange of Letters Concerning a Symposium on Nuclear Ship Propulsion with Special Reference to Safety, Taormina, Italy, 14-18 November 1960] [Host Agreement] [IAEA, Italy]	8 Nov. 1960	20.1.2 28.4.2(b)
-	50	[Exchange of Letters Concerning Technical Assistance to the Philippines] [IAEA, Philippines]	10 Nov. 1960	18.1.5.2(A)

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into forcé	UN Treaty Series Vol. page	Described in this study Section
-	62	[Exchange of Letters Concerning the Provisional Application of an Agreement Relating to a Project for Co-operation in Carrying Out a Joint Programme of Research in Reactor Physics with the NORA Reactor] [Norway, IAEA]	10 Apr. 1961	402 255	17.2.2.4 29.2.5
-	102	[Exchange of Letters Concerning the Participation by the IAEA in Discussions of the Conceptual Study for an International Demonstration Power Plant at Ljubljana, Yugoslavia] [IAEA, Yugoslavia]	14 June 1962		17.8(a)
-	107	Protocol on the Signature of the Agreements Concerning the TRICO Reactor Project [IAEA, Belgium, Congo(L), USA]	27 June 1962	463 11	17.2.2.8 26.5.2.2
-	119	Letter of Agreement [for the Purpose of the Operation of the Mobile Isotope Laboratory in Brazil] [IAEA, Brazil]	31 Aug. 1962		18.3.6
-	121	Agreement between the International Commission on Radiological Units and Measurements and the IAEA [Concerning the Development of Practical Data for Dosimetry and Related Work] [Technical Contract]	6 Sept. 1962		12.6.3(i) 19.2.6
-	129	Agreement between the International Commission on Radiological Protection and the IAEA [Concerning Studies on Maximum Permissible Exposure to Radiation] [Technical Contract]	30 Nov. 1962		12.6.3(i) 19.2.6

-	130	[Exchange of Letters between the IAEA and Japan Concerning a Symposium on the Application of Radioisotopes in Hydrology, Tokyo, 5-9 March 1963] [Host Agreement]	4 Dec. 1962			28.3.5.3
-	147	Plan of Operation for a UN Special Fund Project in Yugoslavia [IAEA, Special Fund, Yugoslavia]	8 Apr. 1963			18.1.4 18.1.5.2 18.2.4
-	156	Agreement for the Provision of Technical Assistance to the Government of Ceylon [IAEA, Ceylon]	23 May 1963			18.1.5.2(B)
-	162	Agreement between the IAEA and the Government of Austria for Assistance by the Agency in Furthering a Research Project [Project Agreement]	27 June 1963	490	351	17.3
-	178	Agreement between the United Nations, the International Labour Organisation, the Food and Agricultural Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the International Civil Aviation Organization, the World Health Organization, the International Telecommunication Union, the World Meteorological Organization, the IAEA, and the Universal Postal Union and the Government of the United Arab Republic Concerning Technical Assistance [EPTA Standard Agreement]	10 Sept. 1963	480	100	18.1.5.2 26.3.5 26.5.2.2.1

INFCIRC/	IAEA Reg. No. ⁴	Title ⁵	Entry into force	UN Treaty Series Vol. page	Described in this study Section
-	184	[Exchange of Letters Constituting an Agreement Amending the Revised Standard Agreement between the United Nations, the International Labour Organisation, the Food and Agricultural Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the International Civil Aviation Organization, the World Health Organization, the International Telecommunication Union, the World Meteorological Organization and the Government of India Concerning Technical Assistance] [all the above plus IAEA, UPU]	3 Oct. 1963	480 342	18.1.5.2(C) 26.3.5 26.5.2.2.1
-	186	Terms of Grant in Connection with 15 Motion Picture Films	14 Oct. 1963		20.3.1(b) 26.2.1.4
-	212	Plan of Operation for a UN Special Fund Project in the Philippines [IAEA, Special Fund, Philippines]	14 Feb. 1964		18.1.4 18.1.5.2 18.2.4
-	262	Supplementary Agreement on the Provision of Technical Assistance by the IAEA to the Government of India	19 Oct. 1964		18.1.5.2(C)
-	402	Standard Agreement on Operational Assistance [UN, ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU, IMCO and Malta]	12 May 1966	563 54	26.2.1.6 26.3.5
-	415	[Exchange of Letters Concerning the Conduct of a Panel on Recurring Inspection of Nuclear Pressure Vessels, Pilsen, Czechoslovakia, 3-7 October 1966][Host Agreement][IAEA, CSSR]	1 Aug. 1966		20.1.2

-	433	Amendment No.1 to Plan of Operation for a UN Special Fund Project in Yugoslavia [IAEA, Special Fund, Yugoslavia] [see No.147]	19 Oct. 1966	18.1.4 18.1.5.2 18.2.4
-	434	Plan of Operation for a UN Special Fund Project in Turkey [IAEA, Special Fund, Turkey]	4 Nov. 1966	18.1.4 18.1.5.2 18.2.4

¹ Section 26.6.1.2.1. With minor, special exceptions, such as the First Conference Agreement (Section 28.2.1) concluded between the Government of Austria and the Preparatory Commission, acting for itself and the Agency, and the agreement with Yugoslavia relating to the Vinča Dosimetry Experiment (Section 19.1.4) that was signed and carried out but never entered into force for want of ratification (Chapter 19, note 77).

² The Second Edition, STI/PUB/180 (Vienna 1968), covers all agreements registered up to 31 December 1966.

³ Section 34.2.2.

⁴ Section 26.6.1.2.3.

⁵ The bracketed words following many of the titles are not a part of these, but merely indicate the type of agreement, as described in this study (see Annex 4), or its popular name. Where the title does not clearly indicate the parties, their names have also been added in brackets. Where part or all of the title of the agreement is enclosed within brackets, this indicates that the instrument itself has no title or only an incomplete one (e.g., if it is expressed in an exchange of letters) so that a nominal title has had to be formulated for registration purposes.

⁶ In this list "International Atomic Energy Agency" is always contracted to "IAEA".

