Review Working Party IV on Organizational and Functional Questions

Statement by the Executive Secretary regarding Specialized Agency Status
(Made at the Meeting on 27 November 1954)

The Charter of the United Nations gives the Economic and Social Council all-embracing jurisdiction over economic and social matters in the United Nations orbit. At San Francisco the establishment of bodies to deal in specialized economic and social fields was also envisaged and the Charter provides that, such specialized organizations having broad functions in the economic and social field, shall be brought into relationship with the United Nations. The purpose of such relationship is

(1) to define the area of responsibility of the Agency;

(2) to arrange for cross representation, in the Agency by the United Nations and vice versa, for the exchange of information and documents, and to avoid duplication of work between the Agency and the United Nations;

(3) to ensure that the Agency reports annually to the Economic and Social Council to enable the latter generally to co-ordinate the activity of the United Nations in the economic and social fields.

Agreements between the Agencies and the United Nations cover these purposes. The Agreements cover other matters as well; for example, they provide that recommendations can be made by the Agency for consideration by the United Nations and vice versa. They relate also to administrative matters including the following:

(1) The question of privileges and immunities. An overall convention exists concerning privileges and immunities which governments accord to officials and delegates of the United Nations and specialized agencies. In accordance with this Convention, governments automatically extend the provisions of the Convention to any organization which has the status of specialized agency of the United Nations.

(2) The United Nations Pension Fund, a collective arrangement establishing pensions for the Staff of the United Nations and of a number of specialized agencies.
(3) The co-ordination of financial, administrative and personnel arrangements. An attempt is being made to establish common staff conditions in order to build up an effective international civil service.

The possible disadvantages which might result from specialized agency status relate to policy and administration.

Concerning policy, the basic question is whether the Organization established to administer the Agreement would be similar in character to the other specialized agencies. The Agreement is a treaty embodying specific rights and obligations on the parties to it in the important field of commercial policy. In this respect it differs from those specialized agencies, which operate under Charters providing for general co-operation and co-ordination in various fields but without creating treaty rights and obligations such as those provided for in GATT. If it could be argued that the effect of specialized agency status would in any way subject the decisions of the CONTRACTING PARTIES to appeal, or even to the influence of an external body, then it would be necessary carefully to consider entering into such status. Much would depend upon the nature of the agreement drawn up between the United Nations and the new Organization. There appears to be no reason why it should not be possible to insert in such an agreement safeguarding clauses to avoid any suggestion of this nature. A similar problem had existed with the International Bank and the Monetary Fund, and the Agreements between those two agencies and the United Nations differ in important respects from the Agreements between the United Nations and other specialized agencies.

From the point of view of administration, while admittedly there is advantage in co-ordinating methods of administration and standardizing conditions of service, it should also be borne in mind that the way that an international organization is run should depend on the business of the organization, rather than on a theory of international administration. There is a tendency to standardize patterns of administration simply because all the organizations involved are international. Again, any agreement that might be entered into with the United Nations should provide that arrangements for administrative co-ordination should not prevent the GATT organization from adopting whatever secretariat structure and methods of administration would be most suitable for its task.

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There is also circulated (one copy to each delegation) with this note an extract from General Assembly document No. A/C.1/758 which gives a comprehensive account of constitutional questions relating to agencies within the framework of the United Nations.
SUMMARY OF INTERNAL SECRETARIAT STUDIES OF CONSTITUTIONAL QUESTIONS RELATING TO AGENCIES WITHIN THE FRAMEWORK OF THE UNITED NATIONS

Prepared in response to a request made in the First Committee and submitted by the Secretary-General

This summary is by no means exhaustive; only such information and analysis are provided as seem to have most direct bearing on the subject. Main emphasis has been placed on constitutional relationships with only incidental attention to actual practices.

