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CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING
FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE
WITH THE CHARTER OF THE UNITED NATIONS

Methods of fact-finding with respect to the execution of
international agreements

(Study prepared by the Secretary-General in pursuance of
General Assembly resolution 2104 (XX))

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INTRODUCTION

1. On 20 December 1965, at its twentieth session, the General Assembly adopted resolution 2104 (XX) entitled "Question of methods of fact-finding". In paragraph 1 of the resolution the General Assembly requested the Secretary-General to supplement an earlier study of the problem,^{1/}

"so as to cover the main trends and characteristics of international inquiry, as envisaged in some treaties as a means of ensuring their execution, and to report to the General Assembly at its twenty-first session."

In paragraph 2 the General Assembly invited Member States to submit in writing to the Secretary-General before July 1966, any views or further views which they may have on this subject in the light of the reports of the Secretary-General and the relevant chapter of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States.^{2/}

2. The following report summarizes the methods used by a number of international organizations in order to verify the execution by States of the obligations they have assumed under international agreements and treaties. The variety of the organizations concerned and of the facts investigated has rendered it impracticable to arrange the study solely in terms of the methods used. The report has therefore been divided into three chapters, dealing respectively with fact-finding as conducted by United Nations bodies, by the specialized agencies and the International Atomic Energy Agency, and by other international bodies. The account given of the practice of the various organizations has been based for the most part on information supplied by the organizations themselves.

^{1/} Official Records of the General Assembly, Twentieth Session, Annexes, agenda items 90 and 94, document A/5694.

^{2/} Ibid., document A/5746.

I. FACT-FINDING CONDUCTED BY UNITED NATIONS BODIES WITH
RESPECT TO THE EXECUTION OF INTERNATIONAL AGREEMENTS

A. Human rights

3. The methods of fact-finding employed by United Nations bodies in the field of human rights fall into the following categories: (a) methods provided in international conventions; (b) reporting systems established by the General Assembly or by the Economic and Social Council; (c) methods used in the preparation of studies on special rights or groups of rights; and (d) methods used by ad hoc bodies appointed to consider particular problems. The examples given in the summary below are not intended to be exhaustive.

1. Methods provided in international conventions

(a) Submission of information by contracting States to United Nations bodies

4. A number of multilateral conventions relating to human rights require contracting States to undertake to provide United Nations bodies with information regarding pertinent national legislation and the steps taken to implement the convention. Examples include the Convention relating to the Status of Refugees,^{3/} the Convention relating to the Status of Stateless Persons^{4/} and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.^{5/}

(b) Review, conciliation and inquiry system envisaged in the International Convention on the Elimination of All Forms of Racial Discrimination

5. This Convention, which was adopted by the General Assembly in resolution 2106 (XX) of 21 December 1965, provides that the periodic reports to be made by States Parties regarding the steps taken to give effect to the Convention shall be considered by a special body, the Committee on the Elimination of Racial

^{3/} United Nations, Treaty Series, vol. 189, p. 137.

^{4/} Ibid., vol. 360, p. 117.

^{5/} Ibid., vol. 266, p. 3.

Discrimination, composed of eighteen experts of high moral standing and acknowledged impartiality. The Committee, which may request additional information, shall submit an annual report to the General Assembly. If a State Party considers that another State Party has failed to observe the Convention it may submit the matter to the Committee, which shall then invite the State against which the allegation is made to give its comments. If the issue is not resolved to the satisfaction of both Parties, the Committee may appoint an ad hoc conciliation commission, which shall have at its disposal all the information previously obtained and which may call for more information on its own initiative. The report of the Conciliation Commission is communicated to the Parties by the Chairman of the Committee. The States Parties to the dispute must declare within three months whether or not they accept the Commission's recommendations; after this period the report and the declarations of the States Parties concerned are communicated to the other contracting States.

6. If a State Party agrees, the Committee may receive communications from individuals within the jurisdiction of the State concerned regarding alleged non-observance of the Convention by that State. Such communications are to be brought to the attention of the State Party, which shall submit written statements clarifying the matter and the remedy, if any, that may have been adopted. The Committee shall consider the original communication in the light of the information made available to it and shall forward to the State Party and the petitioner any suggestions and recommendations which it wishes to make.

2. Reporting systems established by the General Assembly or by the Economic and Social Council

(a) Periodic reports on developments in human rights

7. In resolution 1074 C (XXXIX) of 28 July 1965, the Economic and Social Council invited States Members of the United Nations and members of the specialized agencies to supply information on human rights and fundamental freedoms in territories subject to their jurisdiction, within a continuing three-year cycle scheduled as follows: (a) in the first year, on civil and political rights; (b) in the second year, on economic, social and cultural rights and (c) in the third year, on freedom of information. The Council also invited the specialized agencies to continue their

contributions to the periodic reports in accordance with the above schedule and Council resolution 624 B (XXII), which invited them to submit reports, on a topical basis, summarizing the information which they had received from their member States. Non-governmental organizations in consultative status were invited to continue to submit comments and observations of an objective character on the situation in the human rights field; any material so received which refers to any particular State Member of the United Nations or member of a specialized agency is to be forwarded by the Secretary-General to the State concerned for any comment it may wish to make.

8. Under resolution 624 B (XXII) Governments were asked, inter alia, to describe the measures taken to safeguard human liberty in their metropolitan areas and Non-Self-Governing and Trust Territories, and to deal with the right of peoples to self-determination and the rights enumerated in the Universal Declaration of Human Rights. In resolution 1074 C (XXXIX), the Council suggested that Governments include more information on judicial and other decisions and administrative practices affecting human rights and on the ratification and accessions to international agreements in the field of human rights.

(b) Reports relating to the implementation of international conventions, declarations and similar instruments

9. In resolution 504 E (XVI) of 23 July 1953, the Economic and Social Council requested States Parties to report every two years on the measures taken by them to implement the provisions of the Convention on the Political Rights of Women.^{6/} In resolution 961 B (XXXVI) of 12 July 1963, the Council expanded the reporting system to include all States Members of the United Nations, whether or not they were parties to the Convention. It invited the Government of each State Member of the United Nations to supply the Secretary-General with appropriate information every two years regarding the implementation of the principles stated in the Convention, including, in particular, whether any women have been elected to high official posts. The Secretary-General submits reports based on the information received from Governments under these two resolutions to the Commission on the Status of Women.

^{6/} Ibid., vol. 193, p. 135.

10. The Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted by the General Assembly in resolution 2018 (XX) of 1 November 1965, provides for a system of reporting by Governments on a continuing basis. In the Recommendation the General Assembly proposed that each Member State should bring the Recommendation before the authorities competent to enact legislation or to take other action at the earliest practicable moment and, if possible, not later than eighteen months after the adoption of the Recommendation. The Assembly also recommended that Member States should inform the Secretary-General, as soon as possible after action referred to above, of the measures taken to bring the Recommendation before the competent authority or authorities and who these competent authorities were. Member States were asked to report to the Secretary-General at the end of three years, and thereafter at intervals of five years, on their law and practice with regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to its provisions, and such modifications as have been found, or may be found, necessary in adapting or applying it.

11. Under the terms of the Recommendation, the Secretary-General will submit the reports received from Governments to the Commission on the Status of Women, which is invited to examine them and to report thereon to the Council with such recommendations as it may deem fit to make.

3. Methods used in the preparation of studies on special rights or groups of rights

12. At its twelfth session held in 1956, the Commission on Human Rights decided to undertake a series of studies on specific rights or groups of rights and to stress in these studies general developments, progress achieved and measures taken to safeguard human liberty, with such recommendations of an objective and general character as might be necessary. The material used in the preparation of such studies, whether by an ad hoc Committee of the Commission on Human Rights or by a special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, is drawn from the following sources: (a) the Governments of States Members of the United Nations and members of the specialized agencies; (b) the Secretary-General; (c) specialized agencies; (d) non-governmental

organizations in consultative status; and (e) writings of recognized scholars and scientists. When a study is initiated, the organ responsible for the study, utilizing the above-mentioned sources, collects information on the law and practices in individual countries concerning the subject of the study and prepares a draft monograph on each country. Use is not made of any information or material on which the Government concerned has not had an opportunity to comment. The draft country monographs are forwarded to the Governments concerned for checking, verification and comment, and are then revised in the light of the information received. On the basis of these country monographs, a world-wide study is then prepared for submission to the Sub-Commission or Commission.^{1/}

13. In preparing studies for the Commission on the Status of Women, two principal methods have been followed for the collection of information. Questionnaires have been prepared and sent to Governments and reports have been based on the replies received from Governments to such questionnaires. Examples may be found in the questionnaire on the legal status and treatment of women, prepared in accordance with resolution 2 (II) of the Council; the questionnaire on inheritance laws as they affect the status of women, prepared in accordance with resolution 10 (XIV) of the Commission on the Status of Women; and a questionnaire on dissolution of marriage, annulment of marriage and judicial separation, prepared in accordance with resolution 14 (XV) of the Commission.

14. The other principal method is the compilation of information from sources available to the Secretary-General. This method has been followed, for example, in the study of the effect on national legislation of resolutions and recommendations of the Commission on the Status of Women. After considering the Secretary-General's report on this matter, the Commission, in resolution 14 (XVIII), requested the Secretary-General to forward the report to Governments of States Members of the United Nations and members of the specialized agencies in order to supplement the information on national legislation contained therein and to prepare a supplementary report, if possible, on a biennial basis. Other examples of this method of collecting information may be found in the reports prepared

^{1/} See for example, Study on the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile (United Nations publication, Sales No.: 65.XIV.2).

annually by the Secretary-General, under Economic and Social Council resolution 120 A (VI) of 3 March 1948, on constitutions, electoral laws and other legal instruments relating to the political rights of women; and reports on the nationality of married women, prepared every two years, by the Secretary-General under Council resolution 547 D (XVIII) of 12 July 1954.

4. Methods used by ad hoc bodies appointed to consider particular problems

(a) Ad Hoc Committee on Forced Labour

15. Pursuant to Council resolution 350 (XII), in 1951 the Secretary-General of the United Nations and the Director-General of the International Labour Office jointly appointed an Ad Hoc Committee on Forced Labour composed of three independent members qualified by their competence and impartiality to study the nature and extent of the problem raised by the existence of systems of forced or corrective labour, by examining the texts of laws and regulations and their application and, if necessary, by taking additional evidence. The Committee decided that it should first undertake a survey of the problem of forced labour and, thereafter, if it were found to exist, a study of its nature and extent. For the purposes of the survey the Committee endeavoured to obtain relevant information, on a global basis, by three means: (a) through a questionnaire on forced labour which it transmitted to Governments; (b) from documents and evidence which had been brought to the knowledge of the Council during its debates on the subject; and (c) from documentation and other evidence submitted by non-governmental organizations and private individuals.

16. After completing its survey, the Committee decided to confine its detailed study to those countries or territories concerning which allegations regarding the existence of forced labour had been made. Summaries of such allegations and of the documentary evidence in the Committee's possession were transmitted to the Governments concerned for comment; and the final study,^{8/} containing the Committee's conclusions, was based on all the material available to the Committee. As to the

8/ Official Records of the Economic and Social Council, Sixteenth Session, Supplement No. 13 (E/2431).

remaining countries, the Committee decided simply to publish, without comment or conclusions, its summary of the replies of the Governments concerned to the questionnaire.