ANNEX 2.3

**PROGRAMMES, BUDGETS
AND PRINCIPAL ANNUAL REPORTS**

Programme (1 Jan. - 31 Dec.)	Budget (Supplementary) (1 Jan. - 31 Dec.)	Board's Report to General Conference (1 July - 30 June)	Accounts (1 Jan. - 31 Dec.)	Technical Assistance provided (1 Jan. - 31 Dec.)	Report to UN General Assembly (1 July - 30 June)	Supplement (1 July - early Oct.)	Report to ECOSOC (1 April - 31 March)
1957		GC(II)/39 ³			GC(II)/INF/11 ⁴ GC(II)/40 ⁴		1957
1958	GC.1/1 ²	GC.1/1 ²	GC(III)/81 ²		INFCIRC/10 ⁵	GC(III)/INF/20	INFCIRC/4 ¹ 1958
1959	GC(II)/36	GC(II)/36	GC(IV)/117	GC(V)/INF/37	GC(IV)/114	INFCIRC/23	INFCIRC/17 ¹ 1959
1960	GC(III)/75	GC(III)/75	GC(V)/156	GC(V)/INF/37	GC(V)/154	INFCIRC/31	INFCIRC/28 ¹ 1960
1961	GC(IV)/116	GC(IV)/116	GC(VI)/199	GC(VI)/INF/52	GC(VI)/195	INFCIRC/39	INFCIRC/35 1961
1962	GC(V)/155	GC(V)/155 (GC(VI)/191)	GC(VII)/231	GC(VII)/INF/61			INFCIRC/43 1962
1963	GC(VI)/200	GC(VI)/200	GC(VIII)/277	GC(VIII)/INF/72	GC(VII)/228	INFCIRC/46	INFCIRC/54 1963
1964	GC(VII)/230	GC(VII)/230	GC(IX)/301	GC(IX)/INF/80	GC(VIII)/270	INFCIRC/59	INFCIRC/61 1964
1965	GC(VIII)/275	GC(VIII)/276 (GC(IX)/296)	GC(X)/331	GC(X)/INF/87	GC(IX)/299	INFCIRC/85	INFCIRC/80 1965
1966	GC(VIII)/275	GC(IX)/300 (GC(X)/328)	GC(XI)/361	GC(XI)/INF/93	GC(X)/330	INFCIRC/87	INFCIRC/93 1966
1967	GC(X)/332	GC(X)/333	GC(XII)/384	GC(XII)/INF/100	GC(XI)/355	INFCIRC/103	INFCIRC/113 1967
1968	GC(X)/332	GC(XI)/360	GC(XIII)/406	GC(XIII)/INF/111	GC(XII)/380	INFCIRC/124	INFCIRC/126 1968
1969	GC(XII)/385	GC(XII)/385	GC(XIII)/404		GC(XIII)/404	INFCIRC/134	INFCIRC/139 1969
1970	GC(XII)/385	GC(XIII)/405					1970

¹ The first Report to ECOSOC (INFCIRC/4) covered the period to 15 April 1959, the second (INFCIRC/17) from 16 April 1959 to 15 April 1960 and the third (INFCIRC/28) from 16 April 1960 to 31 March 1961.

² The first Programme and Budget (GC.1/1) covered the period from the establishment of the Agency until 31 December 1958.

³ The Board's first Report (GC(II)/79) covered the period from 23 October 1957 to 30 June 1958.

⁴ The first Report to the General Assembly (GC(II)/INF/11) covered the period to 31 October 1957 and the second (GC(II)/40) from 1 November 1957 to 30 June 1958.

⁵ The third Report to the General Assembly (INFCIRC/10) covered the period from 1 July 1958 to 30 June 1959, but contained an expanded Preface referring to developments to early October 1959.

ANNEX 2.4

UNITED NATIONS RESOLUTIONS
RELATING TO THE AGENCY¹

Resolution Number	Title	Described in this study Section
<u>UNGA/RES/</u> ²		
810(IX)	International co-operation in developing the peaceful uses of atomic energy: Part A - Concerning an International Atomic Agency	2.3
912(X)	Peaceful uses of atomic energy: Part II - Concerning an international Atomic Energy Agency	2.6
1115(XI)	Authorization for the Advisory Committee established by General Assembly resolution 810(IX) to negotiate on behalf of the United Nations an agreement to establish relations between the United Nations and the International Atomic Energy Agency	12.2.1.1
1145(XII)	Agreement governing the relationship between the United Nations and the International Atomic Energy Agency	12.1.2 12.2.1.1
1146(XII)	Authorization to the International Atomic Energy Agency to request advisory opinions of the International Court of Justice	12.1.4.1 27.1.2.2
1201(XII)	Amendments to the Regulations of the United Nations Joint Staff Pension Fund: Annex, Supplementary article C (new text)	12.1.4.2 24.5.2.1
1242(XIII)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
1255(XIII)	United Nations programmes of technical assistance: Part A, preamble	12.1.4.2 18.1.3.2
1336(XIII)	Administrative and budgetary co-ordination between the United Nations and the specialized agencies and the International Atomic Energy Agency: Part B	12.4.2.3 25.2.2.5
1344(XIII)	Report of the Secretary-General on the Second United Nations International Conference on the Peaceful Uses of Atomic Energy: para. 4	12.2.4.1(b)
1355(XIV)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
1376(XIV)	Progress report of the United Nations Scientific Committee on the Effects of Atomic Radiation	12.2.3.2
1437(XIV)	Administrative and budgetary co-ordination between the United Nations and the specialized agencies: Part I, para.3	12.4.2.3 25.2.2.5
1503(XV)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
1531(XV)	Possibilities of increasing voluntary contributions to the Operational Fund of the International Atomic Energy Agency	18.2.1 25.5.2

