INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

INTERPRETATION OF THE AGREEMENT OF 25 MARCH 1951 BETWEEN THE WHO AND EGYPT

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

INTERPRÉTATION DE L'ACCORD DU 25 MARS 1951 ENTRE L'OMS ET L'ÉGYPTE

CONTENTS - TABLE DES MATIÈRES

WRITTEN STATEMENTS

EXPOSÉS ÉCRITS

LETTRE DU SOUS-SECRÉTAIRE GÉNÉRAL DU MINISTÈRE DES RELATIONS EXTÉRIEURES ET DU CULTE DE BOLIVIE [1]

15 juillet 1980.

Par référence à votre avis nº 64516, du 6 juin, se rapportant à la résolution nº WHA33.16 approuvée le 20 mai 1980 à la trente-troisième Assemblée mondiale de l'Organisation mondiale de la Santé, sur le déplacement du Bureau régional de l'Organisation mondiale de la Santé de l'est de la Méditerranée à Alexandrie, Egypte, j'ai l'honneur de vous communiquer que le Gouvernement de la Bolivie, du début de sa participation dans les organismes spécialisés des Nations Unies jusqu'à présent, a contribué à la soutenance de la nature technique de ceux-ci en évitant dans la mesure du possible leur politisation.

En conséquence, le Gouvernement de la Bolivie soutient ce point de vue en tenant compte des justifications suivantes pour que le siège du Bureau régional de l'est de la Méditerranée de l'Organisation mondiale de la Santé reste à Alexandrie :

1. Il ne se trouve pas de causes pour considérer que les différences politiques qui affectent la région puissent nuire aux activités d'une organisation internationale d'ordre technique et d'une finalité nettement humanitaire.

2. Approuver la résolution transférant ce Bureau pour des causes politiques, loin de faciliter à l'Organisation mondiale de la Santé la réalisation de ses buts, lui présentera un grave antécédent qui la soumettra à la doctrine politique dominante, ce qui est nuisible pour les activités que réalisent les organismes spécialisés.

3. Les activités de cette Organisation sont entièrement « techniques » et son bureau régional d'Alexandrie assume les projets techniques dans la région.

4. Le Conseil exécutif de l'Organisation a décidé de présenter à l'Assemblée générale de l'Organisation, à la trente-troisième session réalisée les premiers jours du mois de mai 1980 :

a) le rapport du groupe de travail ;
b) le sommaire des discussions du Conseil.

5. L'information présentée par le groupe de travail qui a été distribuée le 16 janvier 1980 portait les conclusions suivantes :

a) le problème de donner du personnel qualifié ainsi que d'avoir un local approprié pour l'établissement du Bureau ;
b) en cas de transfert du Bureau, l'Organisation mondiale de la Santé devra affronter un montant entre 1 360 000 et 4 500 000 dollars américains ;
c) en cas de déplacement le pourcentage de dépenses monterait de 14,5 % à 77 % en relation au pays du siège.

6. En tenant compte des raisons exposées par le Conseil exécutif de l'Orga-

[1] Parvenue au Greffe le 12 août 1980. *[Note du Greffe.]*

nisation mondiale de la Santé, on devrait ajourner la discussion de ce sujet jusqu'à 1981 quand aura lieu la réunion de l'Assemblée mondiale de la Santé, ce qui permettrait de l'étudier plus soigneusement, car le groupe de travail ainsi que les pays membres n'ont pas eu le temps suffisant pour l'analyser.

(Signé) Marcelo OSTRIA TRIGO.

WRITTEN STATEMENT SUBMITTED BY THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN [1]

9 August 1980.

1. The matter referred to the honourable Court for an advisory opinion does not involve a dispute over the interpretation of any of the provisions of the Bilateral Agreement dated 25 March 1951 between the Government of Egypt and the World Health Organization. It is quite clear that the establishment of a regional office in Alexandria, Egypt, for the WHO, is not based on that Agreement. It is the result of a decision taken by the Health Assembly to this effect. Any transfer of the Regional Office, therefore, comes squarely within the sole jurisdiction of the Health Assembly.

Article 44, paragraph *(b)*, of the Constitution of the World Health Organization entrusted the Health Assembly with the task of establishing a regional organization to meet the special needs of an area. Under Article 46 each regional organization shall consist of a special committee and a regional office. Article 50, paragraphs *(a)* and *(b)*, state that the functions of the regional committee shall be to formulate policies concerning matters of exclusively regional character and to supervize the activities of the regional office.

It is clear, therefore, that the host country in the region cannot disrupt the work of the Organization and have a veto power over the continuation of the functioning of the regional organization.

2. The Bilateral Agreement signed between the Government of Egypt and the WHO is meant to facilitate the task of the Regional Office. It is intended to frame the relationship between the Regional Office and the host country. It would have never been the intention of the Health Assembly of the WHO to delegate its authority to the host country. To argue otherwise would render that delegation of power, unconstitutional.

It is worth noting that the provisions of the Agreement emphasize the privileges and immunities of the WHO staff members. The claim that the transfer of the Regional Office is subject to negotiations amounts to giving the host country the power to overrule the decision of the WHO Health Assembly and undermine its authority. This was never the intention of those who decided to establish a regional office in Egypt.

3. Since we maintain that the Bilateral Agreement between WHO and Egypt does not apply to the Regional Office in Alexandria, it follows that Section 37 of Article XII of the Agreement is not applicable in the event that the WHO Health Assembly wishes to have the Regional Office transferred from the territory of Egypt.

4. Moreover, the idea behind the establishment of a regional organization was the creation of a body to help member States in the region. Since the States of the region have already decided to boycott the Regional Office and not co-operate

[1] Received in the Registry on 13 August 1980. *[Note by the Registry.]*

with it, it goes without saying, therefore, that the very idea behind establishing the Regional Office will be defeated if the Office stays in Egypt. Its continued presence in Egypt, therefore, will be a burden on the mother organization and not a service to it nor to those members who are in need of its services and care.