(b) Rapporteurs on Freedom of Information

17. By resolution 442 C (XIV) the Economic and Social Council decided to appoint, for a period of one year, a rapporteur to prepare, for submission to the Council in 1953, a substantive report covering major contemporary problems and developments in the field of freedom of information. The report^{9/} was prepared in co-operation with the Secretary-General, the specialized agencies (in particular UNESCO), and the professional organizations concerned, both national and international. Comments and suggestions from Governments, information enterprises and national and international professional associations were obtained for the Rapporteur by the Secretary-General. At its twenty-seventh session the Council adopted resolution 718 (XXVII), requesting the Secretary-General to prepare a substantive report for submission to the Council in 1961 on developments in the field of freedom of information since 1954. The preparation of this report^{10/} was entrusted by the Secretary-General to a consultant who, in conformity with resolution 718 (XXVII), enlisted the co-operation of the same bodies as the previous Rapporteur.

(c) Rapporteur on slavery

18. Under resolution 525 A (XVII) of 29 April 1954, the Economic and Social Council appointed a Rapporteur to prepare a concise summary of the information on slavery supplied in accordance with that resolution and earlier decisions of the Council, as well as of any relevant information supplied by the ILO. The information presented by the Rapporteur to the Council in 1955 was extracted from: (i) replies of Governments to the questionnaire on slavery and servitude prepared by the Ad Hoc Committee established under Council resolution 238 (IX); (ii) the ancilliary memoranda prepared individually by certain members of the Ad Hoc Committee; (iii) materials furnished by non-governmental organizations and experts; and (iv) materials supplied by the ILO.^{11/}

9/ Ibid., Supplement No. 12 (E/2426).

10/ Ibid., Thirty-first Session, Annexes, agenda item 10 (part II), document E/3443

11/ Ibid., Nineteenth Session, Annexes, agenda item 8, document E/2673.

19. In 1963 the Secretary-General, pursuant to Council resolution 960 (XXXVI), appointed a Special Rapporteur on slavery to bring the 1955 report up to date by collecting information on slavery from Member States of the United Nations, from the specialized agencies, and from non-governmental organizations in consultative status. The Secretary-General formulated, in consultation with the Special Rapporteur, a questionnaire for submission to Member States, specialized agencies and interested non-governmental organizations in consultative status, with a view to putting full information on slavery at the disposal of the Special Rapporteur. The report was presented by the Special Rapporteur to the Economic and Social Council in 1965.^{12/}

B. Narcotic drugs

20. A number of international agreements relating to narcotic drugs were concluded prior to the establishment of the United Nations. By virtue of an amending instrument,^{13/} the supervisory and fact-finding functions exercised under these agreements have continued to be performed within the framework of the United Nations and are referred to in the present summary, together with the procedures envisaged in more recent agreements.

21. The various international agreements concerned provided for the establishment of facts by the following means: (a) the establishment of special international bodies; (b) the submission by States of information and reports to international bodies; and (c) the examination by international bodies of the information supplied by States.

1. Establishment of international bodies with fact-finding functions

22. A number of treaties provide for the establishment of permanent international bodies whose functions include the ascertainment of facts concerning the manufacture of, and trade in, narcotic drugs. The Permanent Central Opium Board was set up under article 19 of the International Opium Convention signed in 1925.^{14/}

^{12/} E/4056.

^{13/} Protocol signed at New York, 11 December 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at The Hague, 23 January 1912, at Geneva, 11 February 1925, 19 February 1925, and 13 July 1931, at Bangkok, 27 November 1931, and at Geneva, 26 June 1936 (United Nations, Treaty Series, vol. 12, p. 179).

^{14/} League of Nations, Treaty Series, vol. 81, p. 317.

(subsequently referred to as the 1925 Convention) and, following that, the Drug Supervisory Body, which was set up under article 5, paragraph 6, of the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed on 13 July 1931^{15/} (subsequently referred to as the 1931 Convention). The latest instrument, the Single Convention on Narcotic Drugs, which was concluded in 1961,^{16/} (subsequently referred to as the 1961 Convention) and which replaces the foregoing treaties as between States Parties, refers to the Commission on Narcotic Drugs of the Economic and Social Council and establishes an International Narcotics Control Board.

23. As part of the control system introduced by these agreements the various international bodies may receive and evaluate information from Governments in order to determine whether or not the obligations relating to the supervision of the manufacture and disposal of narcotic drugs are being observed. These international bodies may also be authorized to request non-parties to furnish information, in particular where the actions of the State concerned are at variance with a treaty, and to collect information by means of a local inquiry where the local government has given its consent.^{17/} Independently of these treaty provisions, resolutions of United Nations organs may request States to furnish data; for example, resolution 240 B (IX) of the Economic and Social Council gives the Secretary-General authority, defined in very broad terms, to obtain information regarding narcotic drugs.

2. Submission by States of reports and information to international bodies

24. The international agreements relating to narcotic drugs all provide for the furnishing of information by contracting States. The material concerned ranges

^{15/} Ibid., vol. 139, p. 301.

^{16/} United Nations, Treaty Series, vol. 520, p. 666.

^{17/} Art. 26, 1925 Convention; art. 2, para. 3, 1931 Convention; art. 8, para. 8, art. 11, para. 1 (d) and art. 13, Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of, Opium, signed on 23 June 1953 (subsequently referred to as the 1953 Convention) (United Nations, Treaty Series, vol. 456, p. 3); and art. 13, paras. 2 and 3, and art. 14, para. 1 (a), 1961 Convention.

from the provision of any information considered relevant by an international control organ^{18/} to the submission to an international body of an annual report on the working of the particular treaty;^{19/} the latter constitutes the most regular control procedure.

25. Other provisions require States Parties to furnish specific data regarding drug production figures, national legislation, export and import controls, and so forth.^{20/} In some instances a State Party may be requested to provide the international body with an explanation of its non-compliance with an obligation imposed by the treaty.^{21/}

3. Examination by international bodies of the information supplied by States

26. The authorization given to international bodies to examine the information received from States may be either general or specific in character. In the case of a general authorization, the international body may be authorized: (a) to examine "any matter" notified by a Party as relating to narcotic drugs and requiring investigation;^{22/} (b) to examine "all matters pertaining to the aims" of the treaty;^{23/} and (c) to examine facts indicating possible breaches of treaty

^{18/} Thus, art. 18 of the 1961 Convention provides that States parties shall furnish such information as the Commission on Narcotic Drugs may request as being necessary for its functions.

^{19/} Art. 21, 1913 Convention; art. 16, Convention of 1936 for the Suppression of the Illicit Trade in Dangerous Drugs, 26 June 1936 (subsequently referred to as the 1936 Convention) (League of Nations, Treaty Series, vol. 198, p. 299); art. 10, 1953 Protocol; and art. 18, para. 1 (a), 1961 Convention.

^{20/} Art. X, Agreement concerning the Suppression of the Manufacture of Internal Trade in and Use of, Prepared Opium, 11 February 1925 (ibid., vol. 51, p. 337); arts. 21-23 and art. 30, 1925 Convention; arts. 2-5, art. 11, para. 2, art. 13, para. 2 (c), art. 14, para. 1, and arts. 20-23, 1931 Convention; art. 16, Convention of 1936 for the Suppression of the Illicit Trade in Dangerous Drugs (ibid., vol. 198, p. 299); art. 4, arts. 8-10, art. 19, para. 4, 1953 Protocol; art. 1, Protocol bringing under International Control Drugs outside the Scope of the 1931 Convention, 19 November 1948 (United Nations, Treaty Series, vol. 44, p. 277); and art. 12, art. 13, arts. 18-20, art. 25, para. 3, and art. 49, paras. 3 and 4, 1961 Convention.

^{21/} Art. 24, para. 1, 1925 Convention; art. 14, para. 3, 1931 Convention; art. 11, para. 1 (a) and (b), 1953 Protocol; and art. 14, para. 1 (a), 1961 Convention.

^{22/} Art. 25, 1925 Convention.

^{23/} Art. 8, 1961 Convention.

obligations by States Parties or non-compliance with treaty provisions by non-parties.^{24/}

27. Where the authorization given is in specific terms it usually relates to statistical data and to information received indicating that exports of narcotic drugs to a particular country are in excess of the limit established under the agreement.^{25/}

C. Trust Territories and Non-Self-Governing Territories

28. The Charter of the United Nations distinguishes between two types of dependencies: Non-Self-Governing Territories, referred to in Chapter XI, and Trust Territories, dealt with in Chapters XII and XIII. The provisions of the Charter, the Trusteeship Agreements with the Administering Authorities and the General Assembly resolutions concerning Non-Self-Governing Territories, define the objectives of the United Nations system of decolonization as well as the powers and functions of the Trusteeship Council and of the various committees dealing with Non-Self-Governing Territories. The following account attempts to summarize the methods of fact-finding used by these bodies in order to obtain information regarding the Territories in question.

1. Trust Territories

29. The Trusteeship Council exercises supervisory functions over Trust Territories as laid down in Articles 83, 85, 87 and 88 of the Charter. The machinery which has been used for supervisory purposes includes the following: (a) the consideration of annual reports submitted by the Administering Authority; (b) the examination of petitions and the dispatch of special missions; (c) periodic visits by visiting missions; and (d) the dispatch of plebiscite and similar commissions. Each of these methods involves to a greater or lesser extent the ascertainment of facts, on a basis of which the Trusteeship Council may fulfil its responsibilities.

^{24/} Art. 11, para. 1, art. 12, para. 2, and art. 13, 1953 Protocol; and art. 14, para. 1, 1961 Convention.

^{25/} Arts. 22 and 23, 1925 Convention; art. 5, para. 6, and art. 14, paras. 1-3, 1931 Convention; art. 8, paras. 7 and 11, 1953 Protocol; art. 12, para. 4, art. 13, para. 2, art. 21, paras. 3 and 4, and art. 24, para. 2, 1961 Convention.

(a) Consideration of the annual reports submitted by the Administering Authorities

30. In answer to a detailed questionnaire sent by the Trusteeship Council, each Administering Authority submits a report each year on political, economic, social and educational conditions in the Trust Territory. When the Trusteeship Council considers the particular Territory a representative of the Administering Authority makes an opening statement and replies to questions by Council members. The report of the Visiting Mission and petitions concerning general conditions in the Territory are considered along with the report of the Administering Authority. Following the debate and a closing statement made by the representative of the Administering Authority, the Council adopts its conclusions and recommendations, which form part of the Council's annual reports to the General Assembly and the Security Council.

31. The FAO, the ILO, UNESCO and WHO participate in the work of the Council when necessary and frequently submit written observations on the annual reports of the Administering Authorities. In 1964 an expert mission appointed by the International Bank for Reconstruction and Development investigated economic and social conditions in New Guinea and Papua, at the request of the Government of Australia, and submitted a report.

(b) Examination of petitions and the dispatch of special missions

32. Rule 85 of the rules of procedure of the Trusteeship Council classifies petitions into two main categories: specific petitions containing requests, complaints or grievances and seeking action by the Council; and petitions dealing with general conditions in, and general problems of, the Territory. The Administering Authority concerned is invited to submit observations or comments regarding petitions in the former category. The Council^{26/} examines these petitions individually, in the light of the comments made, and normally adopts a resolution on each. Petitions in the general category are considered together with the annual reports. Both the petitioner and the Administering Authority are informed by the Secretariat of the action taken by the Council.

^{26/} Between 1952 and 1962 there was a Standing Committee which examined all petitions received from inhabitants of Trust Territories. As the majority of such Territories have achieved independence the number of petitions has declined and since 1962 the Council itself has considered all petitions.