Resolution Number	Title	Described in this study Section
<u>UNGA/RES/</u> ²		
1629(XVI)	Report of the United Nations Scientific Committee on the effects of atomic radiation: Part I, para.5; Part II, para.1	12.2.3.2.
1651(XVI)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
1764(XVII)	Report of the United Nations Scientific Committee on the Effects of Atomic Radiation: Part II, para.1	12.2.3.2
1769(XVII)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
1770(XVII)	Third International Conference on the Peaceful Uses of Atomic Energy: para.3	12.2.4.1(c)
1886(XVIII)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
2026(XX)	Reports of the International Atomic Energy Agency	12.2.2.7.1 32.1.4.
2078(XX)	Effects of atomic radiation: para.5	12.2.3.2
2156(XXI)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
2284(XXII)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
2309(XXII)	Question of holding a fourth international conference on the peaceful uses of atomic energy: paras.2, 3	12.2.4.1(d)
2373(XXII)	Treaty on the Non-Proliferation of Nuclear Weapons: Annex, preamble and Articles III, VIII	21.3.2.3
2406(XXIII)	Fourth International Conference on the Peaceful Uses of Atomic Energy: para.2	12.2.4.1(d)
2456(XXIII)	Conference of Non-Nuclear-Weapon States: Part A, paras.5,7,9; Part C, para.1	15.2.2(i)-(ix) 17.5 17.8(d)
2457(XXIII)	Report of the International Atomic Energy Agency ³	12.2.2.7.1 32.1.4
2536(XXIV)	Report of the International Atomic Energy Agency	12.2.2.7.1 32.1.4
2575(XXIV)	Fourth International Conference on the Peaceful Uses of Atomic Energy: para.5	12.2.4.1(d)
2605(XXIV)	Conference of Non-Nuclear Weapon States: Part A, paras.1, 4-7; Part B	15.2.2(i)-(ix) 17.5 17.8(d)

Resolution Number	Title	Described in this study Section
<u>ECOSOC/RES/</u>		
694(XXVI)	Development and co-ordination of the economic, social and human rights programmes and activities of the United Nations and the specialized agencies as a whole: Part E – Co-ordination of activities in the field of atomic energy	12.2.2.7.2 12.3.2.2 34.1.5
704(XXVI)	Participation of the International Atomic Energy Agency in the Expanded Programme of Technical Assistance	12.1.4.2 18.1.3.2
724(XXVIII)	Report of the Transport and Communications Commission: Part C – International Transport of Dangerous Goods, para.3(g)	22.2.4.6
737(XXVIII)	Allocation of administrative and operational services costs between Regular and Expanded Programme budgets: para.4	18.2.5.1 25.2.1(iv)
743(XXVIII)	Development and co-ordination of the economic, social and human rights programmes and activities of the United Nations and the specialized agencies as a whole: Part B – Peaceful uses of atomic energy; Part D – Programme appraisals for the period 1959 to 1964, paras.II.2, II.3, III	12.4.1.3 12.4.2.3 15.3.1.2
799(XXX)	Work of the Administrative Committee on Co-ordination: Part B.III	12.4.1.3
844(XXXII)	Reports of the specialized agencies and of the International Atomic Energy Agency ⁴	12.2.2.7.2 32.1.5
855(XXXII)	Allocation of administrative and operational services costs between Regular and Expanded Programme budgets: para.2	18.2.4.1 25.2.1(iv)
982(XXXVI)	Economic and social consequences of disarmament: para.4	15.1.2.3
986(XXXVI)	Co-ordination of atomic energy activities	12.4.1.3-4
1060(XXXIX)	Administrative and operational services costs: para.2	18.2.5.1 25.2.1(iv)
1146(XL)	Water desalination: preamble	

¹ This list does not include those Resolutions in which the Agency is merely mentioned routinely together with the specialized agencies or other international organizations.

² For the sake of convenience, this symbol has been used throughout this study to identify the Resolutions of the UN General Assembly.

³ This is the only one of the otherwise routine Resolutions with this title that contains some substance.

⁴ This is apparently the first time that ECOSOC took note of the reports of the specialized agencies and of the Agency in this way. Thereafter, a similar routine Resolution has been adopted annually, though from time to time ECOSOC has used these as vehicles for urging the organizations to make their reports more comparable and useful.

ANNEX 3
LEADING STATES AND PERSONS

ANNEX 3.1
MEMBERSHIP OF ORGANS

AREA ⁷	Organ	PRE-OPERATIONAL				
		Correspondence ¹ (1954-56)	Negotiating Group ² (1955)	Six Governments ³ (1955)	Working Level Meeting ⁴ (1958)	Preparatory Commission ⁵ (1956-57)
	No. of members	2	8	6	12	18
(1)	NORTH AMERICA	USA	USA Canada	USA Canada	USA Canada	USA Canada
(2)	LATIN AMERICA				Brazil	<u>Brazil</u> Argentina Peru
(3)	WESTERN EUROPE		France UK Belgium Portugal	France UK	France UK Belgium Portugal	France UK Belgium Portugal
(4)	EASTERN EUROPE	USSR		USSR Czechoslovakia	USSR Czechoslovakia	USSR <u>Czechoslovakia</u>
(5)	AFRICA & MIDDLE EAST		South Africa		South Africa	South Africa Egypt
(6)	SOUTH ASIA				India	India Pakistan
(7)	SOUTH EAST ASIA & PACIFIC		Australia		Australia	Australia Indonesia
(8)	FAR EAST					Japan