5. Both the title of the Agreement and the preamble indicating its purpose emphasize that the intention of the parties was to determine "the privileges, immunities and facilities to be granted in Egypt by the government to the Organization, to the representatives of its Members, and to its experts and officials". Nothing in the Agreement shows that member States of the Health Assembly have delegated their sovereign rights to one member State, i.e., the host country. Nor is there anything to show that the Agreement governs the establishment of the Regional Office and/or its transfer.

6. The Health Assembly is the only body which has authority and jurisdiction to decide where and when to establish a regional office of the WHO. It takes its decision in the light of the circumstances prevailing at the time of such decision, taking naturally into consideration the needs of the member States in the region and the widest possible services of the regional office. If and when those circumstances change then it is only reasonable and natural that the same body which had established the regional office should have the same rights to change its site.

7. At the risk of repeating ourselves, it is our contention that the provisions of Section 37 of Article XII of the Agreement between Egypt and the WHO under reference refers only to possible modifications to the provisions of the Agreement relating to the objects of the Agreement only. These objects are defined in the preamble which states the following :

> "Desiring to conclude an agreement for the purpose of determining the privileges, immunities, and facilities to be granted by the Government of Egypt to the World Health Organization, to the representatives of its Members and to its experts and officials in particular with regard to its arrangements in the Eastern Mediterranean Region, and of regulating other related matter."

It is obvious, therefore, that the intention of the parties in concluding this Agreement was to agree on the matters contained therein and cannot go beyond the four corners of this instrument.

8. The Government of Jordan reserves its right to adduce further arguments in support of its views if and when necessary.

EXPOSÉ ÉCRIT DU GOUVERNEMENT DES ÉMIRATS ARABES UNIS [1]

Conformément à la résolution WHA33.16 adoptée par l'Assemblée mondiale de la Santé le 20 mai 1980 en vertu de l'article 96, paragraphe 2, de la Charte des Nations Unies, de l'article 76 de la Constitution de l'Organisation mondiale de la Santé et de l'article X, paragraphe 2, de l'accord entre l'Organisation des Nations Unies et l'Organisation mondiale de la Santé, la Cour internationale de Justice a été saisie d'une requête pour avis consultatif sur les questions suivantes :

> « 1. Les clauses de négociation et de préavis énoncées dans la section 37 de l'accord du 25 mars 1951 entre l'Organisation mondiale de la Santé et l'Egypte sont-elles applicables au cas où l'une ou l'autre partie à l'accord souhaite que le Bureau régional soit transféré hors du territoire égyptien ?
>
> 2. Dans l'affirmative, quelles seraient les responsabilités juridiques tant de l'Organisation mondiale de la Santé que de l'Egypte en ce qui concerne le Bureau régional à Alexandrie, au cours des deux ans séparant la date de dénonciation de l'accord et la date où celui-ci deviendrait caduc ? »

Il s'agit de l'interprétation d'un texte d'un accord : la section 37 de l'accord susmentionné. Le problème qui se pose est en effet de déterminer la portée exacte de cette section.

Le Gouvernement des Emirats arabes unis se bornera à présenter quelques observations sur l'un des aspects du problème, à savoir la possibilité de l'Organisation mondiale de la Santé de transférer son Bureau régional hors du territoire égyptien. C'est précisément cet aspect qui a été la cause directe de la requête de l'avis consultatif dont il s'agit.

Quelle est donc la portée de la section 37 ?

Cette section est ainsi conçue :

> « Le présent accord peut être revisé à la demande de l'une ou l'autre partie. Dans cette éventualité, les deux parties se consultent sur les modifications qu'il pourrait y avoir lieu d'apporter aux dispositons du présent accord. Au cas où, dans le délai d'un an, les négociations n'aboutiraient pas à une entente, le présent accord peut être dénoncé par l'une ou l'autre partie moyennant un préavis de deux ans. »

Cette disposition n'est pas unique, une disposition analogue se trouve dans des accords que l'OMS a conclus avec d'autres Etats, dont le Danemark [2], les Philippines [3] et la Suisse [4] et que l'Egypte a conclus avec d'autres organisations, dont l'OACI [5].

---

[1] Parvenu au Greffe le 27 août 1980. *[Note du Greffe.]*

[2] La section 35 de l'accord signé à Genève le 29 juin 1955 et à Copenhague le 7 juillet 1955.

[3] La section 35 de l'accord du 22 juillet 1951.

[4] L'article 29 de l'accord entre le Conseil fédéral suisse et l'Organisation mondiale de la Santé, *Recueil des traités*, vol. 26, 1949, p. 346.

[5] La section 37 de l'accord du 27 août 1953.

Il est évident que cette section concerne l'accord du 25 mars 1951, elle concerne précisément la revision des dispositions de cet accord. Il faut donc savoir si cet accord règle le choix du siège du Bureau régional et le transfert de ce siège.

Le Gouvernement des Emirats arabes unis constate que cet accord ne traite ni de l'un ni de l'autre de ces deux points. Par conséquent, sa section 37 ne peut leur être appliquée.

En effet, comme le dit son titre, c'est un accord « pour déterminer les privilèges, immunités et facilités accordés en Egypte par le Gouvernement à l'Organisation, aux représentants de ses Membres, à ses experts et à ses fonctionnaires ».