33. Two examples of the dispatch of fact-finding missions to Trust Territories to investigate allegations contained in petitions may be noted. In 1947, following the receipt of a petition requesting that self-government be established, a special visiting mission was sent to Western Samoa, with the consent of the Administering Authority, in order to investigate the political organization and social structure of the Territory. Secondly, in 1965 the Council examined a petition concerning public health services in the Trust Territory of the Pacific Islands. The Council invited WHO to investigate the complaints made; the report of the mission which visited the Territory will be considered by the Trusteeship Council at its next session.

(c) Periodic visits by visiting missions

34. As provided by Article 87 c of the Charter, the Trusteeship Council may arrange for "periodic visits" to be made to the various Trust Territories. Since the original Trust Territories were located in three geographic areas (East Africa, West Africa and the Pacific), it was considered that the most suitable course would be to send a Visiting Mission annually to one of the regions, and thus to visit each Territory every three years; the triennial cycle of visiting missions has continued.

35. These missions have been composed of the nationals of four Council members and have reflected the principle of equal representation between administering and non-administering States. For the duration of the visit the members of visiting missions are responsible exclusively to the Council and act on the basis of its instructions. In the course of its tour of the Territory the visiting mission may meet officials of the Administering Authority and hold public or private meetings in order to learn the views of the inhabitants. The report of the visiting mission and any written comments made regarding it by the Administering Authority are considered together with the annual report.

(d) Dispatch of plebiscite and similar commissions

36. The Trusteeship Council may direct a visiting mission to report on the method of consultation to be followed when the time comes for the inhabitants of the

Territory to express their wishes about their future form of government; this was done in the case of British Togoland, British Cameroons and Western Samoa. In each of these instances the United Nations conducted plebiscites, in agreement with the Administering Authorities concerned. The United Nations also supervised elections and the referendum in French Togoland and in Ruanda-Urundi, which led to the termination of the Trusteeship Agreements.

2. Non-Self-Governing Territories

37. Under Article 73 e of Chapter XI of the Charter eight Member States undertook in 1946 to transmit to the Secretary-General information on conditions in seventy-four Non-Self-Governing Territories under their administration. For the guidance of these States, in resolution 142 (II) the General Assembly adopted a standard form dividing items of information under four main headings: general information (including government), and social, educational and economic conditions. In 1949 the Committee on Information was established, composed of eight administering and eight non-administering Member States to assist the General Assembly by examining the information provided and by assessing the progress made towards self-government. Following the establishment of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, consisting of twenty-four members, the General Assembly decided in resolution 1970 (XVIII), adopted on 16 December 1963, to dissolve the Committee on Information and to request the Special Committee to study the information transmitted by the administering States. Two other Committees which were set up by the General Assembly in order to secure the co-operation of the administering States in the fulfilment of their Charter obligations, the Special Committee for South West Africa and the Special Committee on Territories under Portuguese Administration, were dissolved by resolutions 1806 (XVII) and 1809 (XVII) and their functions, including those of fact-finding, transferred to the Special Committee of Twenty-four which has become the only body responsible for matters relating to all dependent Territories.

(a) Special Committee of Twenty-four

38. In resolution 1514 (XV) of 14 December 1960, the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples. At the following session the Assembly adopted resolution 1654 (XVI), in which it called upon all States administering Trust and Non-Self-Governing Territories to implement the Declaration and established a Special Committee, consisting of seventeen members, which was charged with studying the application of the Declaration. In resolution 1810 (XVII) of 17 December 1962, the General Assembly decided to increase the membership of the Special Committee to twenty-four and invited it to continue to seek the most suitable ways and means for the speedy and total application of the Declaration to all dependent territories. The Special Committee is composed of three administering States (Australia, the United Kingdom and the United States) and twenty-one non-administering States.^{27/} The various subsidiary bodies which have been set up by the Special Committee also contain a majority of non-administering States.

39. At its initial meetings the Special Committee discussed its methods of work and procedure and the administering States made reservations regarding the hearing of petitioners and the dispatch of visiting missions. As Article 73 of the Charter contains no provision for the hearing of petitioners or the dispatch of visiting missions, they maintained that these matters should not be considered without the consent or co-operation of the administering State. The methods and procedure which the Special Committee agreed to adopt in performing its task include: (a) the collection of information; (b) the examination of petitions and hearing of petitioners; and (c) the dispatch of visiting groups.

(i) Collection of information

40. On the instructions of the Special Committee the Secretariat has collected and submitted information on the dependent Territories, including the information transmitted under Article 73 e. In order to assist in the submission of information by the administering States a questionnaire drawn up by a sub-committee was

^{27/} The twenty-one non-administering States are: Afghanistan, Bulgaria, Chile, Denmark, Ethiopia, India, Iran, Iraq, Italy, Ivory Coast, Madagascar, Mali, Poland, Sierra Leone, Syria, Tunisia, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay, Venezuela and Yugoslavia.

addressed to them, but so far no information had been furnished on the basis of this questionnaire. The working papers prepared by the Secretariat are included as supplementary information in the annual report of the Special Committee to the General Assembly.

41. In co-operation with the Secretary-General and the specialized agencies the Special Committee has made two special studies: one concerned the activities of the mining industry and of international companies having interests in South West Africa, and the other the influence of foreign economic and other interests on the implementation in the Territories under Portuguese administration of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

(ii) Examination of petitions and hearing of petitioners

42. In order to acquire further information the Special Committee receives written petitions and hears petitioners. With the assistance of its Sub-Committee on Petitions, the Special Committee received over 1,000 communications between 1962 and 1965, including some 140 requests for hearings, and examined over 400 petitions. The large majority of these communications originated in Africa. The figures for 1965 were: 197 communications, including 36 requests for hearings; 188 communications circulated as petitions; and 27 hearings (4 at Headquarters and 23 in Africa).

(iii) Dispatch of visiting groups

43. The dispatch of visiting groups to various Territories has been regarded by the Committee as one of the means to be employed to enable it to fulfil its responsibilities, although it has recognized the limitations of this procedure and the need for securing the co-operation of the administering State concerned. In 1962, 1963 and 1964, the Sub-Committee on Southern Rhodesia visited London in order to discuss the affairs of that Territory with the United Kingdom Government. The Sub-Committee on Aden, which was denied permission to enter the Territory by the administering State, visited the neighbouring countries in 1963 and 1964 and conducted hearings there. The Sub-Committee on British Guiana was also denied entry to the Territory.

44. In 1965, however, two visiting groups were sent, with the consent of the administering States, to four Territories. One group visited Basutoland, Bechuanaland and Swaziland and held discussions with the local administration, members of political parties and individuals, regarding economic conditions in

those Territories. In its report the group emphasized the need for economic development in, and financial and technical assistance to, the Territories. Upon the recommendation of the Special Committee, the General Assembly decided, in resolution 2063 (XX) of 16 December 1965, to establish a fund for the economic development of these Territories by means of voluntary contributions. Secondly, following a recommendation made by the Special Committee, in resolution 2005 (XIX) of 18 February 1965, the Assembly authorized the supervision by the United Nations of the elections in the Cook Islands and requested the Secretary-General to appoint a United Nations representative. Following the elections and in the light of the report of the United Nations representative, the Assembly decided in resolution 2064 (XX) of 16 December 1965, that the transmission of information in respect of the Cook Islands was no longer necessary.

II. FACT-FINDING CONDUCTED BY THE SPECIALIZED AGENCIES AND THE
INTERNATIONAL ATOMIC ENERGY AGENCY WITH RESPECT TO THE
EXECUTION OF INTERNATIONAL AGREEMENTS

A. Food and Agriculture Organization of the United Nations

45. The methods of fact-finding employed within the framework of FAO may be divided according to whether they relate to the reports submitted by member nations and associate nations in accordance with the FAO Constitution, or to the obligations imposed under conventions and agreements concluded under the auspices of FAO.

1. Reports required under the FAO Constitution

46. In execution of an undertaking laid down in the preamble of the Constitution whereby "Members will report to one another on the measures taken and the progress achieved", member nations and associate members of FAO are required, under article XI-1 of the Constitution, to

"communicate periodically to the Organization reports on the progress made towards achieving the purpose of the Organization as set forth in the Preamble, and on the action taken on the basis of recommendations made and conventions submitted by the Conference

47. Under paragraph 4 of the same article, the Director-General of FAO is authorized to request additional information "relating to the purpose of the Organization", while under paragraph 5, member nations and associate members may be required to communicate all laws and regulations, as well as official reports and statistics, concerning nutrition, food and agriculture.

48. Member nations and associate members have submitted reports in accordance with these provisions. Owing to the increased membership and expanding activities of the organization, however, the submission of periodic reports has tended to become irregular in recent years. The Governing Bodies of FAO have therefore decided that the question of the form and content of these reports should be reviewed, prior to a decision by the FAO Conference as to the practice to be followed in the future.

2. Fact-finding in relation to conventions and agreements concluded under the auspices of FAO

49. Twelve conventions and agreements have so far been concluded under the auspices of FAO in pursuance of articles XIV and XV of the Constitution. Most of the conventions and agreements concluded under article XIV^{28/} make provision for the establishment of a body (council, commission or committee) to meet at regular intervals. Such meetings provide an opportunity for exchanging information on the various problems arising in connexion with the implementation of the convention or agreement concerned and enable the organization to ascertain factual data, on the basis of reports presented by official delegations, on occasions supplemented by documents and verbal information given to the secretary, who is in each case a staff member of FAO. Furthermore, bodies established under article XIV of the Constitution are required, under specific provisions contained in the relevant conventions and agreements, to transmit reports and recommendations to the Director-General who, in turn, brings to the attention of the FAO Conference any recommendations having policy, programme or financial implications; as a rule, the integral text of reports of such bodies is made available to the appropriate Governing Bodies of FAO, and thus circulated to all member Governments. While the majority of the international instruments concerned in fact contain relatively few provisions which impose specific obligations on the contracting parties, in some instances the bodies created under these agreements are empowered to address

28/ Article XIV, paras. 1-3, provides as follows:

- "1. The Conference may by a two-thirds majority of the votes cast approve and submit to Member Nations conventions and agreements concerning questions relating to food and agriculture which shall come into force for each Member Nation only after acceptance by it in accordance with its constitutional procedure.
- "2. The Council may, under rules to be made by the Conference, approve and submit to Member Nations regulations or supplementary agreements designed to implement any general convention or agreement which has come into force under paragraph 1. Any such regulations or supplementary agreements shall come into force for each Member Nation only after acceptance by it in accordance with its constitutional procedure.
- "3. The Conference shall make rules laying down the procedure to be followed to secure proper consultation with governments and adequate technical preparations prior to consideration by the Conference of proposed conventions and agreements."

recommendations to member Governments, and the Director-General is authorized to follow up the implementation of such recommendations.

50. In so far as certain agreements make provision for the adoption of emergency measures in the event of outbreaks of animal diseases, plant diseases and pests, and desert locust infestations, reliance is placed on the State reporting on the emergency for its evaluation of the situation, and no special fact-finding procedures have been established.

51. Other conventions and agreements contain provisions requiring the contracting parties to establish national institutions or authorities for dealing with the programmes and activities which form the subject matter of the convention or agreement, or to designate existing national institutes or authorities for this purpose. Examples include the national poplar commission, established under the International Poplar Convention,^{29/} and the national plant protection organizations established under the International Plant Protection Convention.^{30/} In each of these cases States Parties are required to transmit a description of the competence and scope of a national commission or organization to the Director-General who, in turn, circulates this information to the other members of the commission. This method makes it possible for the Director-General and the States Parties to ascertain the fulfilment of this treaty obligation by the other Parties. Direct communications are frequently exchanged moreover between the national commissions and organizations, without recourse to diplomatic channels, and copies transmitted to the FAO secretariat for its information.