AREA	[Statute Article] ⁴	BOARD OF GOVERNORS						
		I (1957-58)	II (1958-59)	III (1959-60)	IV (1960-61)	V (1961-62)	VI (1962-63)	VII (1963-64)
		25	23	23	23	23 + [2]	23 + [2]	25
(1)	VI.A.1(1) VI.A.1(1)	USA <u>Canada</u>	USA Canada	USA Canada	USA Canada	USA Canada	USA <u>Canada</u>	USA Canada
(2)	VI.A.1(2) VI.A.3(1) VI.A.3(1) ^a VI.A.3(1) ^b VI.A.3(2) ^a VI.A.3(2) ^b	Brazil Argentina Guatemala Peru	<u>Brazil</u> Argentina Venezuela Peru	Brazil Venezuela Mexico Peru	Brazil <u>Mexico</u> Argentina El Salvador	Brazil Argentina Colombia El Salvador	Argentina Colombia Brazil Mexico	Argentina Brazil Uruguay Mexico
(3)	VI.A.1(1) VI.A.1(1) VI.A.2(1) VI.A.2(2) VI.A.3(1) VI.A.3(2)	France UK Portugal Sweden Italy Turkey	France UK Belgium Denmark Netherlands Turkey	France UK Portugal Norway Netherlands Spain	France UK Belgium Finland Spain F.R. Germany	France UK Portugal Sweden F.R. Germany Greece	France UK Belgium Denmark Greece Italy	France UK Portugal Norway Italy Switzerland
(4)	VI.A.1(1) VI.A.2(1) VI.A.3(1)	USSR <u>Czechoslovakia</u> Romania	USSR <u>Poland</u> Romania	USSR <u>Czechoslovakia</u> Bulgaria	USSR Poland <u>Bulgaria</u>	USSR Czechoslovakia <u>Hungary</u>	USSR <u>Poland</u> Hungary	USSR Czechoslovakia <u>Romania</u>
(5)	VI.A.1(2) VI.A.3(1) VI.A.3(1) ^a VI.A.3(1) ^b	South Africa Egypt	South Africa UAR	<u>South Africa</u> <u>UAR</u>	South Africa Iraq	South Africa <u>Iraq</u> [Ghana] ^c [Tunisia] ^d	South Africa Iran [Ghana] ^e [Tunisia] ^f	South Africa Iran Congo (L) Morocco
(6)	VI.A.1(2) VI.A.3(1)	India Pakistan	India <u>Pakistan</u>	India Ceylon	India Ceylon	India <u>Pakistan</u>	India <u>Pakistan</u>	India Afghanistan
(7)	VI.A.1(2) VI.A.3(1)	Australia Indonesia	Australia Indonesia	Australia Indonesia	<u>Australia</u> Thailand	Australia Thailand	Australia Indonesia	Australia Indonesia
(8)	VI.A.1(2) VI.A.3(1)	<u>Japan</u> Korea	Japan Korea	Japan Philippines	Japan Philippines	Japan Viet-Nam	Japan Viet-Nam	<u>Japan</u> China

AREA	BOARD OF GOVERNORS					
	VIII (1964-65)	IX (1965-66)	X (1966-67)	XI (1967-68)	XII (1968-69)	XIII (1969-70)
	25	25	25	25	25	25
(1)	USA <u>Canada</u>	USA Canada	USA Canada	USA Canada	USA <u>Canada</u>	USA Canada
(2)	Brazil Argentina Uruguay Chile	Brazil Argentina <u>Colombia</u> Chile	Argentina Brazil Colombia Mexico	<u>Argentina</u> Brazil Peru Mexico	Brazil Argentina Peru Venezuela	<u>Brazil</u> Argentina Uruguay Venezuela
(3)	France UK Belgium Finland Switzerland Netherlands	France UK Portugal Sweden Netherlands Austria	France UK Belgium Denmark <u>Austria</u> F.R. Germany	France UK Portugal Norway F.R. Germany Turkey	France UK Belgium Finland Turkey Italy	France UK Portugal Sweden Italy Spain
(4)	USSR <u>Poland</u> Romania	USSR <u>Czechoslovakia</u> Yugoslavia	USSR <u>Poland</u> Yugoslavia	USSR <u>Czechoslovakia</u> <u>Bulgaria</u>	USSR <u>Poland</u> Bulgaria	USSR <u>Czechoslovakia</u> <u>Hungary</u>
(5)	South Africa <u>UAR</u> Congo (L) Morocco	South Africa UAR Ghana Tunisia	South Africa Lebanon Ghana <u>Tunisia</u>	South Africa Lebanon Madagascar Algeria	South Africa <u>Iran</u> Madagascar Algeria	South Africa Iran Nigeria Morocco
(6)	India Afghanistan	India Pakistan	India Pakistan	India Ceylon	India Ceylon	India Pakistan
(7)	Australia Thailand	Australia Thailand	Australia Indonesia	<u>Australia</u> <u>Indonesia</u>	<u>Australia</u> Singapore	<u>Australia</u> Singapore
(8)	Japan China	<u>Japan</u> Korea	Japan Korea	Japan Philippines	Japan Philippines	Japan Viet-Nam

NOTES

Doubly underlined States provided the Chairman and singly underlined States the Vice Chairman or Vice Chairmen (all elected ad personam — the names of the Chairmen appear in the second column of Annex 3.3)

- 1 Section 2.2.
- 2 Section 2.4.
- 3 Section 2.5.
- 4 Section 2.7. The Co-ordination Committee of the Conference on the Statute had the same membership (Section 2.8.2).
- 5 Section 3.1.
- 6 These are the Articles of the Statute that determine the composition of the Board (Section 8.2); the numbers in parenthesis indicate sub-categories or clauses, described as indicated:

<u>Statute Article</u>	<u>Description</u>	<u>[Number before/after 1968 Statute amendment]</u>	<u>Section of study</u>
VI.A.1 (1)	Most advanced in world	[5/5]	8.2.2.1.2.1
VI.A.1 (2)	Regionally most advanced	[5/5]	8.2.2.1.2.2
VI.A.2 (1)	Source material producer	[2/2]	8.2.2.2.
VI.A.2 (2)	Technical assistance supplier	[1/1]	8.2.2.3
VI.A.3 (1)	Geographical seat	[7/11]	8.2.2.4.3.1
VI.A.3 (2)	"Floater"	<u>[3/1]</u> [23/25]	8.2.2.4.3.2

- 7 "Areas" and numbers as specified in Statute Article VI.A.1; the definition of these areas is discussed in Section 8.2.2.4.6.
- 8 Amended in 1963 (INFCIRC/41); Sections 5.3.2.1 and 8.2.1.2.2.
- 9 Participating by special arrangement, without a vote, pending the entry into force and implementation of the amendment to Statute Article VI.A.3 (Section 8.4.10 (a) (ii)).