Le préambule confirme cette réalité :

> « Désireux de conclure un accord ayant pour objet de déterminer les privilèges, immunités et facilités qui devront être accordés par le Gouvernement de l'Egypte à l'Organisation mondiale de la Santé, aux représentants de ses Membres, à ses experts et à ses fonctionnaires, notamment en ce qui concerne les arrangements pour la région de la Méditerranée orientale, ainsi que de régler diverses autres questions connexes... »

L'examen minutieux du texte de l'accord démontre clairement que cet accord n'a pour objet que des privilèges, immunités et facilités. Aucune disposition ne détermine le choix du siège. Le paragraphe v) de l'article premier relatif aux définitions mentionne, il est vrai, le Bureau régional à Alexandrie :

> « *Les termes « organes principaux ou subsidiaires » doivent être entendus* comme comprenant l'Assemblée mondiale de la Santé, le Conseil exécutif, le Comité régional de la région de la Méditerranée orientale et toute subdivision de ces divers organes, de même que le secrétariat et le Bureau régional à Alexandrie. »

Mais certainement, il s'agit là non pas d'une disposition qui prévoit l'établissement du Bureau à Alexandrie, mais d'une simple constatation que le Bureau existait déjà.

L'accord du 25 mars 1951 doit de toute façon être interprété à la lumière de la Constitution de l'OMS, or il est difficile d'admettre que l'OMS, en concluant un accord pour déterminer les privilèges, les immunités et les facilités qu'on doit accorder à l'Organisation, aux représentants de ses members et à ses fonctionnaires, ait voulu restreindre la compétence que la Constitution reconnaît à l'Assemblée de la Santé en ce qui concerne le choix du siège d'un bureau régional. L'Etat qui conclut un tel accord avec l'OMS, surtout quand il est membre de cette Organisation, est censé connaître la portée de cette compétence.

Quoi qu'il en soit, le Bureau régional pour la Méditerranée orientale existait avant la conclusion de l'accord du 25 mars 1951. Il a été établi à Alexandrie par un processus juridique antérieur à la conclusion de cet accord.

C'est l'article 44 de la Constitution de l'Organisation mondiale de la Santé qui concerne la détermination des régions géographiques et l'établissement des organisations régionales.

Cet article est ainsi conçu :

> « *a)* L'Assemblée de la Santé, de temps en temps, détermine les régions géographiques où il est désirable d'établir une organisation régionale.
>
> *b)* L'Assemblée de la Santé peut, avec le consentement de la majorité des

Etats Membres situés dans chaque région ainsi déterminée, établir une organisation régionale pour répondre aux besoins particuliers de cette région. Il ne pourra y avoir plus d'une organisation régionale dans chaque région. »

D'après cet article de la Constitution l'établissement d'une organisation régionale, y compris évidemment le choix du siège de son bureau, relève de la compétence de l'Assemblée de la Santé.

C'est conformément à la Constitution de l'OMS que le siège du Bureau de la région de la Méditerranée orientale a été établi. Dans sa résolution WHA1.72 de juillet 1948, l'Assemblée de la Santé a délimité les régions géographiques, dont la région de la Méditerranée orientale, et

« *Décide* de charger le Conseil executif : 1) de constituer des organisations régionales en tenant compte de la délimitation des régions géographiques établies, dès que sera acquis le consentement de la majorité des Etats Membres situés dans lesdites régions [1]... »

Le Comité régional pour la Méditerranée orientale a tenu sa première session au Caire, du 7 au 10 février 1949, et a recommandé le choix d'Alexandrie comme siège du Bureau de la région de la Méditerranée orientale. Le Conseil exécutif a examiné le rapport sur cette session et a adopté sa résolution EB3.R30 de mars 1949, dans laquelle il :

« 1. Approuve sous condition le choix d'Alexandrie comme siège du Bureau régional pour la Méditerranée orientale, cette décision devant être soumise aux Nations Unies ;

2. Prie le Directeur général de remercier le Gouvernement égyptien d'avoir généreusement mis l'emplacement et les locaux d'Alexandrie à la disposition de l'Organisation pour une période de neuf ans, moyennant un loyer nominal de 10 piastres par an ;

3. Approuve la création d'un Bureau régional pour la Méditerranée orientale qui commencera à fonctionner le 1er juillet 1949 ou vers cette date ;

4. Approuve la résolution du Comité régional demandant que « les fonctions du Bureau sanitaire d'Alexandrie soient intégrées à celles de l'organisation régionale de l'Organisation mondiale de la Santé [2]. »

C'est ainsi que le Comité a été créé et le Bureau établi en 1949. Le Bureau a en effet commencé à fonctionner en 1949, bien avant la conclusion de l'accord du 25 mars 1951 sur les privilèges, immunités et facilités...

C'est donc par un acte unilatéral des organes compétents de l'OMS selon la Constitution de cette Organisation que le siège du Bureau de la région de la Méditerranée orientale a été déterminé. Pour être opposable à l'Egypte, cet acte a dû être accepté par elle. Mais cette acceptation n'a point pour effet de changer le statut juridique de l'acte, et surtout de faire dépendre le transfert du siège de la volonté de l'Eypte. Et cela se comprend. L'Egypte est supposée savoir, en acceptant cet acte unilatéral, que la détermination du siège d'une organisation régionale appartient, selon la Constitution de l'OMS, à l'Assemblée de la Santé. On peut même accepter que la détermination du siège se réalise par un accord.

[1] *Recueil des résolutions et décisions de l'Assemblée mondiale de la Santé et du Conseil exécutif*, vol. 1, 1948-1972, p. 315.

[2] *Ibid.*, p. 332.

L'Etat où le siège est choisi conclut, en acceptant la décision de l'Organisation, un accord avec celle-ci. On peut accepter que le siège du Bureau régional pour la Méditerranée orientale a été établi à Alexandrie par un accord qui résulte de l'acceptation, par l'Egypte, de la décision des instances compétentes de l'OMS. Cet accord n'est certes pas l'accord du 25 mars 1951, et c'est un accord en forme simplifiée qui ne contient pas de clause concernant sa dénonciation. Or, selon le droit international,

> « un traité qui ne prévoit pas qu'on puisse le dénoncer ne peut faire l'objet d'une dénonciation à moins qu'il ne soit établi qu'il entrait dans l'intention des parties d'admettre la possibilité d'une dénonciation ou que le droit de dénonciation ne puisse être déduit de la nature du traité ».