52. Provisions of a directly regulatory nature are contained in only three conventions and agreements, namely the International Plant Protection Convention, the Plant Protection Agreement for South-East Asia and the Pacific Region^{31/} and the Constitution of the European Commission for the Control of Foot and Mouth Disease.^{32/}

^{29/} United Nations, Treaty Series, vol. 410, p. 155.

^{30/} Ibid., vol. 150, p. 67.

^{31/} Ibid., vol. 247, p. 400.

^{32/} United Nations, Treaty Series, vol. 191, p. 285.

(a) International Plant Protection Convention

53. The Convention prescribes the establishment of an official plant protection organization by each Party and outlines the powers to be conferred on such organizations. States Parties are required to issue phytosanitary certificates and to maintain the prescribed control over imports. Safeguards for the observance of these regulatory measures are only provided in so far as States Parties will find it difficult to participate in any trade or exchange of plants falling within the scope of the Convention unless they adhere to the regulatory provisions set forth therein. Information available to FAO indicates that the standards set by the Convention are largely followed by a number of countries that are not parties to the Convention.

(b) Plant Protection Agreement for South-East Asia and the Pacific Region

54. The Agreement which, by virtue of its preamble, is considered "a supplementary Agreement under Article III of the International Plant Protection Convention" makes provision for specific measures to exclude the South American leaf blight of Hevea and to enable the Plant Protection Committee, established under the Agreement, to adopt stricter standards than those established by the Plant Protection Convention for both the importation of plants from outside the region and the movement of plants within the region. To a large extent, the methods of ascertaining the compliance of the Parties with the regulatory provisions contained in the Agreement, or adopted by the Plant Protection Committee, are similar to those described above with respect to the Plant Protection Convention, but the existence of a Committee provides some additional opportunities for both FAO and member Governments to ascertain the practice followed by the various States in the implementation of the Agreement.

(c) Constitution of the European Commission for the Control of Foot and Mouth Disease

55. Under the Constitution of the European Commission for the Control of Foot and Mouth Disease, members of the Commission undertake to adopt specific measures (slaughter policy, immunization and vaccination, slaughter together with vaccination) and to make arrangements for the typing of virus as required by the

Commission. States members are required to notify the Commission immediately of the results of such typing and to provide the Commission with any other information it may need to carry out its functions. Measures for the control of foot and mouth disease, as contemplated in the Constitution of the Commission, cannot in practice be carried out without the adoption at the national level of appropriate legislative, regulatory and administrative measures. Documentary evidence relating to such measures is communicated to the secretariat of the Commission.

B. International Atomic Energy Agency

56. The methods of fact-finding employed by the IAEA concern either the operation of the IAEA safeguards system or the maintenance of the health and safety measures set by the Agency.

1. IAEA safeguards system

57. Under article III.A.5 of its Statute IAEA is authorized to

"establish and administer safeguards designed to ensure that special fissionable and other material, services, equipment, facilities and information made available by the Agency or at its request or under its supervision are not used in such a way as to further any military purpose".

Article XII A sets out the rights and responsibilities of the IAEA with respect to any project or arrangement which it is to safeguard. These responsibilities include the right to review the design of principal nuclear facilities and to arrange for the keeping of records and the submission of records. In addition the IAEA may send inspectors into the territory of a recipient State, with broad rights of access, in order

"as necessary to account for source and special fissionable materials supplied and fissionable products and to determine whether there is compliance with the undertaking against use in the furtherance of any military purpose... and with any other conditions prescribed in the agreement between the Agency and the State or States concerned".

58. In pursuance of these provisions a series of detailed guidelines have been laid down in a document entitled "The Agency's Safeguards System (1965)", ^{33/}

^{33/} IAEA document INFCIRC/66, dated 3 December 1965.

approved by the IAEA Board of Governors on 28 September 1965. Several safeguards agreements have been concluded with individual member States incorporating these proposals. Under the safeguards system the Agency may inspect safeguarded nuclear materials and principal nuclear facilities in order to verify compliance with safeguards agreements. In the case of inspections these may be either routine, initial or special in character. Routine inspections include the audit of records and reports; the verification of the amount of safeguarded nuclear material by physical inspection, measurement and sampling; the examination of principal nuclear facilities; and the checking of the operations carried out at principal nuclear facilities and at research and development facilities containing safeguarded nuclear material. Initial inspections of principal nuclear facilities are intended to verify that the construction of these facilities is in accordance with the design previously reviewed by the Agency. Special inspections may be conducted where any report or other source of information suggests this may be necessary.

59. The inspectors form part of the staff of IAEA. The State in which the material or installation to be inspected is situated is informed in advance of the designation of an inspector and of the place and approximate time of his arrival.^{34/} In accordance with the Agency's safeguards system inspectors must be granted rights of access and of inspection of all relevant facilities and records.

60. The State concerned is also required to submit periodic reports regarding the operation of the facilities and the use of the materials in question.

2. IAEA health and safety measures

61. The fact-finding responsibilities of the IAEA in regard to health and safety standards and measures are provided for in article III.A.6 and Article XII.A.2 and A.6 of the IAEA Statute. In a document entitled "The Agency's Health and Safety Measures",^{35/} which was approved by the Board of Governors on 31 March 1960, and which is referred to in all relevant project agreements concluded between IAEA with member States, the conditions of application

^{34/} Details of the method of designation and notification are given in The Agency's Inspectorate, IAEA document GC(V)INF/39, dated 28 August 1961.

^{35/} IAEA document INFCIRC/18, dated 31 May 1960.

of these measures are defined. The States concerned are required to make annual reports listing cases of the radiation exposure of persons in excess of the applied safety standards, the types and amounts of radio-active waste disposed of, and a statement of the mode of disposal. The State is also required to conduct supervisory examinations and to notify IAEA in the event of a major incident. IAEA may require the State to supply it with the information necessary to evaluate potential radiation hazards, details of the design and operation of facilities and of the proposed system of administration. IAEA inspectors may evaluate operations to ensure that satisfactory radiation levels are maintained; the inspections conducted deal chiefly with tests of radiation sources, examination of facilities where radiation sources are stored, and evaluation of the extent of radiation exposure of persons.

C. International Civil Aviation Organization

62. The Convention on International Civil Aviation, which is the constituent instrument of the organization, entrusts a number of functions to the Council of ICAO which may include that of conducting inquiries into the pertinent facts in order to ascertain whether States are observing the particular obligations concerned.^{36/} Article II, section 1, of the International Air Services Transit Agreement gives further inquiry functions to the Council.

63. As regards methods of fact-finding, apart from the particular case of the provisions of article 69, which is dealt with below, it is left to the initiative of the State alleging that another State is acting in breach of its obligations under the Convention or other agreement to present documentary or other evidence before the Council, or a Committee of the Council, to establish the facts. The respondent State may then similarly furnish evidence, usually in the shape of documents, although oral evidence is not excluded.

1. Air navigation facilities

64. Article 69 of the Convention provides that if the Council is of the opinion that the airports or other air navigation facilities of a contracting State are not reasonably adequate for the safe, regular, efficient and economical operation

^{36/} See articles 15, 54 (j) and (k), 55 (e), 69 and 84.

of international air services, the Council shall consult with the State directly concerned and the other States affected, with a view to finding means of remedying the situation. A special body, called the Implementation Panel, was established under a resolution of the Assembly of ICAO adopted in 1956, composed of persons serving in their independent capacity, in order to observe the implementation of this provision. The main functions of the Panel are to consider whether the plans approved for different regions in relation to the operation of air navigation services are being adequately implemented by the member States concerned and, where necessary, to consult with States in order to assist and encourage them to meet their responsibilities under article 28 of the Convention, regarding the provision of air navigation facilities and services up to the prescribed standards. The Panel or its members undertake missions to different regions and submit reports and recommendations to the Council.

D. International Labour Organisation

65. The ILO has developed a series of procedures since its creation in 1919 for measuring the extent of observance of the conventions and recommendations adopted by the organization.^{37/} The methods employed may be divided according to whether they relate to the system of periodic supervision of the reports of States members or to the steps taken following the receipt of particular complaints alleging the non-observance of an ILO convention or recommendation.

1. Periodic supervision of the reports made by member States

66. The system of periodic supervision operates on the basis of reports requested from member States regarding the measures they have taken to give effect to conventions and recommendations. The basis for this system, as far as ratified conventions are concerned, is provided by the obligation, laid down in article 22 of the Constitution of the ILO, requiring States which have ratified conventions to make an annual report on the measures taken to give effect to them.

^{37/} For a more detailed review of the organization and procedure for the implementation of ILO conventions and recommendations, see the report of the ILO submitted to the Economic and Social Council (E/4144), dated 29 December 1965.

These reports are required to contain detailed information on the relevant national laws and regulations and on the steps adopted to ensure the practical application of the particular convention. Member States are required under the Constitution to communicate copies of their reports to the representative organizations of employers and workers in their country. These organizations may make observations on the application of the provisions of a convention, and States are requested to supply information in their reports on any such observations received and to add any comments that they consider useful.

67. The reports of Governments are submitted consecutively to two distinct procedures, both of which verify the conformity of national laws and regulations with the terms of the conventions, as well as their application in practice. Firstly, the reports come before the Committee of Experts on the Application of Conventions and Recommendations, which is composed of nineteen eminently qualified independent and impartial persons appointed in their personal capacity by the Governing Body of the ILO on the proposal of the Director-General. The Committee, in addition to the reports supplied by Governments, consults official journals, compilations of legislation, any other information available to the ILO on the practical application of the convention and recommendations, and data contained in such comments as may have been made by employers' and workers' organizations. The report of the Committee is communicated to Governments and presented to the ILO Conference.

68. Secondly, the ILO Conference Committee on the Application of Conventions and Recommendations considers a summary of the reports made by Governments and the observations of the Committee of Experts. The Governments concerned are invited to participate in the meetings of the Committee; employers' and workers' representatives may also express their views on the manner in which conventions are applied in their own or other countries. The Committee submits a report to the ILO Conference, for its approval in plenary session.

2. Procedures based on the presentation of complaints

(a) Representations and complaints concerning non-observance of ratified conventions

(i) Representations

69. Articles 24 and 25 of the Constitution of the ILO provide for a procedure under which employers' or workers' organizations may make a representation that "any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party". Any such representation is brought before the Governing Body of the ILO and is examined initially by a Committee composed of three members of the Governing Body, chosen respectively from government, employers' and workers' representatives. Under the Constitution, the Governing Body may communicate the representation to the Government concerned and may "invite that Government to make such statement on the subject as it may think fit"; this is in fact done whenever a representation is found to be receivable. Under the relevant Standing Orders, the Governing Body may ask for further information from the organization submitting the representation; the conclusions of the Governing Body are thus essentially based on material supplied by the "parties". At the same time, recourse may also be had to information derived from the procedures of periodic supervision of the particular convention, from official journals, compilations of legislation, and from similar sources.

(ii) Complaints

70. Article 26 and following of the Constitution provide for the handling of complaints, whether made by a member State or by the Governing Body, alleging that a particular member State has failed to secure the effective observance of a ratified convention. The Governing Body may make such a complaint either of its own motion or upon receipt of a complaint from a delegate to the conference. The Governing Body may then either communicate with the Government concerned in the same manner as in the case of a representation, or, if this is not deemed necessary or if no satisfactory reply has been received within a reasonable time, may appoint a Commission of Inquiry to examine the matter. Member States are required by article 27 of the Constitution to place all information in their possession which

bears upon the subject-matter of the complaint at the disposal of the Commission of Inquiry. The Commission prepares a report embodying its findings on all factual matters relevant to determining the issue between the parties and containing such recommendations as it may think proper.