ANNEX 3.2

GENERAL CONFERENCE OFFICERS AND COMMITTEES

	I ¹ 1957	II 1958	III 1959	IV 1960	V 1961	VI 1962
President ²	Austria ³	Indonesia	Japan	Bulgaria	Argentina	Ghana
Vice-Presidents ⁴	France India Indonesia Japan South Africa USSR USA Venezuela	Canada Cuba Philippines Thailand Turkey USSR UAR UK	Bulgaria France Greece India Mexico Pakistan USSR USA	Bulgaria Canada India Indonesia Italy Japan Mexico Morocco UK	France Ghana India Indonesia Japan Tunisia USSR USA	Austria Canada Chile India Japan Thailand USSR UK
<u>General Committee⁵</u> Additional Members	Australia Canada Poland UK	France Japan Romania USA	Brazil Canada New Zealand UK	France Iran USSR USA	Canada Chile UK Yugoslavia	France Mexico USA Yugoslavia
<u>Programme, Technical and Budget Committee:</u>						
Chairman ⁶	Brazil	Spain	Tunisia	Argentina	CSSR	Lebanon
Vice-Chairmen ⁶	Greece	Tunisia	Finland	UAR	Afghanistan	Tunisia
Rapporteur ⁶	Yugoslavia	Yugoslavia	Australia	Poland	Ceylon	Afghanistan
<u>Administrative and Legal Committee:</u>						
Chairman ⁶	Egypt	India	Netherlands	Norway	Philippines	Romania
Vice-Chairmen ⁶	Spain	Argentina	Poland	Romania	Ethiopia	Brazil
Rapporteur ⁶	Denmark	Italy	Turkey	Pakistan	Brazil	Indonesia
<u>Credentials Committee⁷</u> Members	Argentina <u>Australia</u> Brazil Indonesia Italy Japan South Africa USA USSR	Australia Ceylon <u>Pakistan</u> Peru Sweden South Africa USSR USA Venezuela	Ceylon CSSR Iran Italy Peru Philippines USSR USA <u>Venezuela</u>	Afghanistan Brazil CSSR New Zealand Peru Philippines <u>Turkey</u> USSR USA	<u>Colombia</u> El Salvador France Lebanon Romania Thailand USSR UAR USA	Argentina <u>Australia</u> Bulgaria El Salvador Iraq Lebanon Philippines USSR USA

VII 1963	VIII 1964	IX 1965	X 1966	XI 1967	XII 1968	XIII 1969
Ceylon	Netherlands	Japan ^a	Thailand	CSSR	Mexico	Tunisia
Colombia	Argentina	Brazil	Canada	Australia	Australia	Australia
France	Canada	Congo (Dem)	Ghana	France	Brazil	Bulgaria
India	India	France	Japan	F. R. Germany	Canada	Chile
Japan	Indonesia	India	Peru	India	India	France
New Zealand	Japan	Iran	Switzerland	Iran	Japan	Italy
USSR	Senegal	Romania	UKSSR	Japan	Uganda	Japan
UAR	USSR	USSR	USSR	USSR	USSR	USSR
USA	UK	USA	UK	USA	UK	USA
Canada	France	Canada	Austria	Brazil	Bulgaria	Canada
Congo (L)	Nigeria	UAR	France	Canada	France	Hungary
Hungary	USA	UK	Tunisia	Hungary	F. R. Germany	Nigeria
UK	Yugoslavia	Yugoslavia	USA	UK	USA	UK
Yugoslavia	Romania	Argentina	India	Colombia	Poland	India
Finland	Ghana	Hungary	El Salvador	Netherlands	Pakistan	Argentina
Romania	UAR	Nigeria	Spain	Tunisia	Philippines	
Mexico	Pakistan	Tunisia	Hungary	Congo (Dem)	Netherlands	CSSR
Brazil	Philippines	Norway	Poland	Ghana	Italy	Brazil
Mali	Bulgaria	BSSR	Congo (Dem)	Bolivia	Romania	Ghana
Bulgaria	Peru	Uruguay	Turkey	Bulgaria	Uruguay	
Austria	Algeria	Philippines	Bolivia	Pakistan	Gabon	Turkey
Afghanistan	El Salvador	<u>Australia</u>	Belgium	<u>Australia</u>	<u>Belgium</u>	Jordan
Argentina	Hungary	Colombia	<u>Brazil</u>	Chile	Bolivia	Peru
<u>Australia</u>	Iran	Iraq	Bulgaria	El Salvador	Hungary	<u>Philippines</u>
CSSR	Iraq	Italy	Gabon	Lebanon	Iraq	Poland
France	Japan	Poland	Lebanon	Philippines	Japan	Spain
Philippines	New Zealand	Thailand	New Zealand	Poland	Peru	Thailand
USSR	UKSSR	USSR	Philippines	Spain	Philippines	USSR
USA	USA	USA	USSR	USSR	USSR	USA
Venezuela	<u>Uruguay</u>	Uruguay	USA	USA	USA	Uruguay

NOTES

- 1 The list below applies to the First Special Session. At the First Regular Session the only officer elected was the President, who was re-elected by the Special Session, and the only Committee appointed was the Credentials Committee, which continued to serve the Special Session (Section 4.1(ii)).
- 2 The President is elected ad personam (Sections 7.3.3.1 and 7.3.3.7). The names of the persons who have occupied this post appear in the first column of Annex 3.3.
- 3 Host Government of the Conference.
- 4 Sections 7.3.3.1. and 7.3.3.7.
- 5 Besides the "additional members", the President, the Vice-Presidents and the Chairmen of the Programme, Technical and Budget Committee and of the Administrative and Legal Committee are members of the General Committee, while the Chairman of the Credentials Committee and the Chairman of the Board of Governors may participate without a vote (Section 7.3.3.2).
- 6 All officers of the Main Committees are elected ad personam (Sections 7.3.3.4 and 7.3.3.7).
- 7 Section 7.3.3.3. The name of the State whose national was elected Chairman of the Credentials Committee is underscored on the list.