C'est l'article 56 de la convention de Vienne sur le droit des traités qui énonce cette règle que la Commission du droit international a confirmé plus récemment dans l'article 56 de son projet sur les traités conclus entre Etats et organisations internationales ou entre deux ou plusieurs organisations internationales.

Au reste, la Commission du droit international dans son commentaire sur cet article donne, comme exemple typique où le droit de dénonciation peut être déduit de la nature du traité, les accords de siège :

> « Parmi les traités entre un ou plusieurs Etats et une ou plusieurs organisations internationales, il est une catégorie de traités qui, en l'absence de clause ayant cet objet, semblent dénonçables : ce sont les accords de siège conclus entre un Etat et une organisation. En effet, le choix de son siège par une organisation internationale correspond pour elle à l'exercice d'un droit dont il est normal de ne pas immobiliser l'exercice – d'ailleurs, le fonctionnement harmonieux d'un accord de siège suppose entre l'organisation et l'Etat hôte des relations d'une nature particulière dont le maintien ne peut être assuré par la volonté d'une partie seulement [1]. »

La doctrine a déjà été très claire dans ce sens. M. Philippe Cahier dit que

> « certains accords de siège ne prévoient pas de dénonciation de l'accord... Dans ce cas-là il semble que la possibilité de dénonciation n'est qu'unilatérale, c'est-à-dire que c'est l'organisation qui est titulaire de ce droit qu'elle peut exercer en changeant de siège, mais que l'Etat lui-même ne saurait le faire. Cette règle vaut aussi pour l'accord de siège entre l'Unesco et la France qui ne prévoit ni la dénonciation, ni le changement de siège, étant donné qu'une organisation doit toujours être libre de déplacer son siège comme elle l'entend [2]. »

A supposer donc que l'établissement du siège du Bureau de la région de la Méditerranée orientale ait été réalisé en 1949 en vertu d'un accord, en forme simplifiée, cet accord qui, quoique ne prévoyant pas qu'on puisse le dénoncer, est par nature dénonçable.

En conclusion, le Gouvernement des Emirats arabes unis est d'avis que l'accord du 25 mars 1951 a été conclu entre l'OMS et l'Egypte pour déterminer les privilèges, immunités et facilités accordés en Egypte par le Gouvernement à l'Organisation, aux représentants de ses membres, à ses experts et à ses fonc-

[1] *Rapport de la Commission du droit international sur les travaux de sa trente et unième session*, 1979, p. 434.

[2] *Etude des accords de siège conclus entre les organisations internationales et les Etats où elles résident*, p. 389 et 390.

tionnaires, or cet accord n'est pas l'instrument en vertu duquel le Bureau régional pour la Méditerranée orientale a été établi et peut être transféré.

Ce Bureau a été établi par un acte unilatéral de l'OMS accepté par l'Egypte, on peut même dire qu'il a été établi par un accord en forme simplifiée qui s'est réalisé en 1949, avec l'acceptation, par l'Egypte, de la décision unilatérale de l'OMS. Mais, de toute façon, la section 37 de l'accord du 25 mars 1951 ne peut point s'appliquer aux questions que cet accord ne règle pas et qui ont été réglées par un accord antérieur.

Cette section 37 qui prévoit les conditions de la dénonciation de l'accord du 25 mars 1951 ne peut certainement pas s'appliquer à la dénonciation de l'accord antérieur de 1949 en vertu duquel le Bureau régional pour la Méditerranée orientale a été établi.

WRITTEN STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF IRAQ [1]

Pursuant to the resolution adopted by the World Health Assembly on 20 May 1980, the International Court of Justice has been requested for the advisory opinion on Section 37 of the agreement of 25 March 1951 between the WHO and the Government of Egypt.

This request was put forward in regard with Section 37, Article 12, of the said agreement, which reads as follows :

> "The present Agreement may be revised at the request of either party. In this event the two parties shall consult each other concerning the modifications to be made in its provisions. If the negotiations do not result in understanding within one year, the present Agreement may be denounced by either party giving two years' notice."

The Government of the Republic of Iraq will submit the following opinion :

1. Our request from the WHO is to transfer its regional office of the Eastern Mediterranean from Alexandria – Egypt – to Amman – Jordan.

This request needs no explanations of Section 37 of Article 12 of the agreement of 25 March 1951, between the WHO and the Government of Egypt. That is because Section 37 cannot be applied to the choice of the site of the regional office and the transfer of such site.

2. Our request to transfer the regional office is based on Article 44 of the Constitution of the WHO. This article reads as follows :

> "*(a)* The Health Assembly shall from time to time define the geographical areas in which it is desirable to establish a regional organization.
> *(b)* The Health Assembly may, with the consent of the majority of the Members situated within each area so defined, establish a regional organization to meet the special needs of such area. There shall not be more than one regional organization in each area."

According to this article of the Constitution, the establishment of a regional organization, including obviously the choice of its office comes within the jurisdiction of the World Health Organization.

It is in accordance with Article 44 of the Constitution of the WHO, which relates to the determination of geographical areas and the establishment of regional organizations.

The regional office for the Eastern Mediterranean was established in Alexandria to make it easy for the countries of the area. But now after Egypt being boycotted by the countries of this area, the regional office cannot function and therefore it has been necessary to transfer the office to Jordan to carry on its function and make the co-operation possible between the office and the rest of the countries in the region.

[1] Arabic text received in the Registry on 28 August 1980 ; English text received in the Registry on 18 September 1980. *[Note by the Registry.]*

The State of Egypt has no right to object against the request of moving the regional office from its territories and has no right to limit the authorities of the WHO given by Article 44.