71. This complaints procedure has only come into effective operation in the last five years, during which there have been two cases and in each of which a Commission of Inquiry was established. The members of the Commissions were chosen in a personal capacity and made a solemn declaration in the same terms as that of the judges of the International Court of Justice. The Commissions requested information from the parties concerned, from the Governments of neighbouring countries, from the Governments of countries which had important economic relations with the parties concerned, and from certain non-governmental organizations. After considering this documentary material, both Commissions took evidence from witnesses in formal hearings in Geneva. Some of the witnesses were heard at the request of the parties, whereas the attendance of others was arranged at the request of the Commission itself by the Government against which the complaint had been made. In one of the two cases, the Commission made an on-the-spot visit and travelled extensively in order to supplement the formal evidence by information gathered directly from workers, directors and employees of undertakings, officials and others. The recommendations based on the findings of fact so arrived at were in each case accepted by the parties concerned.^{38/}

(b) Special procedure relating to freedom of association

72. In 1950 the Governing Body of the ILO set up a specific procedure for complaints alleging interference with freedom of association presented either by Governments or by employers' or workers' organizations. Such complaints may be presented even against States which are not formally bound by the conventions relating to freedom of association.

73. Complaints may be submitted, in the first place, to the Governing Body Committee on Freedom of Association, a body composed of representatives of

^{38/} The reports of the two Commissions were published in the ILO Official Bulletin, vol. XLV, No. 2, April 1962, supplement II, and vol. XLVI, No. 2, April 1963, supplement II.

Governments, employers and workers. No representative or national of the State against which a complaint has been made, nor any person occupying an official position in the national association of employers or workers which has made the complaint, may participate in the Committee's deliberations or be present thereat. As a general rule, the Committee examines complaints on the basis of written documents (on the one hand, complaints, and on the other, observations of the Governments concerned, who are given every opportunity to comment on complaints). There have, however, been cases in which the Committee has also had before it the report of an on-the-spot mission made by a representative of the Director-General (an independent person of high legal standing appointed for the purpose), who had been sent at the request of the Government concerned with a view to establishing the relevant facts. Most complaints are disposed of by the Governing Body on the basis of the report of the Committee, which may conclude that no further action is called for, or that certain suggestions should be made to the Government concerned.

74. Complaints may, however, be submitted in the second place to the Fact-Finding and Conciliation Commission on Freedom of Association, a body of ten independent members set up in 1950 in agreement with the Economic and Social Council of the United Nations. The Commission may work in panels of between three and five members. As a rule no case may be submitted to the Commission without the consent of the Government concerned. In the one case which has been completed by the Commission to date, the procedure followed was analogous to that of the Commissions of Inquiry referred to above. There were formal hearings of witnesses and an on-the-spot visit.^{39/}

75. Virtually all the procedures described above, which in many respects are complementary, make use of bodies composed of independent members working in accordance with quasi-judicial principles. This is designed both to ensure an objective examination of the facts and to secure the confidence and co-operation of all concerned. The various procedures employed have, in particular, obtained the full co-operation of the Governments concerned, without which it would be difficult to ascertain the relevant facts with a sufficient degree of certainty.

^{39/} See ILO, Official Bulletin, vol. XLIX, No. 1, January 1966, special supplement.

E. International Telecommunication Union

76. The fact-finding activities of the ITU are concentrated on the functions of the organization with respect to the use and administration of radio frequencies. The obligations of member States and the procedures for consultation and co-ordination regarding radio frequencies are defined in the Radio Regulations, which form an integral part of the Convention adopted by each International Telecommunication Conference. These Regulations are established and revised by the administrations of member States in the course of administrative conferences.

1. List of international frequencies and the International Frequency Registration Board

77. Since 1928 the ITU has published a list of international frequencies giving the technical characteristics of broadcasting stations, upon notification from the States having jurisdiction over the stations in question. In 1948 the International Frequency Registration Board was set up at the headquarters of the ITU, in order to keep the list up to date. Whilst lacking any direct powers over States, the task of the Board is to mediate between States and to co-ordinate their proposals so as to avoid interference between stations and, where interference does occur, to make proposals for reducing or avoiding such interference in the future.

2. Legal aspect of the use of frequencies

78. Whenever a country notifies the International Frequency Registration Board that a particular station has been assigned a frequency, it is necessary for the Board to make a technical evaluation of the probability that the station will be subject to interference from stations already in service. According to the results of its examination, the Board reaches a conclusion, favourable or unfavourable, which is inscribed in the list at the time when the name of the station is itself included. On a basis of technical facts these conclusions provide countries with a right to protection against interference, or at least a right to international recognition and the duty to respect the corresponding rights of others. These rights and duties are invoked by States when a case of interference arises.

3. Inquiries regarding the use of frequencies

79. The Radio Regulations contain a procedure whereby, in order that the list of international frequencies may reflect the actual situation regarding the utilization of frequencies, the International Frequency Registration Board can open an inquiry in certain cases. For example, if upon its evaluation of the probability of interference the Board reaches an unfavourable conclusion with regard to a notification, the country making the notification can submit a claim that it has operated the station in question for at least sixty days without having received a complaint of interference. In such a case the Board informs the administrations in whose jurisdiction stations are in operation, according to the list of international frequencies, and which should, according to the technical evaluation, be suffering from interference. In this way the Board is informed, through the collaboration of the countries concerned, of what the exact situation is as regards the frequencies, and the list of international frequencies can be modified accordingly. A similar method is used when the Board, on a basis of the information available to it, has grounds for thinking that the utilization of a frequency is not in accordance with notified characteristics.

4. Regulation in case of interference

80. In the event of interference the Board is charged with the task of intervening when direct consultations between the countries concerned are not possible or have not led to a satisfactory solution. A procedure is laid down in the Radio Regulations whereby administrations not forming a party to the dispute can be requested to co-operate in order to determine the origin and characteristics of particular interference and to establish responsibility therefor.

5. International control of broadcasts

81. This control ensures both that stations send their signals on the frequency and with the characteristics which have been notified and that there is no danger of interference with stations operating on adjacent frequencies. The control exercised also makes it possible to discover the locality of stations where, on the basis of messages sent, it has not been easy to determine their nationality.

82. Besides taking the necessary measures to maintain their own facilities in good order, States exercise the control measures which the Board or other countries may ask them to perform; they communicate the results of the observations made by their control centres to the Board, which in turn examines and co-ordinates them, and periodically publishes them in the form of résumés for the use of States. ITU administrative conferences have requested the Board to establish control programmes regarding broadcasts on certain frequencies, for example, frequency bands attributed solely to air services. When results of these control programmes have been obtained, the Board makes representations to the countries in whose jurisdiction the offending stations are operating.

6. International inspection of mobile radio-electric stations

83. In accordance with the Radio Regulations, all mobile stations and their operators must receive a government licence. When a vehicle, plane or ship carrying a mobile station enters another country, the authorities of that country can demand the production of these licences or operator's certificates. If these documents are not produced, the authorities may inspect the station in order to ensure that the Radio Regulations are being observed. The country of origin is immediately informed of the position, as determined by the authorities of the second country, and of any measures taken. The form of the report of any violation of the Radio Regulations is defined in the Regulations themselves.

F. United Nations Educational, Scientific and Cultural Organization

84. The most widespread method of fact-finding used in connexion with conventions and agreements sponsored by UNESCO is that of reporting. In a few instances, however, conventions adopted under the auspices of UNESCO provide for systems of fact-finding which go beyond the reporting method.

1. Recommendations and conventions adopted by the UNESCO General Conference

85. Under article VIII of the UNESCO Constitution member States are under an obligation to report periodically to the organization "on the action taken upon the recommendations and conventions" adopted by the General Conference. Regulations adopted in 1950 to implement this provision provide that initial reports relating

to any convention or recommendation shall be transmitted not less than two months prior to the first ordinary session of the General Conference following that at which the pertinent convention or recommendation was adopted. Under a resolution of the General Conference, initial special reports must contain information on the following points: (a) whether the convention or the recommendation has been submitted to the competent authorities; (b) what these competent authorities are; (c) whether any steps have been taken by these authorities; and (d), the nature of these steps.

86. Additional reports, giving any further information which may be necessary, have been requested in only one instance, regarding the application of the Convention and Recommendation against Discrimination in Education.^{40/} Detailed questionnaires were sent to member States and reports are to be submitted by April 1966. They are to be examined by a special committee of the Executive Board of UNESCO and will be transmitted, together with the comments of the Board and an analysis by the UNESCO secretariat, to the fourteenth session of the General Conference, to be held in October 1966.

2. Conventions adopted by conferences convened under the auspices of UNESCO

87. These conventions generally contain provisions requesting contracting States (and not, therefore, all member States, as in the case of conventions adopted by the UNESCO General Conference) to report on their application. In a few cases, however, conventions adopted by conferences convened by UNESCO have provided for more elaborate methods of fact-finding. Thus the Convention for the Protection of Cultural Property in the Event of Armed Conflict^{41/} relies for the execution of its provisions on the fact-finding attributions recognized to the protecting Powers of the parties to a conflict. Delegates of the protecting Powers are entitled to investigate, with the approval of the party to which they are accredited, the circumstances in which violations of the Convention have occurred. The Commissioner-General for cultural property, appointed by agreement between the party to which he will be accredited and the protecting Powers acting on behalf

^{40/} United Nations, Treaty Series, vol. 429, p. 93.

^{41/} Ibid., vol. 249, p. 215.

of the opposing parties, has the right, with the agreement of the party to which he is accredited, to order an investigation or to conduct one himself. Whenever he considers it necessary, the Commissioner-General may propose for the approval of the party to which he is accredited an inspector of cultural property to be charged with a specific fact-finding mission. Experts may also be appointed for the same purposes.

88. In another case, the Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States parties to the Convention against Discrimination in Education, gives certain fact-finding powers to the Commission. The Commission may call upon the States concerned to supply any relevant information and, after obtaining all the information it thinks necessary, ascertain the facts and makes available its good offices to the States concerned. Reports drawn up by the Commission must contain a statement of the facts thus obtained.

G. World Health Organization

89. The most important of the international agreements sponsored by WHO as regards methods of fact-finding are the International Sanitary Regulations,^{42/} adopted by the Fourth World Health Assembly in 1951, in accordance with article 21, paragraph (a), of the WHO Constitution. Certain provisions of these Regulations require member States to provide information so as to enable WHO to determine whether the measures taken are in conformity with the Regulations. Thus, article 8 of the Regulations requires States to furnish information on their vaccination requirements and on the measures applied to persons arriving from infected local areas. Article 13 obliges States to report annually regarding the occurrence of any case of a quarantinable disease due to, or carried by, international traffic, as well as action taken under the International Sanitary Regulations or bearing upon their application. On the basis of the information provided by States, as well as any other official information, WHO prepares an annual report on the functioning of the Regulations and on their effect on international traffic, which is reviewed by the Committee on International Quarantine and by the World Health

^{42/} Ibid., vol. 175, p. 215.

Assembly, thus permitting a check to be made upon the compliance of States with the provisions of the Regulations.

90. It may be noted that information regarding the compliance of a State with the Regulations is also made available to WHO by other States, international carriers, and even by travellers coming from the State in question. An investigation, usually by correspondence with the State concerned, is made where it is necessary to clarify the situation and to obtain withdrawal of measures not permitted by the Regulations. The settlement of any dispute is the responsibility of the Director-General, in accordance with article 112 of the Regulations.