I. PART ONE: FORM AND STRUCTURE OF AGENCIES

1. Existing agencies within the framework of the United Nations may be classified as

   (1) subsidiary organs of the United Nations;
   (2) specialized agencies; and
   (3) "special bodies".

2. Subsidiary Organs. A subsidiary organ is one which is established by or under the authority of a principal organ of the United Nations in accordance with Article 7(2) of the Charter by resolution of the appropriate body. Such an organ is an integral part of the Organization.

3. Through numerous committees and commissions, administrative organs, judicial bodies and operational agencies, the United Nations has had extensive experience with subsidiary organs. They vary greatly as regards origin, composition, structure, function and duration of existence. In the context of this paper, the operational agencies may merit special note. Most subsidiary organs have in common their establishment by parent bodies which presumably may change their terms of reference and composition, issue policy directives to them, receive their reports and accept or reject their recommendations. Generally speaking, a subsidiary organ may be abolished or modified by action of the parent body. Conceivably, a subsidiary organ could have a structure which would permit it a considerable measure of operational autonomy and would afford, if necessary, a special position for some participating States in recognition of special responsibilities.

4. Specialized Agencies. A specialized agency is an agency established by inter-governmental agreement, having wide international responsibilities in economic, social, cultural, educational, health and related fields, and brought into relationship with the United Nations in accordance with Articles 57 and 63

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of the Charter by means of an agreement negotiated with the United Nations. Since specialized agencies are established by treaty, unlike subsidiary organs, changes in their basic organization and terms of reference would have to be made in the same way. In the basic structure of specialized agencies provision is made for a general conference of all members, for a governing body of limited membership, in some cases with qualified voting procedure on certain questions, and for an executive head and international secretariat.

5. United Nations organs, particularly the Economic and Social Council and the General Assembly, have under the Charter, specific functions with respect to specialized agencies. The more important of these functions may usefully be indicated, although it is to be noted that in actual practice the extent of their implementation has varied, and that in important respects the original intent has not been fully realized. In the next two paragraphs the provisions are set out, without regard to practice.

6. The Economic and Social Council may enter into agreements with the specialized agencies (subject to approval by the General Assembly), defining the terms on which the agencies shall be brought into relationship with the United Nations (Article 63). It may coordinate the activities of the specialized agencies through consultation with them and through recommendations to the agencies, to the General Assembly and to Members of the United Nations (Article 54). It may take appropriate steps to obtain regular reports from the specialized agencies and may make arrangements with them to obtain reports on steps taken to give effect to its own recommendations and to recommendations made by the General Assembly (Article 64). It may make arrangements for representatives of the specialized agencies and of the Economic and Social Council to participate without vote in each other's deliberations (Article 70).

7. As regards the functions of the General Assembly with respect to the specialized agencies, Article 17(3) provides that it shall consider and approve financial and budgetary arrangements with specialized agencies and shall examine the administrative budgets of such agencies with a view to making recommendations to the agencies concerned. Article 58 provides that the United Nations shall make recommendations for the co-ordination of the policies and activities of the specialized agencies - a responsibility vested in the General Assembly and under the authority of the General Assembly in the Economic and Social Council (Article 60). The Trusteeship Council under the Charter (Article 91), and the Security Council, under most of the agreements, may avail themselves of the assistance of the specialized agencies.

8. With a view to promoting and facilitating co-ordination among the United Nations and the specialized agencies, the Administrative Committee on Co-ordination - consisting of the Secretary-General, as Chairman, and the Executive heads of the specialized agencies - was set up pursuant to a resolution of the Economic and Social Council at its third session. Through this Committee continuous and informal consultations on programmes and administrative questions are maintained on the executive level under broad directives from both the General Assembly and the Economic and Social Council.
9. "Special Bodies". There are examples of existing international bodies which are neither subsidiary organs nor specialized agencies, namely, the Permanent Central Opium Board (PCOB) established under the Opium Convention of 19 February 1925, and the Drug Supervisory Body established under the Convention on Narcotic Drugs of 13 July 1931. These may be described as "special bodies" within the framework of the United Nations. On the one hand, like the specialized agencies, they have been established by treaty and, on the other, while enjoying wide operational autonomy, they have a position within the United Nations similar in some respects to that of subsidiary organs.