3. The agreement of 25 March 1951 between Egypt and the WHO did not constitute placing the headquarters of the regional office for the Eastern Mediterranean in Alexandria and has no right to decide that and cannot have a say about the transfer also.

And that is obviously clear if we follow closely the studies of the placing of the regional office :

A. The WHO requested the Director-General in June 1949 to carry on the negotiations with the Egyptian Government for the purpose of determining the privileges, immunities and facilities, granted in Egypt by the Government to the WHO in the Eastern Mediterranean office and to submit a report of this negotiation to the Third Assembly of the WHO. When such an agreement became valid, the concerned government will be called upon to grant the needed immunities and privileges.

By the Third Assembly the following decision has been taken in May 1950 :

> "by letter of 23 March 1950, the State Adviser to the Ministries for Foreign Affairs and Justice of the Government of Egypt notified the Organization of the acceptance of the draft agreement concerning the privileges, immunities and facilities to be accorded to the World Health Organization in Egypt, in particular with regard to the regional arrangements in the Eastern Mediterranean Area".

Therefore the Third Assembly approved the agreement with the Egyptian Government to give all needed privileges, immunities and facilities to the organization, to the representatives of its members, to its experts and officials, in particular with regard to its arrangements in the Eastern Mediterranean Region and regulating other related matters.

B. Article 12 of the agreement of 25 March 1951 did not govern the choice of the headquarters and its transfer. The motive of the agreement, as stated in its title : "for the purposes of determining the privileges, immunities and facilities" granted in Egypt by the Government to the Organization, to the representatives of its members, to its experts and officials in particular with regard to its arrangements in the Eastern Mediterranean Region and regulating other related matters.

C. A careful examination of the text of the agreement shows plainly that the agreement is concerned solely with privileges, immunities and facilities. None of the agreement provisions providing for the establishment of the regional office in Alexandria and the transfer of such site has been decided upon.

4. The agreement of 25 March 1951 did not decide to place the regional office in Alexandria. It is true that paragraph (v) of Section 1, concerning definitions, mentions the regional office in Alexandria. This is however certainly not a provision providing for the establishment, but merely a record of the fact that that office was already in existence.

It is Article 44 of the Constitution of the WHO, which relates to the determination and the establishment of the regional organization.

The Government of Egypt, therefore accepted the establishment of the regional office on its territory in a later agreement between Egypt and the WHO.

It was in conformity with the constitution of the WHO that the site of the

regional office for the Eastern Mediterranean was established. Egypt being a member of that organization, must be deemed to know the scope of such competence, which its Constitution grants. Therefore such an agreement between Egypt and the WHO to establish the office or moving it, could naturally be decided upon according to the policy of the WHO and its Constitution.

This state of fact was confirmed by the International Law Commission in Article 56 of its draft on treaties concluded between States and international organizations or between two or more international organizations :

> "Treaties between one or more States and one or more international organizations include a class of treaties, which although having no denunciation clause, seem to be denounceable : the headquarters agreements concluded between a State and an organization. For an international organization, the choice of its headquarters *(siège)* represents a right whose exercise is not normally immobilized ; moreover, the smooth operation of a headquarters agreement presupposes relations of a special kind between the organization and the host State, which cannot be maintained by the will of one party only [1]."

5. As has been stated in paragraph 4, we conclude, that the Government of the Republic of Iraq is of the opinion that the agreement of 25 March 1951 concluded between the World Health Organization and the Government of Egypt was mainly for the purpose of determining the privileges, immunities and facilities and this agreement is not the instrument by virtue of which the Regional Office for the Eastern Mediterranean was set up and can be transferred and Section 37 of Article 12 of the agreement of 25 March 1951 cannot apply to the questions concerned.

---

[1] *Report of the International Law Commission on the Work of Its Thirty-first Session*, 1979, p. 434.

WRITTEN STATEMENT OF THE STATE OF KUWAIT [1]

28 August 1980.

On 20 May 1980 the World Health Assembly adopted resolution WHA33.16, in pursuance of Article 96, paragraph 2, of the United Nations Charter, of Article 76 of the Constitution of the World Health Organization and of Article X, paragraph 2, of the agreement between the United Nations Organization and the World Health Organization, whereby it was decided to submit a request to the International Court of Justice for its advisory opinion on the following questions :

> "1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?
> 2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria during the two-year period between notice and termination of the Agreement ?"

The matter lies in the interpretation of the text of an agreement : Section 37 of the above-mentioned agreement. The problem resides in the determination of the exact scope of that section.

The observations of the Government of Kuwait will be limited to the possibilities for the World Health Organization to transfer its Regional Office outside the territory of Egypt. It is precisely this aspect which was the direct cause for the request for an advisory opinion.

What is then the scope of Section 37 ?

That section reads as follows :

> "The present Agreement may be revised at the request of either party. In this event the two parties shall consult each other concerning the modifications to be made in its provisions. If the negotiations do not result in an understanding within one year, the present Agreement may be denounced by either party giving two years' notice."

This provision is not unique, a similar provision is to be found in the agreements that the World Health Organization has concluded with other States, such as Denmark [2], the Philippines [3] and Switzerland [4] and which Egypt has concluded with other organizations such as the ICAO [5].

It is obvious that that section concerns the agreement of 25 March 1951 ; it

[1] Received in the Registry on 29 August 1980. *[Note by the Registry.]*

[2] Section 35 of the agreement signed in Geneva on 29 June 1955 and in Copenhagen on 7 July 1955.

[3] Section 35 of the agreement of 22 July 1951.

[4] Article 29 of the agreement between the Swiss Federal Council and the WHO.

[5] Section 37 of the agreement of 27 August 1953.

deals precisely with the revision of the provisions of that agreement. It is necessary therefore to know whether that agreement determines the choice of the headquarters of the Regional Office and the transfer of those headquarters.