III. FACT-FINDING CONDUCTED BY OTHER INTERNATIONAL BODIES WITH
RESPECT TO THE EXECUTION OF INTERNATIONAL AGREEMENTS

A. Antarctica Treaty

91. By a Treaty signed at Washington on 1 December 1959,^{43/} the twelve signatory States agreed that Antarctica should be used for peaceful purposes only. To ensure compliance with the Treaty signatory States may appoint observers having wide inspection powers and must inform one another of their activities in the Antarctic. Article 7 of the Treaty provides as follows:

"1. In order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article 9 of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers and like notice shall be given of the termination of their appointment.

"2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.

"3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.

"4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.

"5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of

(a) All expeditions to and within Antarctica, on the part of its ships or nationals and all expeditions to Antarctica organized in or proceeding from its territory;

(b) All stations in Antarctica occupied by its nationals; and

^{43/} Ibid., vol. 402, p. 71.

(c) Any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article 1 of the present Treaty."

92. Article 9 provides that representatives of the contracting States shall meet "at suitable intervals and places for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty". The "measures" listed include "facilitation of the exercise of the rights of inspection". Three meetings of governmental representatives have been held, in Canberra, Buenos Aires and Brussels, in 1961, 1962 and 1964, respectively; recommendations concerning the operation of the Treaty were subsequently submitted to the contracting States.^{44/}

B. Benelux Economic Union

93. The methods of observing compliance with the decisions taken under the Treaty establishing the Benelux Economic Union^{45/} and the conventions concluded with a view to attaining the objectives of the Union may be divided according to whether the control exercised is executive, parliamentary or jurisdictional in character.

1. Exercise of executive control

94. By virtue of article 30 (c) of the Treaty the Committees and Special Committees established within the framework of the Union are required to observe within their particular fields of competence, the execution by national administrations of the decisions taken. In accordance with article 30 (a) of the Treaty and the rules of procedure adopted under article 32, paragraph 3, these bodies are required to report to the Committee of Ministers through the Council of the Economic Union.

^{44/} The recommendations are reproduced in Message from the President of the United States transmitting a special report on United States Policy and International Co-operation in Antarctica, 88th Congress, 2nd Session, House Document No. 358, pp. 32-41.

^{45/} United Nations, Treaty Series, vol. 381, p. 165.

2. Exercise of parliamentary control

95. The Consultative Interparliamentary Council, established under a Convention of 5 November 1955,^{46/} receives an annual report from the three Governments which deals, inter alia, with the realization and functioning of an economic union between the three States. This report is prepared by the Committee of Ministers and considered by the Consultative Interparliamentary Council. The Council may question Governments regarding the report, inform Governments of its opinion, and adopt recommendations by a two-thirds majority.

3. Exercise of jurisdictional control

96. Under the Treaty a College of Arbitrators is established for the settlement of disputes between the contracting Parties regarding its application. Any dispute which cannot be settled by the Committee of Ministers is to be submitted to the College of Arbitrators, either at the joint request of the parties or unilaterally. The decisions of the College, which are taken by majority vote, are final and without appeal. The College has power to rule that a national decision (judicial or executive) is in violation of the Treaty or of an associated convention. If a party to a dispute does not execute a judgement given, the other party may appeal to the International Court of Justice, unless the parties agree to solve the dispute in some other way.

97. It may be noted that in a treaty signed on 31 March 1965, the three States provided for the establishment of a Benelux Court of Justice charged with promoting the uniform application of the legal rules common to the three countries.

C. Council of Europe

98. The methods of fact-finding employed within the framework of the Council of Europe are divided according to whether the particular subject-matter concerns a situation which may affect the aims of the Council, as defined in article 1 of its Statute,^{47/} or arises in connexion with a convention or agreement concluded under the auspices of the Council.

^{46/} Ibid., vol. 250, p. 201.

^{47/} Ibid., vol. 87, p. 103.

1. Statute of the Council of Europe

99. The statutory organs of the Council of Europe, the Committee of Ministers and the Consultative Assembly, may deal with the fact-finding aspects of any situation which may affect the attainment of the statutory aims of the Council, as defined in article 1 of the Statute. The Consultative Assembly has acted as a fact-finding body on two occasions. During the years 1952-1954 a working group of the Political Committee of the Assembly drew up proposals for the settlement of the Saar question between France and the Federal Republic of Germany. Secondly, another working group of the Political Committee has examined the difficulties that have arisen between Austria and Italy over the status of the German-speaking minority in Northern Italy. In each instance these working groups have attempted to collect factual information by means of reports from Governments, reports prepared by members of the Consultative Assembly, and by direct contacts made by the chairmen and rapporteurs of the working groups with the Governments concerned.

2. Conventions and agreements concluded within the Council of Europe

100. The methods of inquiry provided in conventions and agreements concluded within the Council of Europe may be grouped into three main categories: judicial and quasi-judicial inquiry; inquiry by arbitral and conciliatory bodies; and reporting systems.

(a) Judicial and quasi-judicial inquiry

101. The Convention for the Protection of Human Rights and Fundamental Freedoms,^{48/} concluded under the aegis of the Council of Europe, makes provision for judicial and quasi-judicial inquiry as a means of ascertaining facts regarding alleged breaches of the Convention.

102. Two organs are established under the Convention to ensure its observance: the European Commission, and the European Court, of Human Rights. All complaints regarding violations of the Convention, whether emanating from a State or from an individual, must be addressed to the Commission. If the Commission declares the case admissible, it proceeds to ascertain the facts. As part of the process of doing so the Commission may carry out an investigation, the contracting States being under an obligation to furnish all the facilities necessary to make the investigation effective. Besides discovering the facts, the Commission must attempt

^{48/} Ibid., vol. 213, p. 221.

to secure a friendly settlement between the parties. Since the Commission was established in 1954, it has heard witnesses and taken evidence on several occasions in the course of its work. In one instance, in 1958, a sub-commission carried out an investigation on the territory where the facts giving rise to the complaint had occurred.

103. The final, binding decision in cases arising under the Convention is taken either by the European Court of Human Rights or by the Committee of Ministers after the Commission has submitted its report. The Rules of the Court provide for various forms of inquiry and other measures for obtaining information. To date, neither the Court nor the Committee of Ministers has carried out a fact-finding inquiry before taking a decision on any case placed before it.

(b) Inquiry by arbitral and conciliatory bodies

104. Several conventions drawn up within the framework of the Council of Europe provide that disputes arising between contracting States shall be the subject of proceedings before arbitral or conciliatory bodies. All relevant information about the matter in issue is to be supplied to the bodies to which such disputes are referred, which may also conduct such inquiries as they consider necessary. Examples of this procedure include the Conciliation Commission and the Arbitral Tribunal instituted, under chapters II and III respectively, of the European Convention for the Peaceful Settlement of Disputes,^{49/} the Standing Committee set up under the provisions of article 24 of the European Convention on Establishment,^{50/} and the methods of arbitration envisaged in article 11 of the European Interim Agreements on Social Security.^{51/}

(c) Reporting systems

105. Three different methods of obtaining factual information through reports are found in the conventions and agreements concluded within the framework of the Council of Europe.

(i) Reports made under statutory obligations

106. These reports may be required on one occasion only or at fixed or periodic intervals. For example, article 2 of the European Convention on the Equivalence of Diplomas Leading to Admission to Universities^{52/} provides that each Contracting

^{49/} Ibid., vol. 320, p. 243.

^{50/} Ibid., vol. 529, Registration No. 7660.

^{51/} Ibid., vol. 218, p. 211.

^{52/} Ibid., vol. 218, p. 125.

Party shall, within a year of the entry into force of the Convention, supply a written statement of the measures taken to implement the substantial provisions of the Convention.

107. The European Social Charter^{53/} provides that the contracting Parties shall send at two-year intervals a report concerning the application of the provisions relating to the obligations which they have accepted. The contracting Parties also undertake to communicate copies of these reports to various national organizations for their comments. The reports and comments thereon are then examined by a Committee of Experts, according to a system similar to that adopted by the ILO, which is itself entitled to participate at the examination in a consultative capacity.

108. The European Convention on Establishment provides for the publication by the Standing Committee of a periodical report containing all information regarding the laws and regulations in force in the territory of the Parties in respect of matters provided for in the Convention.

(ii) Reports to be made on request

109. Examples of this method of obtaining information are found in the Convention for the Protection of Human Rights and Fundamental Freedom and in the Statute of the Council of Europe.

110. Article 57 of the Convention on Human Rights states that "on receipt of a request from the Secretary-General... any... Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of this Convention".

(iii) Exchange of technical information

111. Examples of the ascertainment of facts through the exchange of technical information include the following: (a) the Agreement on the Exchange of War Cripples between Member Countries of the Council of Europe with a view to Medical Treatment,^{54/} which provides for the exchange of technical information on medical treatment afforded to cripples in the different countries; and (b) the European Agreement on the Exchange of Therapeutic Substances of Human Origin,^{55/} which

^{53/} Ibid., vol. 529, Registration No. 7659.

^{54/} Ibid., vol. 250, p. 3.

^{55/} Ibid., vol. 351, p. 159.

provides that the contracting Parties shall forward to one another lists of institutions empowered to issue prescribed certificates.

D. European Atomic Energy Community

112. The provisions of the Treaty establishing the European Atomic Energy Agency (Euratom)^{56/} specify a number of methods whereby the Euratom Commission may ascertain whether or not Member States, persons and enterprises, are complying with the provisions of the Treaty. These methods involve either direct means of fact-finding by the Commission itself or impose upon Member States the obligation to provide the Commission, at its request, with information collected from their nationals.

113. Under articles 141 and 142 of the Treaty the European Court of Justice may also be called upon at the request of the Euratom Commission or of a Member State to determine whether or not a Member State has failed to fulfil any of its obligations under the Treaty. In the case of an infringement of the Treaty by a person or enterprise, the Member State concerned is obliged to impose a penalty at the request of the Commission; if the ruling of the Commission is contested, the matter may be submitted to the Court of Justice.

1. Methods of fact-finding used directly by the Euratom Commission

114. Under article 187 of the Euratom Treaty the Commission is given a general power to collect information and to verify relevant matters, under conditions laid down by the Council of Ministers. This article has not so far been utilized since the other provisions of the Treaty have enabled the Commission to obtain all the information it has required; these other provisions, moreover, have not required the authorization of the Council of Ministers before they could be exercised.

115. The main method used by the Commission for the direct ascertainment of facts relating to the observance of the Treaty has been the dispatch of inspectors, who are required to examine the control facilities maintained by Member States over nuclear activities. Article 81 of the Treaty provides that the inspectors appointed by the Commission

^{56/} Ibid., vol. 298, p. 176.

"shall at all times have access to all places and data and to any person who by reason of his occupation deals with materials, equipment or facilities subject to the control provided for in this Chapter, to the extent necessary to control ores, source materials and special fissionable materials, and to satisfy themselves concerning the observance of article 77".

Article 81 also states that the President of the European Court of Justice may issue a warrant in the event that there is opposition to the carrying out of an inspection. Article 77 refers to the safeguards to be applied to nuclear materials in order to avoid diversion from their intended use and to the

"provision concerning supplies and any special undertaking concerning measures of control entered into by the Community in an agreement concluded with a third country or an international organization..."

2. Information supplied by Member States

116. Under article 104 of the Euratom Treaty the Commission may require a Member State to communicate to it agreements concluded by persons or enterprises with a third country, with a national of a third country, or with an international organization, so that the Commission may ascertain that such agreements do not contain clauses impeding the application of the Treaty. Any inquiry made by the Commission is based on data which Member States are bound under the Treaty to obtain from their nationals. Under article 192 Member States are obliged to take all appropriate measures to ensure the implementation of the Treaty and of acts adopted by the institutions of the Community.