ANNEX 3.3
PRINCIPAL OFFICERS AND OFFICIALS

Year	President ¹ General Conference	Chairman ² Board of Governors	Director General ³	Administration, Liaison & Secretariat ⁴	Deputy Director General ⁴		Technical Operations	Safeguards & Inspection ⁴	Director ⁵ Legal Division
					Research & Isotopes	Scientific & Technical Information ⁷			
1956	[Muniz] ⁹ (Brazil)	[Bernardes] ¹⁰ (Brazil)							
1957	Gruber ¹² (Austria) ¹³	Winkler ¹⁴ (Czechoslovakia)	[Jolles] ¹¹ (Switzerland)					[von Mehren] ¹⁵ (USA)	
			Cole (USA)					(Lande) (USA)	
1958	Sudjarwo (Indonesia)	Bernardes (Brazil)		Jolles (Switzerland)	Seligman (UK)	Migulin (USSR)	Laboulaye (France)	Eser (F. R. Germany)	
1959	Furuuchi (Japan)	Sole (South Africa)				Rylov (USSR)			
1960	Nadjakov (Bulgaria)	McKnight (Australia)						(Wattles) (USA)	
								Seyemted (Norway)	
1961	Quihillait (Argentina)	Hasani ¹⁶ (Iraq)	Eklund (Sweden)	(Kraczkiewicz) ¹⁷ (Poland)			Balligand (France)		
			Hall (USA)						

1962	Balfour (Ghana)	Urmani (Pakistan)				
1963	Perera (Ceylon)	Salveti ¹⁷ (Italy)		Yagodin (USSR)		
1964	Eschautier (Netherlands)					
1965	Asaki (Japan) ¹⁵	Meagher (Canada)	Wells (USA)		McKnight (Australia)	
1966	Sarasin (Thailand)	Hogen (Japan)	-----	Technical Assistance ¹ Goswami ¹¹ (India)	Yagodin USSR	Boulangier (F.R. Germany)
1967	Neumann (USSR)	Billig (Poland)			Zheludev (USSR)	
1968	Sandoval Vallarta (Mexico)		Hall (USA)	Finkelstein (France)		
1969	Torki ¹⁸ (Tunisia)	Afshar (Iran)				
1970		Baxter (Australia)	-----		Rometsch (Switzerland)	Sugihara (Japan)

NOTES

Names within parentheses are those of "acting" officials; those within brackets are those of persons who occupied a post analogous to the one indicated by the column heading, as explained in each case by a special note.

- 1 Sections 7.3.3.1 and 7.3.3.7.
- 2 Section 8.4.5.1.
- 3 Section 9.2.3.
- 4 Section 9.4.3.
- 5 Also, particularly in the early years, called Legal Adviser Counsel of the Agency (Section 9.4.1(c)).
- 6 In 1964 this Department was renamed "Administration"
- 7 In 1964 the Department of Scientific and Technical Information was in effect dissolved, while a new Department of Technical Assistance was established (Section 9.4.1); this Department was, in 1969, renamed "Technical Assistance and Publications".
- 8 The head of the Department of Safeguards and Inspection is the Inspector General, who ranks as a Deputy Director General (Section 21.12.7).
- 9 President of the Conference on the Statute.
- 10 Chairman of the Preparatory Commission.
- 11 First, Executive Secretary of the Preparatory Commission (Section 3.2.2.1), then, ex officio, Secretary General of the first regular and special sessions of the General Conference (Section 4.1 (iii)) and finally Acting Director General (Section 4.3).
- 12 Legal Adviser of the Preparatory Commission.
- 13 President of both the first regular and the first special sessions of the General Conference.
- 14 Mr. Pavel Winkler had previously served as the Vice-President of the Conference on the Statute and as Vice Chairman of the Preparatory Commission.
- 15 The host State of the Conference.
- 16 Later Special Adviser to the Director General.
- 17 Previously a Division Director in the Secretariat of the Agency.
- 18 Previously a Professional Officer in the Secretariat of the Agency.

ANNEX 4
ABBREVIATIONS AND GLOSSARY

<u>Term</u>	<u>Definition</u>	<u>Described in this study: Chapter or Section</u>
<u>A & B Committee</u>	Administrative and Budgetary Committee of the Board of Governors of the IAEA	8.4.5.2 25.2.2.2
<u>ACABQ</u>	Advisory Committee on Administrative and Budgetary Questions of UNGA	12.2.3.4 25.2.2.5
<u>ACC</u>	Administrative Committee on Co-ordination [of the UN]	12.4.1 12.4.2.1
<u>Agency</u>	International Atomic Energy Agency	
<u>Agency Project</u>	A project for the peaceful use of atomic energy sponsored by a Member State of the Agency and assisted by the latter pursuant to Article XI of its Statute	17
<u>AIEA</u>	Agence Internationale de l'Energie Atomique (French name of IAEA)	30.3
<u>A & L Committee</u>	Administrative and Legal Committee of the General Conference of the IAEA	7.3.3.4 7.3.5.3
<u>Bi-monthly Report</u>	Report by the Director General to the Board of Governors pursuant to Board Procedural Rule 8(a), originally required to be made on a bi-monthly basis	32.1.1
<u>Board</u>	Board of Governors of the IAEA	8
<u>Brussels Convention</u>	Convention on the Liability of Operators of Nuclear Ships (25 May 1962)	23.2
<u>BSSR</u>	Byelorussian Soviet Socialist Republic	
<u>CCAQ</u>	Consultative Committee on Administrative Questions [of ACC]	12.4.2.1(a) 24.2.4
<u>CCPI</u>	Consultative Committee on Public Information	12.4.2.1(b)
<u>CCSS</u>	IAEA inter-departmental Committee for Contractual Scientific Services	9.4.4.1(c) 19.2.4(c)
<u>CCTA</u>	Commission for Technical Co-operation in Africa South of the Sahara (predecessor of CTCA)	12.5.3.4
<u>CERN</u>	European Organization for Nuclear Research	12.5.1
<u>CNNWS</u>	Conference of Non-Nuclear-Weapon States	15.2.2
<u>COMECON</u>	Council for Mutual Economic Assistance (also CMEA)	12.5.3.7
<u>Conference on the Statute</u>	Conference on the Statute of the International Atomic Energy Agency	2.8
<u>Congo (B)</u>	Congo (Brazzaville), later the People's Republic of the Congo	