The Government of Kuwait observes that the agreement deals with neither of those questions. Consequently Section 37 cannot be applied to them.

Indeed, according to its title, it is an agreement "for the purpose of determining the privileges, immunities and facilities" granted in Egypt by the Government to the Organization, to the representatives of its members, to its experts and officials.

The preamble confirms that reality :

> "Desiring to conclude an agreement for the purposes of determining the privileges, immunities and facilities to be granted by the Government of Egypt to the World Health Organization, to the representatives of its Members and to its experts and officials in particular with regard to its arrangements in the Eastern Mediterranean Region, and of regulating the other related matters . . ."

The thorough examination of the text of the agreement shows clearly that the agreement deals only with the privileges, immunities and facilities. No provision determines the choice of headquarters. True, paragraph (v) of Article 1 related to definitions, mentions the Regional Office in Alexandria : "the words 'principal or subsidiary organs' " it reads, "shall be deemed to include the World Health Assembly, the Executive Board, the Regional Committee in the Eastern Mediterranean Region and any of the subdivisions of all these organs as well as the Secretariat and the Regional Office in Alexandria." But this certainly constitutes a simple ascertainment that the office existed already and not a provision stipulating the establishment of the Office in Alexandria.

The Agreement of 25 March 1951 must in any case be interpreted in the light of the Constitution of the World Health Organization ; but it is difficult to admit that the World Health Organization, in signing an agreement to determine the privileges, immunities and facilities to be granted to the Organization, to the representatives of its members and to its officials, wished to limit the competence entrusted by the Constitution to the World Health Assembly, with regard to the choice of the headquarters of a regional office. The State which signs such an agreement with the World Health Organization, especially when it is a member of that Organization, is supposed to know the scope of that competence.

Nevertheless, the Eastern Mediterranean Regional Office existed before the conclusion of the Agreement on 25 March 1951. It was established in Alexandria through a legal process before the signature of the Agreement.

It is Article 44 of the Constitution of the World Health Organization that concerns the determination of the geographical regions and the establishment of Regional Organizations.

This article reads as follows :

> "*(a)* The Health Assembly shall from time to time define the geographical areas in which it is desirable to establish a regional organization.
>
> *(b)* The Health Assembly may, with the consent of a majority of the Members situated within each area so defined, establish a regional organization to meet the special needs of such area. There shall not be more than one regional organization in each area."

According to that article of the Constitution, the establishment of a regional organization, including obviously the choice of the headquarters of its office, comes within the jurisdiction of the World Health Assembly.

It is in accordance with the Constitution of the World Health Organization that the headquarters of the Eastern Mediterranean Regional Office were established. In its resolution (WHAI.72) of July 1948, the World Health Assembly delineated the geographical regions, including the Eastern Mediterranean Region, and resolved that the Executive Board should be instructed

> "1. to establish regional organizations in accordance with the delineation of geographical areas decided upon and as soon as the consent of a majority of Members situated in such areas had been obtained . . .[1]"

The Regional Committee for the Eastern Mediterranean held its first session in Cairo, from 7 to 10 February 1949, and recommended the choice of Alexandria as the headquarters of the Eastern Mediterranean Regional Office. The Executive Board examined the report on that session and adopted its resolution (EB3.R30) of March 1949 whereby it :

> "1. Conditionally approves the selection of Alexandria as the site of the Regional Office for the Eastern Mediterranean Area, this action being *subject to consultation* with the United Nations ;
>
> 2. Requests the Director-General to thank the Government of Egypt for its generous action in placing the site and buildings at Alexandria at the disposal of the Organization for a period of nine years at a nominal rate of 10 piastres a year ;
>
> 3. Approves the establishment of the Regional Office for the Eastern Mediterranean Area, operations to commence on or about 1 July 1949 ;
>
> 4. Approves the resolution of the Regional Committee that 'the functions of the Alexandria Sanitary Bureau be integrated within those of the Regional Organization of the World Health Organization' [2]."

Thus, the Committee was created and the Office established in 1949. In fact, the Office started to operate in 1949, well before the signature on 25 March 1951 of the Agreement on privileges, immunities and facilities . . .

Therefore, it is through a unilateral action of the competent organs of the World Health Organization, in conformity with the Constitution of that Organization, that the headquarters of the Eastern Mediterranean Regional Office were determined. To be applicable to Egypt, that action had to be accepted by the latter. But this acceptation entails neither changing the legal status of the action nor making the transfer of the headquarters depend on the wishes of Egypt. And this is understandable. Egypt is supposed to know, by accepting that unilateral action, that the determination of the headquarters of a regional organization is, according to the World Health Organization Constitution, within the competence of the World Health Assembly. It can even be accepted that the determination of the headquarters has been obtained by agreement. The State chosen for the location of the headquarters concludes, by accepting the decision of the

[1] *Resolutions and Decisions of the World Health Assembly and of the Executive Board*, Vol. I, 1948-1972, p. 315.

[2] *Ibid.*, p. 332.

quarters of the Eastern Mediterranean Regional Office were established in Alexandria through an agreement deriving from the acceptation, by Egypt, of the decision of the competent organs of the World Health Organization. That agreement is certainly not the one signed on 25 March 1951 but an agreement in a simplified form that contains no provision concerning its denunciation. Well, according to international law, "a treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal unless it is established that the parties intended to admit the possibility of denunciation or withdrawal or a right of denunciation or withdrawal may be implied by the nature of the treaty".

It is Article 56 of the Vienna Convention on the law of treaties that defines that rule which the International Law Commission confirmed recently in Article 56 of its draft on treaties concluded between States and international organizations or between two or more international organizations.

Furthermore, the International Law Commission, in its commentary on that article, quotes as a typical example where the right of denunciation can be implied by the nature of the treaty, the headquarters agreements.