10. A new special body, established by treaty, could be related to the United Nations in virtually any degree deemed desirable. Thus, it is possible to envisage a new agency which would be set up by treaty but which at the same time would be integrated into the United Nations through acceptance by the United Nations, either by resolution or by agreement, of functions assigned to it in the treaty.

11. The treaty might provide, for instance, that the General Assembly, in addition to co-coordinating the work of the agency with the work of other United Nations activities, be empowered to perform some or all of the functions normally performed by a general conference of Members, such as general policy direction. At the same time, the operational autonomy essential to such an agency could be provided and guaranteed in the treaty by which it was established. An agency established in this form would have the stability in basic organization and terms of reference of a body based on a treaty, while maintaining a relationship with the United Nations roughly analogous to that of a subsidiary organ.

12. A looser relationship than the above may also be envisaged, for example one which would be somewhat analogous to that of a specialized agency, but under which functions with respect to specialized agencies normally exercised by the Economic and Social Council under the authority of the General Assembly would be performed by the General Assembly itself. Although there is no existing precedent, it is conceivable that such a relationship between the United Nations and a new agency established by treaty could be defined by an agreement outside the scope of Articles 57 and 63 of the Charter. An arrangement of this nature affords the possibility of somewhat greater flexibility in the relationship with the United Nations than in the case of a specialized agency, while ensuring general policy direction and overall co-ordination by the General Assembly.

II. RELATIONSHIP OF THE SPECIALIZED AGENCIES TO THE UNITED NATIONS

13. If a new agency were established as a subsidiary organ, its relationship to other United Nations organs would be defined in the resolution creating it. On the other hand, were it to be established by treaty it is presumed that the treaty would define in general terms the relationship between the agency and
the United Nations. The treaty would probably also authorize the conclusion of a special agreement with the United Nations which would set forth the details of that relationship. Should the agency take the form of a specialized agency, such a special agreement would be necessary. Should it be a "special body" the details of its relationship to the United Nations could be defined in the treaty establishing it and approved by resolution of the United Nations organs concerned or by formal agreement.

14. With regard to the possible relationship between the United Nations and a new agency, whatever its form, it is useful to note the basic principles which are incorporated in the agreements concluded between the United Nations and the specialized agencies. In considering the possible application of such provisions to any new agency, however, it might be helpful to consider carefully the extent to which they have been applied in practice, how they might usefully be developed and the possible desirability of modifying them in certain respects, in the interest of more effective operation and co-ordination.

15. **Recognition of Status.** Under the agreements with the specialized agencies the United Nations recognizes the agency concerned as a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein. The agreements with the Bank and the Fund depart from this basic pattern by recognizing that the Bank and the Fund are, and are required to function as, independent international organizations.

16. **Reciprocal Representation.** According to the basic pattern followed in the specialized agency agreements with the United Nations, its representatives are entitled to participate without vote in any meetings of the specialized agencies. Representatives of the specialized agencies are entitled: to be invited to meetings of the Economic and Social Council and its Commissions and Committees, of the General Assembly and its main committees, and of the Trusteeship Council; to submit to these bodies written statements; and to participate without vote in their deliberations on matters within the scope of the agencies' activities.

17. In the agreements with the Bank and the Fund, the United Nations representation is limited to attendance and participation without vote in meetings of the Board of Governors (plenary organ) and in meetings specially called to consider the United Nations point of view in matters of concern to the United Nations.