E. European Coal and Steel Community

117. The methods of ascertaining facts used within the European Coal and Steel Community vary according to the nature of the facts in question and the particular aspect of the work of the Community which is under consideration.

1. Statistical data

118. The preparation of statistical data relating to the coal and steel industries of the Community is undertaken largely by the statistical office of the European Communities. This office collects the data either directly, or through the community statistical bodies, or by writing to producers and importers. The statistical office prepares questionnaires which are sent periodically to industries

in the six States of the Community and also conducts inquiries relating to particular topics. The data so assembled are placed at the disposition of the High Authority of the Community which in turn can, in certain cases, inform the interested industries.

2. Future policy and forecasting

119. As regards the determination of matters relating to future policy and forecasting the High Authority can - and in some cases must - consult the Consultative Committee, which consists of an equal number of producers, workers and consumers and dealers. The High Authority may also consult with Governments, experts, and with interested persons (firms, workers, consumers and dealers), and their associations.

3. Forecasts and definition of general programmes

120. In this aspect of its work the High Authority conducts multilateral or bilateral consultations with the representatives of Governments or of producers, consumers and workers. The High Authority may also seek the advice of independent experts.

4. Fact-finding in relation to particular questions

(a) Social questions

121. A number of committees, sub-committees and working groups have been established and are consulted by the High Authority with respect to social questions. For the most part these bodies are composed of employers' and workers' representatives but they may also include Government representatives.

(b) Prices

122. Firms are obliged to inform the High Authority of their price levels. In addition the High Authority employs inspectors who have direct access to firms.

(c) Investments

123. Firms are under an obligation to inform the High Authority of their investment plans.

(d) Restrictive agreements

124. The High Authority has the necessary powers of investigation to ensure that the obligations are observed regulating agreements and combinations in restraint of trade.

F. European Economic Community

125. Within the framework of the Treaty establishing the European Economic Community,^{57/} the problem of establishing facts regarding observance of the Treaty is posed with respect to both member States and individuals. The jurisdictional system which is provided includes two principal institutions, the European Court of Justice, which is charged with ensuring respect for law in the application and interpretation of the Treaty, and the Commission, which plays an active role in observing the application of the Treaty and in formulating recommendations and taking other steps under article 165 of the Treaty. The following summary is divided according to whether the facts are obtained by these two institutions (for the most part by the Commission) as regards either member States or private parties.

1. Member States

126. The Commission gains information relating to member States by a variety of means, which are described briefly below.

(a) Information obtained or received by the services of the Commission

127. Official publications of Member States are examined systematically by the services of the Commission in order to ensure that acts taken are in conformity with the Treaty. These services also maintain close contact with the different administrations of Member States so that they may be kept informed of projects which States intend to adopt; since any measures taken which are not in conformity with the Treaty are usually such as to be harmful to the interest of another Member State or its citizens, the latter do not hesitate to inform the Commission. A large number of national professional organizations have established themselves in order to defend the interests of their members at the community level.

^{57/} Ibid., vol. 298, p. 3.

(b) Information furnished by Member States

128. By virtue of article 5 of the Treaty Member States are under an obligation to facilitate the performance of the Commission's tasks, an obligation which includes the furnishing of all necessary information. Other provisions of the Treaty, or measures taken in furtherance of the Treaty, provided for the provision of information in particular spheres. For example, under article 93 of the Treaty Member States are under an obligation to inform the Commission "of any plans to institute or modify aids"; under article 102 a similar obligation exists with regard to "the enactment or amendment of a legislative or administrative provision" which will cause a "distortion" of the conditions of competition within the meaning of article 101. By a decision of the Council of Ministers of 9 October 1961, information must also be given regarding commercial policies. Other decisions taken by institutions of the Community provide expressly that Member States must communicate to the Commission information regarding measures taken to put those decisions into execution (for example, as regards the harmonization of legislation).

(c) Failure to observe the terms of the Treaty

129. When the Commission, having been informed by these means, considered that a Member State has failed to observe an obligation incumbent on it under the Treaty, it invites the State concerned to present its observations. If these observations, which may concern either the facts or the law, do not succeed in modifying the opinion of the Commission, the latter gives a reasoned opinion. Under article 169 of the Treaty the Commission may refer the matter to the Court of Justice if the Member State does not comply with the opinion within a specified period.

130. Under article 170 of the Treaty any Member State may refer a matter to the Court if it considers that another Member State has failed to observe its obligations under the Treaty. Before doing so, however, it must refer the matter to the Commission, which must give a reasoned opinion after the States concerned have submitted their comments in written and in oral proceedings.

131. When the Court is seized of the matter, it has the necessary authority to seek information regarding any facts in dispute. It can, in particular, ask the parties to produce all documents and to furnish all information which it considers

desirable. In addition it can request Member States and institutions which are not parties to the case to supply any information which may be of assistance. It can nominate experts and hear witnesses.

2. Private parties

132. The provisions adopted by institutions of the Community with respect to private parties may vary according to the nature of the actual problem presented. A good example of such an arrangement is contained in Regulation No. 17 of the Council of 6 February 1962,^{58/} concerning the application of the provisions of the Treaty relating to the rules of commercial competition, which provides that the Commission must be notified of all agreements between businesses, decisions of business associations and agreed practices, which are capable of affecting trade between Member States and which have as their object or effect the prevention, restriction or frustration of competition within the Common Market. The Commission may also be informed of such agreements, decisions or practices as a result of a complaint. Before taking a decision with regard to these agreements, decisions or practices the Commission examines them in close liaison with the authorities of Member States and after having given interested firms or associations the opportunity to make their point of view known. Within the framework of its powers of investigation the Commission may collect all necessary information from Governments or from the competent authorities of Member States, as well as from commercial enterprises and associations. It can request the authorities of Member States to verify the information so provided. The Commission can itself seek the necessary verification as regards firms and associations. For this purpose the agents of the Commission are given the following powers: to inspect correspondence and other relevant documents; to make copies or to take extracts from such material; to conduct oral inquiries on the spot; and to have access to all premises, sites and means of transport of commercial enterprises. If an enterprise opposes verification the Member State concerned must provide the agents of the Commission with the necessary assistance.

133. If there are grounds to believe that, in a given economic sector, competition has been restricted or frustrated within the Common Market, the Commission may conduct a general inquiry and, within its framework, ask firms to furnish all necessary information. In order to obtain true and accurate information the

Commission has the power to impose penalties and fines on commercial undertakings and companies. It may be noted that, as with other decisions, the Commission's decisions in the matter may be brought before the Court of Justice and an attempt made to have them annulled.

134. Mention may again be made of article 213 of the Treaty which provides that, in order to accomplish the tasks entrusted to it, the Commission may collect all information and seek appropriate verification within the limits and subject to the conditions set by the Council of Ministers, in conformity with the provisions of the Treaty. This Article has been applied in organizing inquiries regarding salaries and investments, with a view to providing the Commission with the economic information it required in order to determine its policies.^{59/}

G. European Nuclear Energy Agency

135. The European Nuclear Energy Agency, which was established in 1957 by the Organization for European Economic Co-operation (the precursor of the Organization for Economic Co-operation and Development), has prepared a number of conventions one of which, the Convention on the Establishment of a Security Control in the Field of Nuclear Energy,^{60/} provides for a system of fact-finding, including international inspection, designed to ensure that nuclear materials, equipment and services falling within the scope of the Convention are used solely for peaceful purposes. In particular, article 5 (a) of the Convention states:

"The Agency shall have the right and responsibility to send into territory under the jurisdiction of Governments party to the present Convention inspectors, designated by it after consultation with the Governments concerned, who shall have access at all times to all places and data and to any person who by reason of his occupation deals with materials, equipment, or facilities subject to control, as necessary to account for source and special fissionable materials subject to control and to determine whether there is compliance with the obligations arising from the present

^{59/} As regards salaries see the following Regulations: No. 10 of 25 August 1960 (Journal Officiel des Communautés Européennes, 31 August 1960, pp. 1199-1260); No. 14 of 24 July 1961 (ibid., 16 August 1961, pp. 1055-61); No. 28 of 14 May 1962 (ibid., 28 May 1962, pp. 1277-1362); and No. 188-64 of 12 December 1964 (ibid., 24 December 1964, pp. 3634-3664). As regards investments see the Directive of 30 June 1964 (ibid., 30 August 1964, pp. 2193-2264).

^{60/} The Convention was signed on 20 December 1957, and came into force on 22 July 1959.

Convention and from any agreement concluded by the Agency with the Government or Governments concerned."

136. The "control" which is referred to is maintained on behalf of the Agency by means of a Steering Committee and a Control Bureau, the latter consisting of one representative of each State Party to the Convention. The Control Bureau is responsible for drawing up security regulations, for examining the reports made by Governments, and for the despatch of inspectors. The task of the inspectors is to verify the operating records kept by Governments and to ascertain "... whether there is compliance with the obligations arising from the present Convention and from any agreement concluded with the Government or Governments concerned".^{61/} The inspectors report any infringement to the Control Bureau. The Bureau is entitled to request that a State Party which it considers has committed an infringement shall take the necessary steps to remedy the situation; the Bureau may also propose to the Steering Committee that further measures be adopted, including the withholding or withdrawal of Agency assistance. States Parties may appeal to an international Tribunal, established under a Protocol to the Convention, regarding the security measures adopted or steps taken or proposed with respect to infringements. No appeal has yet been made to the Tribunal.

H. Fisheries conventions

137. A number of international agreements have been concluded providing for the regulation of fishing in specific areas so as to ensure that fishing stocks are not unduly depleted. As part of the regulatory machinery established under these agreements provision has been made in several cases for the setting up of an international commission empowered to collect statistical information, to conduct or co-ordinate research, and to make recommendations based on information received. A brief description of the work of three of these commissions is given below.

^{61/} Article 11 (d).

1. International Commission for the North West Atlantic Fisheries

138. The Commission which was established in 1950 by the Convention for the Northwest Atlantic Fisheries^{62/} composed of not more than three Commissioners for each contracting Government, is authorized to obtain and collate the information necessary for maintaining fish stocks in the area. Under article 6 of the Convention the Commission may, either acting independently or through or in collaboration with governmental or other agencies, make scientific investigations; collect statistical information; appraise information concerning methods of maintaining fish stocks; conduct hearings; and publish and disseminate reports of its findings as well as other reports. The Commission receives the reports of the panels established to deal with sub-areas of the waters defined in the Convention. Contracting Governments are requested to furnish relevant data to the Commission and to inform it of the action taken to give effect to proposals put forward by the Commission, after these have been accepted by contracting Governments.

2. International North Pacific Fisheries Commission

139. Under the Convention for the High Seas Fisheries of the North Pacific Ocean,^{63/} concluded in 1952, an International North Pacific Fisheries Commission is established composed of the representatives of Canada, Japan and the United States, the three Parties to the Convention. The task of the Commission is to co-ordinate the scientific studies conducted by the contracting Governments in order to ascertain what conservation measures are required and to make appropriate recommendations to the Parties. States Parties are requested to report to the Commission regarding the conservation measures adopted and on the action taken by them with regard to violations. In the event that a fishing vessel of a contracting Party is found in waters in which that State has agreed to abstain from

^{62/} United Nations, Treaty Series, vol. 157, p. 157. For an account of the operation of the Convention see W. Herrington and J. Kask, International Fishery Conservation Problems and Solutions Developed in Existing Conventions (A/CONF.10/L.4), paras. 63-70, Technical Paper prepared for the International Technical Conference on the Conservation of the Living Resources of the Sea, Rome, April 1955.