> "Treaties between one or more States and one or more international organizations include a class of treaties which, although having no denunciation clause, seem to be denounceable : the headquarters agreements concluded between a State and an organization. For an international organization, the choice of its headquarters represents a right whose exercise is not normally immobilized ; moreover, the smooth operation of a headquarters agreement presupposes relations of a special kind between the organization and the host State, which cannot be maintained by the will of one party only [1]."

The doctrine has already been very clear in this respect.

According to Mr. Philippe Cahier, certain headquarters agreements do not provide for the denunciation of the agreement. The possibility of denunciation is only unilateral, that is, it is the organization which is entitled to this right that it can use by changing its headquarters, but that the State itself could not do it. This rule applies also to the headquarters agreement between Unesco and France which does not provide either for the denunciation of the changing of headquarters, since an organization must always be free to displace its headquarters as it wishes.

In conclusion, the Government of Kuwait is of the opinion that the Agreement of 25 March 1951 was signed between the World Health Organization and Egypt to determine the privileges, immunities and facilities granted in Egypt, by the Government to the Organization, to the representatives of its members, to its experts and officials ; that agreement is not an instrument according to which the Eastern Mediterranean Regional Office was established and may be transferred.

This office was established through a unilateral action of the World Health Organization, accepted by Egypt. It can be said that it was established by an agreement in a simplified form carried out in 1949, with the acceptation, by Egypt, of the unilateral decision of the World Health Organization. But in any case, Section 37 of the Agreement of 25 March 1951 cannot apply to the ques-

[1] *Report of the International Law Commission on the Work of Its Thirty-first Session*, 1979, p. 436.

tions that that Agreement does not regulate and which have been regulated by a previous agreement.

That Section 37, which provides for the conditions of the denunciation of the Agreement of 25 March 1951, may certainly not apply to the denunciation of the previous agreement of 1949 in pursuance of which the Eastern Mediterranean Regional Office was established.

WRITTEN STATEMENT OF THE GOVERNMENT OF EGYPT [1]

1. On 20 May 1980, the World Health Assembly adopted the following resolution :

> "The Thirty-third World Health Assembly,
>
> Having regard to proposals which have been made to remove from Alexandria the Regional Office for the Eastern Mediterranean Region of the World Health Organization,
>
> Taking note of the differing views which have been expressed in the World Health Assembly on the question of whether the World Health Organization may transfer the Regional Office without regard to the provisions of Section 37 of the Agreement between the World Health Organization and Egypt of 25 March 1951,
>
> Noting further that the Working Group of the Executive Board has been unable to make a judgment or a recommendation on the applicability of Section 37 of this Agreement,
>
> *Decides*, prior to taking any decision on removal of the Regional Office, and pursuant to Article 76 of the Constitution of the World Health Organization and Article X of the Agreement between the United Nations and the World Health Organization approved by the General Assembly of the United Nations on 15 November 1947, to submit to the International Court of Justice for its Advisory Opinion the following questions :
>
> 1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt ?
>
> 2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement [2] ?"

2. These are eminently legal questions involving the interpretation and application of an agreement between the requesting International Organization and a member State in relation to the regional activities of the Organization. They fall squarely within the ambit of the Court's advisory jurisdiction, as defined in Articles 96 of the United Nations Charter and 65 of the Statute of the International Court of Justice.

3. As mentioned in its preambular paragraphs, this resolution was adopted in the context of a controversy within the World Health Assembly over the oppor-

[1] Received in the Registry on 29 August 1980. *[Note by the Registry.]*

[2] WHA33.16.

tunity and the legal feasibility of an immediate transfer from Alexandria of the WHO Regional Office for the Eastern Mediterranean, notwithstanding the 1951 Host Agreement between Egypt and the WHO, and more particularly the provisions of Section 37 of the said Agreement.

4. Throughout the debates, there has been a general admission, even on the part of those who were advocating the transfer, that Egypt has always fulfilled its obligations under the Agreement scrupulously and faithfully [1].

The transfer proposal has thus nothing to do with Egypt's observance and implementation of its obligations under the Agreement or as a member of the WHO. Nor indeed has it been justified on economic or technical grounds. And being a highly political proposal, not much emphasis was put on its legal justification either.

5. To the extent that they can be ascertained, the arguments in favour of the legal feasibility of an immediate transfer of the Regional Office from Alexandria without regard to the provisions of Section 37 of the 1951 Agreement, can be formulated as follows :

The 1951 Agreement between the WHO and Egypt is not a headquarters agreement for the WHO Regional Office for the Eastern Mediterranean at Alexandria, but an agreement on the privileges and immunities of the WHO in Egypt in general. In consequence, the transfer of the Regional Office from Alexandria does not concern nor affect that Agreement, and cannot be considered as either a revision or a denunciation of it ; which is another way to say that Section 37 is not applicable to such a transfer.

6. In what follows it is argued :

- that the 1951 Agreement is a headquarters agreement ;
- that it is a headquarters agreement for the WHO Regional Office at Alexandria ;
- and that, in consequence, Section 37 of the Agreement is fully applicable to any transfer of the Regional Office from Egypt.

1. THE AGREEMENT OF 25 MARCH 1951 BETWEEN THE WHO AND EGYPT IS A HEADQUARTERS AGREEMENT

7. The 1951 Agreement is not a mere agreement on the privileges and immunities of the WHO in Egypt in general, but is a real headquarters agreement for the Regional Office for the Eastern Mediterranean at Alexandria.

While one should not exaggerate the difference between a headquarters agreement and a privileges and immunities agreement between a State and an International Organization, this difference does exist.