18. **Reciprocal Right to Propose Agenda Items.** A standard clause in specialized agency agreements provides that, subject to preliminary consultation, the agency shall include on the agenda of its plenary and executive organs items proposed to it by the United Nations, and that the Economic and Social Council and its Commissions and the Trusteeship Council shall include on their agenda items proposed by the plenary or executive organ of the agency. The agreements with the Bank and the Fund merely provide that the agency and the United Nations organs concerned will "give due consideration to the inclusion in their agenda of items proposed" by the other.
19. **Recommendations of the United Nations.** In general, specialized agency agreements include an undertaking by the agency: to submit to its appropriate organs all formal United Nations recommendations; to consult thereon with the United Nations; and to report to the United Nations on actions taken on its recommendations.

20. In the case of the Bank and the Fund, however, it is provided that the United Nations and the agency will not present formal recommendations to each other without reasonable prior consultation, and formal recommendations made after such consultation will be considered as soon as possible.¹

21. **Exchange of Information and Documents and Submission of Reports.** Specialized agency agreements generally provide that, subject to such arrangements as may be necessary for the safeguarding of confidential material, the fullest and promptest exchange of information and documents should be made between the United Nations and an agency. They also provide for regular and special reports by the agency. The Bank and the Fund are not required to furnish information if such action would, in their judgment, constitute a violation of confidence or interference with the orderly conduct of their operations.

22. **Assistance to the United Nations.** In general, specialized agency agreements provide that the agency shall comply to the fullest extent practicable with any request which the United Nations may make for the furnishing of special reports, studies or information, and shall participate in and co-operate with any body or bodies which the Economic and Social Council may establish for the purpose of facilitating co-ordination. They further provide for assistance by the agency on request to the Security and Trusteeship Councils and for the co-operation of the agency in giving effect to Chapter XI of the Charter.

23. The agreements with the International Telecommunication Union (ITU), Universal Postal Union (UPU) and the World Health Organisation (WHO) contain only a general undertaking of the agency to co-operate with and render assistance to the United Nations, so far as consistent with the agency's basic instrument and the position of the agency's members who are not Members of the United Nations. There is no undertaking on the part of the Bank and the Fund to furnish assistance to the Security Council but only to "have due regard for decisions of the Security Council under Articles 41 and 42" of the Charter.

¹ The agreement with the Bank also includes the following provision:

"The United Nations recognizes that the action to be taken by the Bank on any loan is a matter to be determined by the independent exercise of the Bank's own judgment in accordance with the Bank's Articles of Agreement. The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms or conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction or development plans, programmes or projects". (Article IV, paragraph 3)
24. In 1951, at the request of the Economic and Social Council, the International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), Food and Agriculture Organization (FAO), World Health Organization (WHO) and International Civil Aviation Organization (ICAO) undertook to furnish assistance if requested by the General Assembly under resolution 377(V) (Uniting for Peace).

25. Personnel, Statistical, Administrative and Technical Services. Specialized agency agreements generally recognize the desirability of developing a single unified international civil service, and to that end provide for: developing common personnel standards, avoiding discrepancies in employment conditions and facilitating interchange of personnel; co-ordinating statistical services; and establishing common administrative and technical service facilities. Separate articles in most of the agreements provide in detail for co-operation on each of these subjects.

26. The agreements with ITU, UPU and WMO provide for the development of common personnel standards but make no reference to the aim of developing a single unified international civil service. The agreements with the Bank and the Fund, while containing no provision for interchange of personnel, or development of common administrative services, provide for consultation with the United Nations on personnel and administrative matters of mutual interest. Statistical information is to be exchanged only if it is non-confidential.

27. Budgetary and Financial Arrangements. The agreements generally provide that the agency is to consult the United Nations in the preparation of its budget, to transmit budget proposals to the United Nations General Assembly for examination, and to conform to standard practices and forms recommended by the United Nations. A number of the specialized agency agreements also provide that the United Nations and the agency shall consult together concerning arrangements for including the budget of the agency within the general budget of the United Nations, or the desirability of making such arrangements. In fact, the budget of no specialized agency has been included in the general budget of the United Nations, and certain other budgetary provisions in the agreements have not been fully implemented.