^{63/} United Nations, Treaty Series, vol. 205, p. 65. For an account of the operation of the Convention see Herrington and Kask, op. cit., paras. 75-85.

exploitation, officials of any Party may board the vessel to inspect its equipment, books, documents, and other articles, and may question the persons on board.

3. North-East Atlantic Fisheries Commission

140. The North-East Atlantic Fisheries Convention,^{64/} which came into force on 27 June 1963, provides for the establishment of a Commission composed of the representatives of the contracting Parties. The main task of the Commission is to keep under review the fisheries in the area, to consider, in the light of available technical information, what conservatory measures are required and to make appropriate recommendations to the contracting States. The Commission is assisted in its work by regional committees which are responsible for particular areas.

141. Contracting States may be requested to furnish statistical and other information to the Commission and are required to report annually on the action taken by them in order to implement the provisions of the Convention and the recommendations of the Commission which have become binding. In addition the Commission may make recommendations both for measures of national control in the territories of contracting States and for national and international measures of control on the high seas, for the purpose of ensuring the application of the Convention and the measures in force thereunder.

I. International Committee of the Red Cross

142. The relevant aspects of the work of the International Committee of the Red Cross concern, on the one hand, the provisions of the Geneva Conventions of 1949 and, on the other, inquiries undertaken regarding specific allegations of violations of international obligations of a humanitarian character.

1. The Geneva Conventions

143. The four Geneva Conventions of 12 August 1949, for the Protection of War Victims^{65/} contain an identical article providing for an inquiry to be held at the request of a party to a conflict regarding alleged violations of the Conventions and, in the event that the parties are unable to agree upon the

^{64/} United Nations, Treaty Series, vol. 486, p. 157.

^{65/} Ibid., vol. 75, p. 5.

procedure to be followed, for the appointment of an umpire. The article in question reads as follows:

"At the request of a Party to the conflict, an enquiry shall be instituted in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention. If agreement has not been reached, concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

"Once the violation has been established, the Parties to the conflict shall put an end to it, and shall repress it with the least possible delay".^{66/}

The International Committee of the Red Cross informed the United Nations Secretariat that it knew of no instance in which this provision had been applied.

2. Inquiries into alleged violations of international law

144. The International Committee of the Red Cross reported that it had sometimes been requested to undertake inquiries regarding particular violations of international law of a humanitarian character. By way of example the following extract from a memorandum of 23 November 1951^{67/} was forwarded, describing the manner in which the Committee determined its position with regard to such alleged violations.

"There is frequent misconception as to the precise role played by the International Committee in this connexion, and a tendency to think that, in addition to transmitting protests, it is itself competent to inquire into the allegations.* The Committee therefore considers it necessary to recall once more the limits within which, should the occasion arise, it might undertake to make an enquiry.

"In its Memorandum of 12 September 1939, to the belligerent States at the beginning of the World War, the International Committee set out the principles which must necessarily govern its intervention should it be

^{66/} Article 52, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; art. 53, Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; art. 132, Geneva Convention relative to the Treatment of Prisoners of War; and art. 149, Geneva Convention relative to the Protection of Civilian Persons in Time of War.

^{67/} Contained in Le Comité international de la Croix-Rouge et le conflit de Corée, Recueil des Documents, vol. I, pp. 223-224 (French only). English text in Revue internationale de la Croix-Rouge et Supplément, December 1951, vol. IV, No. 12.

* The First Geneva Convention of 1929, and the four Geneva Conventions of 1949, make no mention of the International Committee in the clauses which provide that the interested parties may demand an inquiry which shall be conducted in a manner to be decided between themselves. (foot-note in original) /...

requested to institute an enquiry. It continues to be guided by those principles. They are briefly as follows:

"(1) The International Committee can undertake no enquiry except in virtue (a) of powers conferred on it in advance by a Convention or (b) of an ad hoc agreement by all the interested parties.

"It does not constitute itself into an Enquiry Commission: it limits itself to choosing, from outside its own members, one or more persons who are qualified to carry out the enquiry.

"(2) The enquiry procedure must guarantee complete impartiality, and enable the parties to state their case.

"No communication relating to a request for an enquiry or to the enquiry itself shall be made to the public without the prior consent of the International Committee.

"(3) The Committee's primary mission in time of conflict, taking precedence over all others, is to watch over the interests protected by the Geneva Conventions. Therefore, if it should agree to conduct an enquiry in the conditions indicated above, such enquiry should bear primarily upon infringements of the said Conventions; only exceptionally could an enquiry into alleged violations of the rules of war in general come within its scope.

"(4) The International Committee could not undertake an enquiry if there were a risk of thereby rendering more difficult or even impossible its normal practical work for war victims, or compromise its indispensable impartiality and neutrality."

J. Organisation for Economic Co-operation and Development

145. The methods of fact-finding which are used, or which may be used, by the Organisation for Economic Co-operation and Development vary according to the nature of the facts to be ascertained and the investigating body. It was stated that if a member State were to allege that another had failed to observe an act of the organization, the matter would be placed before the Council of the organization, from which all acts were derived. In such an event the Council would hear the arguments on both sides; no such case has yet arisen.

146. Apart from possible action at Council level, a number of the subordinate bodies of the organization employ various techniques for the ascertainment of facts; such bodies include the Economic and Development Review Committee; the Development Assistance Committee; the Trade Committee; and the Committee for Invisible Transactions.

1. Economic and Development Review Committee

147. The Economic and Development Review Committee, which is responsible for an annual economic survey of individual member States and of Yugoslavia, examines each country's economic situation and policies. The technique used consists of a confrontation country by country. Each member State addresses to the organization a memorandum on its economic situation and on the methods and objectives of its governmental policy. These memoranda are examined by the secretariat of the organization, which prepares a draft report. Two member countries are appointed examiners and have the responsibility for drawing up a list of questions, in conjunction with the secretariat. The representatives of each country then appear before the Committee in order to reply to the relevant series of questions. Following a general debate the draft report is put in final form.

2. Development Assistance Committee

148. The Development Assistance Committee, which has as its objective the expansion of the aggregate volume of resources made available to the developing countries and the improvement of the effective use of those resources, employs a technique of examination which is basically similar in its methods to those employed by the Economic and Development Review Committee.

3. Trade Committee

149. The Trade Committee enables the organization to be kept informed of significant developments in the field of trade. In order to ensure that relevant information is provided and kept up to date, the Trade Committee uses a system of notifications and confrontations. In the course of these confrontations the general trade policy of each member country and its trade practices are examined, special attention being given to the outstanding features of policy and any significant modifications in its application.

4. Committee for Invisible Transactions

150. The Committee for Invisible Transactions, which is composed of a restricted body of experts, is primarily responsible for the progressive removal of restrictions on the international movement of services and capital, and as such

watches over the implementation of the Codes of Liberalization of Capital Movements and of Current Invisible Operations respectively. These two instruments contain detailed technical arrangements designed to ensure that States comply with their obligations.

K. Whaling agreements

1. International Convention for the Regulation of Whaling, signed at Washington, 2 December 1946 68/

151. Under Article III of the 1946 Convention an International Whaling Commission was established, composed of one member from each contracting Government. The main responsibility given to the Commission is to amend periodically the provisions of the Schedule attached to the Convention, which govern the conditions under which contracting States may conduct whaling activities. Under Article IV the Commission is also charged with responsibility for taking action, either independently or in collaboration with governmental, public or private bodies: (a) to encourage, recommend, or, if necessary, organize studies and investigations relating to whaling; (b) to collect and analyse statistical information concerning the condition and trend of whale stocks and the effects of whaling activities; and (c) to study, appraise and disseminate information concerning methods of maintaining and increasing population of whale stocks.

152. The International Whaling Commission has established two Committees which perform fact-finding and fact-evaluating functions.^{69/} The Scientific Committee

^{68/} United Nations, Treaty Series, vol. 161, p. 72. Under the various international agreements concluded prior to 1946, contracting States were obliged to communicate statistical and biological information regarding whales caught by ships flying their flags to the International Bureau for Whaling Statistics, an organ of the Norwegian Government situated at Sandefjord in Norway. The agreements concerned were as follows: Convention for the Regulation of Whaling 1931 (League of Nations Treaty Series, vol. 155, p. 345); International Agreement for the Regulation of Whaling, (ibid., vol. 190, p. 79); and Protocol amending the International Agreement of 1937 and the Protocol of 1938, for the Regulation of Whaling, 1945 (United Nations, Treaty Series, vol. 11, p. 43).

^{69/} See Remington Kellogg, The International Whaling Commission (A/CONF.10/L.18), technical paper prepared for the International Technical Conference on the Conservation of the Living Resources of the Sea, Rome, April 1955.

evaluates relevant scientific and statistical information and reviews the research programmes of Governments, international organizations and other bodies, as well as considering such additional matters as are referred to it by the Commission. The statistical report on whaling operations, prepared each year by the International Bureau for Whaling Statistics (an organ of the Norwegian Government) on the basis of information supplied by contracting Governments, together with the accompanying data, serve as guidelines to the Scientific Committee in reaching decisions on matters within its competence and in making recommendations for appropriate action by the Commission itself.

153. The Technical Committee has been concerned with making an annual examination of the infractions reported by contracting Governments and the pertinent recommendations submitted by them, reviewing the legislation and regulations adopted by Governments in implementing the Convention, and with questions involving the time, manner and intensity of whaling operations.

2. Agreement concerning an International Observer Scheme for Factory Ships Engaged in Pelagic Whaling in the Antarctic, signed at London on 28 October 1963 70/

154. The above-mentioned Agreement provides for the appointment of observers by the International Whaling Commission to expeditions engaged in pelagic whaling in the Antarctic under the flags of States which are members of the Commission. Under provisions of Article I, contracting Governments have the right to nominate one observer of their own nationality in respect of each foreign expedition and are required to nominate as many other observers as they have expeditions operating under their flag during any one season. From the observers so nominated the Commission is to appoint one to each expedition, so that the total number of each nationality is equal to the number of that country's expeditions. The remaining observers are to be appointed to such expeditions as the nominating

70/ United Kingdom Cmd. 2209, Misc. No. 21 (1963). The Agreement, which has not yet come into force, was signed by the Governments of Japan, the Netherlands, Norway, the Union of Soviet Socialist Republics and the United Kingdom. These Governments had previously entered into Arrangements for the Regulation of Antarctic Pelagic Whaling in 1962, providing for a system of quotas (United Nations, Treaty Series, vol. 486, p. 263).

Government may require, provided that not more than one observer of any nationality may be appointed to any expedition.

155. All observers are to be responsible solely to the Commission. They are to be given the status of a senior officer and to be entitled to subsistence and accommodation accordingly. They are to be provided with the necessary facilities for carrying out their duties, including the use of radio. Article 2 (2) states that:

"An observer shall be enabled to observe freely the operations of the expedition to which he is appointed, so that he may verify the observance of the provisions of the Convention and the schedule in regard to the taking of whales and their rational utilisation. In particular the observer shall be given facilities to ascertain the species, size, sex and number of whales taken".

Observers may examine all reports made and all records and data to be kept or supplied in accordance with the Schedule to the 1946 Convention. Officers of the vessel or national inspectors accompanying the expedition are required to supply any information which may be necessary. In the event of an infraction of the Convention or of the Schedule an observer is to draw up a report, which shall be submitted to the master or manager and to the senior national inspector, for information and such comments as they may wish to make. Any comments made are then to be annexed to the report, which is to be forwarded to the secretariat of the International Whaling Commission. Where an infraction not due to excusable error occurs, this is to be brought in writing to the immediate notice of the master or manager and of the senior national inspector by an observer, who may also at once inform the secretariat if he deems it sufficiently serious.