<u>Term</u>	Definition	Described in this study: Chapter or Section
<u>Congo (Dem)</u>	Democratic Republic of the Congo, formerly Congo (Léopoldville)	6.2.4
<u>Congo (L)</u>	Congo (Léopoldville), later the Democratic Republic of the Congo	6.2.4
<u>Co-ordination Committee</u>	Co-ordination Committee of the Conference on the Statute	2.8.2(b) 2.8.4(f)
<u>CSSR</u>	Czechoslovak Socialist Republic	6.2.4
<u>CTCA</u>	Commission for Technical Co-operation in Africa (successor to CCTA)	12.5.3.4
<u>DDG</u>	Deputy Director General of the IAEA	9.4.3 Annex 3.3
<u>DG</u>	Director General of the IAEA	9.1-3 Annex 3.3
<u>ECOSOC</u>	Economic and Social Council of the United Nations	
<u>ECPA</u>	Expert Committee on Post Adjustments	24.2.3 24.4.1.1.2
<u>ENDC</u>	Conference of the Eighteen Nation Committee on Disarmament (later the Conference of the Committee on Disarmament)	
<u>ENEA</u>	European Nuclear Energy Agency (of OECD)	12.5.3.1 21.3.2.1
<u>EPTA</u>	[United Nations] Expanded Programme of Technical Assistance [for Economic Development of Under-Developed Countries], superseded by UNDP/TA	18.1.3
<u>Euratom</u>	European Atomic Energy Community	12.5.3.2 21.11.2-3
<u>FAO</u>	Food and Agricultural Organization of the United Nations	12.3.4.1
<u>FICSA</u>	Federation of International Civil Servants Associations	24.12.2
<u>F.R. Germany</u>	Federal Republic of Germany (West Germany)	6.2.2
<u>GC</u>	Symbol for documents of the General Conference of the IAEA	34.2.3
<u>Geneva Conferences</u>	International Conferences on the Peaceful Uses of Atomic Energy, of the UN	12.2.4.1
<u>GOV</u>	Symbol for documents of the Board of Governors of the IAEA	34.2.4
<u>GS</u>	Staff member in the General Service category	24.3.1.2, 2.1
<u>Health and Safety Document</u>	Document INFCIRC/18	22.1.2
<u>IACB</u>	Inter-Agency Consultative Board [of UNDP]	12.3.3.6 18.1.3 18.2.3-4

<u>Term</u>	Definition	Described in this Study: Chapter or Section
<u>IADA</u>	– The proposed International Atomic Development Authority	1.4(a)
<u>IAEA</u>	– International Atomic Energy Agency	30.3
<u>IAEO</u>	– Internationale Atomenergie-Organisation (German name of IAEA)	
<u>IANEC</u>	– Inter - American Nuclear Energy Commission (of OAS)	12.5.3.3
<u>IBMW</u>	– International Bureau of Weights and Measures	12.5.3.6
<u>IBRD</u>	– International Bank for Reconstruction and Development (World Bank)	12.3.2.3 17.8(d)
<u>ICAO</u>	– International Civil Aviation Organization	
<u>ICJ</u>	– International Court of Justice	27.1.1-2 27.2.1
<u>ICRP</u>	– International Commission on Radiological Protection	12.6.3(i) 19.2.6
<u>ICRU</u>	– International Commission on Radiation Units and Measurements (formerly International Commission on Radiological Units and Measurements)	12.6.3(i) 19.2.6
<u>ICSAB</u>	– International Civil Service Advisory Board	12.4.2(a) 24.2.3
<u>ICTA</u>	– Interdepartmental Committee on Technical Assistance of the IAEA Secretariat	9.4.4.1 18.2.1(ii)(D)
<u>IG</u>	– Inspector General of the IAEA	9.4.3 21.12.7 Annex 3.3
<u>IGO</u>	– Intergovernmental Organization	
<u>ILC</u>	– International Law Commission [of the United Nations]	
<u>ILO</u>	– International Labour Organisation or International Labour Office (the Organisation's Secretariat)	12.3.4.2
<u>ILOAT</u>	– Administrative Tribunal of ILO	27.3.2.2
<u>IMC</u>	– International Maritime Committee	23.2.1
<u>IMCO</u>	– International Maritime Consultative Organization	12.3.2.3
<u>IMF</u>	– International Monetary Fund	
<u>INFCIRC</u>	– Document symbol of IAEA Information Circulars	34.2.2
<u>INIS</u>	– International Nuclear Information System	20.4

<u>Term</u>	<u>Definition</u>	<u>Described in this study: Chapter or Section</u>
<u>Inspectors Document</u>	Document GC(V)/INF/39, Annex	21.4.2 22.1.3
<u>IPA Project</u>	[India-Philippines-Agency] Regional Joint Training and Research Programme Using a Neutron Crystal Spectrometer	19.3.2.3
<u>ITU</u>	International Telecommunication Union	
<u>JINR</u>	Joint Institute for Nuclear Research (Dubna Institute)	12.5.3.7
<u>Latin American Agency</u>	Agency for the Prohibition of Nuclear Weapons in Latin America, established by Article 7(1) of the Tlatelolco Treaty (OPANAL)	21.3.2.2
<u>Middle Eastern Centre</u>	Middle Eastern Regional Radioisotope Centre for the Arab Countries	19.3.1
<u>M&O</u>	Staff member in the Maintenance and Operative Service category	24.3.1.2.2.2
<u>Monaco Laboratory</u>	The International Laboratory of Marine Radioactivity at Monaco	19.1.2
<u>NATO</u>	North Atlantic Treaty Organization	
<u>Negotiating Group</u>	Informal group of 8 States that formulated the first draft of the IAEA Statute	2.4
<u>NGO</u>	Non-Governmental Organization	12.6
<u>NNWS</u>	Non-Nuclear-Weapon State, as defined in the NPT (Section 21.3.2.3) and for the purposes of the CNNWS (Section 15.2.2)	
<u>NWS</u>	Nuclear-Weapon State, as defined in the NPT (Section 21.3.2.3)	
<u>Non-Proliferation Treaty</u>	Treaty on the Non-Proliferation of Nuclear Weapons	21.3.2.3
<u>NORA Project</u>	Joint Agency-Norwegian Program of Research with the Zero Power Reactor "NORA"	17.2.2.4 19.3.2.1
<u>NPT</u>	Treaty on the Non-Proliferation of Nuclear Weapons	21.3.2.3
<u>NPY Project</u>	Agency-Norway-Poland-Yugoslavia Co-operative Research in Reactor Physics/Science	19.3.2.2
<u>OAS</u>	Organization of American States (parent of IANEC)	12.5.3.3
<u>OAU</u>	Organization of African Unity	12.5.3.4
<u>OECD</u>	Organisation for Economic Co-operation and Development (formerly OEEC)	12.5.3.1
<u>OEEC</u>	Organisation for European Economic Co-operation (later OECD)	12.5.3.1
<u>OIEA</u>	Organismo Internacional de Energía Atómica (Spanish name of IAEA)	30.3