28. The agreements with ITU and UPU provide that the annual budget of the agency is to be transmitted to the General Assembly, but there is no provision for consultations in its preparation and no undertaking to conform to standard practices recommended by the United Nations. The relevant provisions in the agreements with the Bank and the Fund impose still less extensive obligations, containing no provision for transmittal of budgets, consultation thereon, or conformity with standard practices recommended by the United Nations.

29. Other Provisions. The agreements with the specialized agencies also contain provisions concerning relations with the International Court of Justice, liaison arrangements, inter-agency agreements, financing of special services, use of the United Nations laissez-passer, supplementary agreements and revision of the agreement. The agreements with UNESCO and ICAO also contain provisions whereby
the Economic and Social Council or the General Assembly may recommend the rejection of applications for membership by non-Members of the United Nations. Agreements with UNESCO, WHO and ILO contain provisions for co-ordination of activities and development of joint services with respect to public information. Some agreements also provide for consultations on the location of the permanent Headquarters of the Agency (ILO, WHO, ICAO, FAO) and for association of regional offices with those of the United Nations (ILO, WHO, ICAO, FAO, UNESCO and IRO).

30. The agreements referred to above, in the nature of the case, relate mainly to procedure and legal forms rather than to the realities of co-operation and co-ordination to which those who framed the Charter attached special importance. While a reasonable degree of co-operation between the United Nations and the specialized agencies has been achieved, and there has been much willing cooperation, it must be borne in mind that the specialized agencies do not merely enjoy autonomy within their respective technical fields of competence (as do certain subsidiary and special bodies referred to earlier in this summary), but they are in all essential respects fully independent organizations, controlling their own policies and programmes.

III. ESTABLISHING AGENCIES BY TREATY AND BRINGING THEM INTO RELATIONSHIP WITH THE UNITED NATIONS

31. In the light of existing practices there are various methods which might be followed in negotiating and drafting a treaty establishing an international agency, whether that agency were to take the form of a specialized agency, or a "special body". The following basic methods will be considered:

(a) drafting or approval of treaty by the General Assembly;

(b) drafting of treaty by inter-governmental conference called by the General Assembly (or by the Economic and Social Council); and

(c) drafting of treaty by inter-governmental conference called by sponsoring States without prior action by the United Nations.

32. Under method (a) the constituent instrument of a new agency is drafted or approved by the General Assembly and comes into force when a given number of States become parties to it. That instrument, in addition to establishing the membership, structure and terms of reference of the agency, might also

1 Various types of constituent instruments may be envisaged, e.g. Constitution (e.g. FAO, ILO, Convention (e.g. ICAO), Agreement (e.g. UNRRA), Statute (e.g. Council of Europe), Articles of Agreement (IBRD and IMF), Charter (e.g. Organisation of American States). In all cases, however the constituent instrument would have the force of a treaty for the States becoming parties to it.
determine the agency's relationship to the United Nations. The agency might be a specialized agency or might have a different type of relationship to the Organization. As a preliminary step, the General Assembly might set up a special committee of members for the purpose of preparing a draft of the agency's constituent instrument. This method was employed in the establishment of the International Refugee Organization.

33. Under method (b) the constituent instrument of a new agency is adopted in an inter-governmental conference convened by the General Assembly or the Economic and Social Council which may make recommendations regarding the structure and terms of reference of the agency and its relationship to the United Nations. The convening of the conference might be preceded by the establishment by the General Assembly or the Council of a committee of States for the purposes of preparing a draft of the constituent instrument. In any event, however, the conference would be free to adopt a constituent instrument of its own choosing.

34. Under method (c) the constituent instrument establishing an agency would be adopted in an inter-governmental conference convened by a State or a group of States. The United Nations would have no part in the convening of the conference. The conference would adopt the constituent instrument, and the relationship of the agency with the United Nations would be determined by negotiation between the United Nations and the agency.

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1 cf. Article X of the Constitution of UNESCO, which reads as follows:

"This Organization shall be brought into relation with the United Nations Organization, as soon as practicable, as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected through an agreement with the United Nations Organization under Article 63 of the Charter, which agreement shall be subject to the approval of the General Conference of this Organization. The Agreement shall provide for effective co-operation between the two Organizations in the pursuit of their common purposes, and at the same time shall recognize the autonomy of this Organization, within the fields of its competence as defined in this Constitution. Such agreement may, among other matters, provide for the approval and financing of the budget of the Organization by the General Assembly of the United Nations."

2 For example, the Constitution of the World Health Organization was adopted by the International Health Conference convened by resolution of the Economic and Social Council of 15 February 1948.

3 For example, the Constitution of UNESCO was adopted by a Conference held in November 1945 at the invitation of the Government of the United Kingdom. UNESCO was formally brought into relationship with the United Nations on 14 December 1946, the date of the entry into force of the agreement between the two Organizations.
Procedure for bringing an agency into relationship with the United Nations.

35. The Charter in Article 63 lays down in general terms the procedure by which an agency is brought into relationship with the United Nations as a specialized agency. The agreement might be negotiated for the agency either before it comes into existence by some preparatory body for the agency (as in the case of WHO, ITU, IRO and IMO), or after it comes into existence by an organ of the agency itself. On behalf of the United Nations, the negotiations might be conducted (as in the case of all the existing United Nations specialized agency agreements) by the Economic and Social Council's Committee on Negotiations with inter-governmental agencies, or by the Economic and Social Council itself, or by some special body designated by the General Assembly or the Council for the purpose.

36. If a "special body" were to be created by treaty, either of two types of procedure could be followed in order to bring it within the United Nations framework. If the "special body" were analogous to a subsidiary organ, a procedure similar to that adopted in the case of the Permanent Central Opium Board and the Drug Supervisory Body might be found appropriate. Under this procedure, the rights, obligations and functions of the new body within the United Nations framework would be specified in its constituent instrument and accepted by the United Nations (presumably the General Assembly). There would be no need of formal agreement between the two organizations, although arrangements would have to be made to implement the general provisions of the treaty.

37. If on the other hand the "special body" were more analogous to a specialized agency, the procedure to be followed for bringing it into relationship with the United Nations would be essentially the same as for a specialized agency, except that organs other than the Economic and Social Council might negotiate and enter into the agreement on behalf of the United Nations.

From the foregoing, it is apparent that various forms of organization, degrees and types of relationship with the United Nations, and methods of establishing such a relationship, may be envisaged in the creation of any new international agency. In making a choice, certain interrelated objectives should be taken fully into account, namely, that the agency, while enjoying fullest autonomy in its operations if that is deemed essential, should have a sufficiently close relationship to the United Nations to ensure effective coordination of its programmes and activities with those of other bodies in the United Nations framework.

Furthermore, theoretical possibilities will need to be carefully examined and weighed in the light of experience, especially since experience with existing forms has indicated that actual practice may sometimes deviate widely from original intent.

1 Article 63 reads as follows:
"1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, refining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.
"2. ..."
There may be good reasons why the pattern provided by the specialized agencies\(^1\) will not adequately serve the desired objectives. Moreover, it may appear that neither the form of a subsidiary organ,\(^2\) nor that of any "special body"\(^3\) so far devised, would be appropriate. It may, therefore, be found advisable, if not necessary, to chart a new course - to depart from precedent in an effort to find the form and relationship best adapted to new and unprecedented circumstances.

\(^1\) cf. paragraphs 4 to 8 and 13 to 30.
\(^2\) cf. paragraphs 2 and 3.
\(^3\) cf. paragraphs 9 to 12.