<u>Term</u>	Definition	Described in this study: Chapter or Section
<u>OPANAL</u> – Agency for the Prohibition of Nuclear Weapons in Latin America (Latin American Agency)		21.3.2.2
<u>P & I Agreement</u> – Agreement on the Privileges and Immunities of the IAEA		28.3
<u>Project Agreement</u> – Agreement between the IAEA and one or more of its Members for the establishment of an Agency Project		17.2.1.2 21.5.2(a) 26.2.1.5
<u>PT & B Committee</u> – Programme, Technical and Budget Committee of the General Conference of the IAEA		7.3.3.4 7.3.5.2
<u>SAC</u> – Scientific Advisory Committee of the IAEA		11.1
<u>Safeguards Agreement</u> – Agreement between the IAEA and one or more of its Members for the application of Agency safeguards (e.g., Project Agreements, Safeguards Submission Agreements, Safeguards Transfer Agreements)		21.5 26.2.1.7
<u>Safeguards Document</u> – Document INFCIRC/66/Rev.2 (formerly INFCIRC/26 and /Add.1)		21.4.1
<u>Safeguards Submission Agreement</u> – Agreement between the IAEA and one of its Members for the application of safeguards to nuclear material or activities of that Member		21.5.2(d)
<u>Safeguards Transfer Agreement</u> – Agreement between the IAEA and two of its Members for the substitution of Agency safeguards for national controls with respect to a bilateral agreement between these Members		21.5.2(b)
<u>SF</u> – United Nations Special Fund, superseded by UNDP/SF		18.1.4
<u>SGAE</u> – Österreichische [Austrian] Studiengesellschaft für Atomenergie GmbH		19.1.1.3 19.3.2.4
<u>SIDA</u> – Swedish International Development Authority		18.2.7
<u>SNF</u> – Special Nuclear Fund (proposed by CNNWS)		17.8(d)
<u>Supply Agreement</u> – Agreement between the IAEA and one or more of its Members concerning the supply of nuclear materials or related items		16.4-5 16.8 26.2.1.3
<u>TAC</u> – Technical Assistance Committee of the Board of Governors of the IAEA		8.4.5.2 18.2.1(ii)(E)
<u>Test-Ban Treaty</u> – Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water		17.5 21.13(v)
<u>Tlatelolco Treaty</u> – Treaty for the Prohibition of Nuclear Weapons in Latin America		21.3.2.2
<u>Trieste Centre</u> – The International Centre for Theoretical Physics, Trieste		19.1.3

<u>Term</u>	Definition	Described in this study: Chapter or Section
<u>UAR</u> - United Arab Republic		6.2.3.1
<u>UK</u> - United Kingdom of Great Britain and Northern Ireland		
<u>UkSSR</u> - Ukrainian Soviet Socialist Republic		
<u>UN</u> - United Nations		
<u>UNAEC</u> - United Nations Atomic Energy Commission		1.5
<u>UNAT</u> - Administrative Tribunal of the United Nations		27.3.2.3
<u>UNCSAT</u> - United Nations Conference on the Application of Science and Technology		12.2.4.2
<u>UNDP</u> - United Nations Development Programme, incorporating the former separate EPTA and Special Fund as the Technical Assistance Sector (UNDP/TA) and the Special Fund Sector (UNDP/SF)		18.1.3 18.1.4
<u>UNESCO</u> - United Nations Educational, Scientific and Cultural Organization		12.3.4.3
<u>UNGA</u> - United Nations General Assembly		
<u>UNIDO</u> - United Nations Industrial Development Organization		
<u>Unilateral Safeguards Submission Agreement</u> - Agreement between the IAEA and one of its Members for the application of safeguards to nuclear material or activities of that Member		21.5.2(d)
<u>UNIPEDE</u> - International Union of Producers and Distributors of Electrical Energy		12.6.3(ii)
<u>UNJSPF</u> - United Nations Joint Staff Pension Fund		24.5.2
<u>UNSAC</u> - United Nations Scientific Advisory Committee (originally established by UNGA as the Advisory Committee on the Peaceful Uses of Atomic Energy, which, for the sake of simplicity, has been assigned the same initials in this study)		2.3 11.1.2 12.2.1.1 12.2.3.1
<u>UNSCEAR</u> - United Nations Scientific Committee on the Effects of Atomic Radiation		12.2.3.2
<u>UNTAB</u> - Technical Assistance Board of the United Nations		12.4.2.2
<u>U.N.T.S.</u> - United Nations Treaty Series		
<u>UPU</u> - Universal Postal Union		
<u>USA</u> - United States of America		
<u>USAEC</u> - United States Atomic Energy Commission		
<u>USSR</u> - Union of Soviet Socialist Republics (Soviet Union)		
<u>Vienna Conference</u> - International Conference on Civil Liability for Nuclear Damage held by the IAEA in Vienna, 29 April - 19 May 1963		23.1.4

<u>Term</u>	Definition	Described in this study: Chapter or Section
<u>Vienna Convention</u>	- Vienna Convention on Civil Liability for Nuclear Damage (21 May 1963)	23.1
<u>Vinča Experiment</u>	- The Vinča Dosimetry Experiment	19.1.4
<u>WFTU</u>	- World Federation of Trade Unions	12.6.2.3
<u>WHO</u>	- World Health Organization	12.3.4.4
<u>WLM</u>	- Symbol for documents of the Working Level Meeting	34.1.4
<u>WMO</u>	- World Meteorological Organization	12.3.2.3
<u>Working Level Meeting</u>	- Working Level Meeting on the Draft Statute of the International Atomic Energy Agency	2.7
<u>World Bank</u>	- International Bank for Reconstruction and Development	12.3.2.3 17.8(d)

ANNEX 5

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