8. Headquarters agreements are defined by Philippe Cahier in his *Etude des accords de siège conclus entre les organisations internationales et les Etats où elles*

[1] E.g., the remarks of Dr. Al Awadi (Kuwait), WHO, *Official Records*, 32nd WHA, Committee B, 14th meeting, 24 May 1979 :

> "he thought he would be expressing the feelings of the delegations of all Arab countries if he assured the Egyptian delegation of their appreciation of the role Egypt had played as host to the Regional Office for the Eastern Mediterranean".

résident [1] (the only full monographic treatment of the subject in the light of post-war practice [2]) as follows :

> "des accords conclus entre une organisation internationale et un Etat dans le but d'établir le statut de cette organisation dans l'Etat où elle a son siège et de délimiter les privilèges et immunités qui lui seront accordés ainsi qu'à ses fonctionnaires [3]".

9. But if a headquarters agreement regulates the status of the Organization and its privileges and immunities as well as those of its staff in the host State, a privileges and immunities agreement also does the same. The difference between the two is not in kind but rather in degree, and relates to the specific purpose of the treaty in each case.

10. A privileges and immunities agreement is formulated for the purpose of regulating the activities of the Organization in any State, however limited or episodic they may be. By contrast, a headquarters agreement is called for by the existence of a permanent centre of activities of the Organization in the contracting State and thus purports to regulate activities which are more ample in scope and more permanent in time. The regulation is usually more detailed and takes specifically into consideration some aspects of the physical presence of the seat of the Organization on the territory of the State. But even these are usually aspects having to do with the privileges, immunities and facilities granted to the Organization. They do not include other questions of detail, such as the rent or cession of the premises put at the disposal of the Organization, which are generally dealt with in separate agreements or contracts not necessarily governed by international law.

11. The difference between the two types of agreements is not then a matter of mere nomenclature, but of substance. They can thus be distinguished by analysing their content and in case of doubt by resorting to the common intention and understanding of the Parties.

12. As far as nomenclature is concerned, none of the headquarters agreements concluded by the WHO, including the agreement with Switzerland where the central seat of the WHO is located, has been labelled "headquarters agreement".

Indeed, the agreements themselves do not carry any label at all, but they are all referred to, during the negotiations and in the WHO official documents, as "Host-Agreements" ; and in French, significantly, as "accords de siège", which is also the translation of "headquarters agreements" [4].

---

[1] Milan, Giuffrè, 1959.

[2] C. W. Jenks' little book *The Headquarters of International Institutions : A Study of Their Location and Status* (RIIA, London, 1945), was written before the end of the war as a prospective study of possible future solutions, and came out in favour of the creation of internationalized areas for the location of headquarters of international organizations ; a solution which was not followed in the post-war practice.

[3] *Op. cit.*, p. 1. See also K. Ahluwalia, *The Legal Status, Privileges and Immunities of the Specialized Agencies of the United Nations and Certain Other International Organizations* (Nijhoff, The Hague, 1964), p. 51, n. 13 :

> "the agreement concluded between the international organization and the host State which defines the privileges and immunities to be enjoyed by the international organizations in the territory of the host State . . .".

[4] See *Handbook of Resolutions and Decisions of the World Health Assembly and the Executive Board*, Vol. I, 1948-1972 (1973), pp. 356 ff. (6.3.2.).

13. The first such agreement was the one concluded with Switzerland in 1946 (though coming into force later on). After the decision of the Second World Health Assembly in 1949, upon the recommendation of the Committee on Headquarters and Regional Organization, to establish, in accordance with Article 44 of the WHO Constitution, six regional organizations (which are in fact as in law not separate organizations, but regional organs of the WHO, similar in some respects to the United Nations regional Economic Commissions), the need arose for special headquarters agreements with the host States of these regional organizations (each composed of a Committee and an Office ; it is the seat of the Office which constitutes the Headquarters of the Regional Organization).

14. Clearly, a mere privileges and immunities agreement was not considered sufficient for this purpose. For, in relation to the two regional organizations whose establishment was immediately envisaged, the Regional Organization for South-East Asia to be located in New Delhi, India, and the WHO Eastern Mediterranean Organization in Alexandria, Egypt, the Executive Board (for the former) and the Second World Health Assembly (for the latter) requested the Director-General of the WHO to continue negotiations with a view to reaching an agreement with the host State ; and significantly added :

> "Pending coming-into-force of such agreement, the Government was invited to extend to the Regional Organization the privileges and immunities set out in the Convention on the Privileges and Immunities of the Specialized Agencies . . . [1]"

15. This attitude clearly reveals that the governing bodies of the WHO considered that the agreement to be negotiated with the host countries is more than a mere privileges and immunities agreement : otherwise it would have been simpler and more expeditious to request the host countries merely to accede to the Convention on the Privileges and Immunities of the Specialized Agencies (which Egypt did in any case), rather than implement it only as an interim solution until a more adequate agreement is reached.

On the other hand, such agreements were sought and concluded only with those States which received on their territories the offices of WHO specialized or regional organizations, which makes it abundantly clear that they were agreements specifically concluded in contemplation of these specialized or regional offices of the WHO ; in other words that they were considered by the WHO and the host States as headquarters agreements.

16. In 1948, the WHO prepared a model draft "host agreement" [2], heavily inspired by the WHO-Switzerland Agreement, to serve as a basis for negotiations with host governments ; it was followed, with some modifications, in the WHO-Egypt Agreement of 1951. In view of its origin, the contents of this draft "host agreement" must be assumed as corresponding to the needs and purposes of the WHO Regional Offices.

The preamble of the draft "host agreement" speaks of "Privileges, immunities and *facilities* . . .". To what extent do these facilities go beyond or add to the privileges and immunities? The answer to this question will become apparent in the light of the analysis of the content of the WHO-Egypt Agreement.

17. As there is no generally accepted model of headquarters agreement to serve as a standard of reference in a serious "content analysis" of the WHO-

[1] See *Handbook of Resolutions and Decisions of the World Health Assembly and the Executive Board*, Vol. I, 1948-1972 (1973), pp. 356 ff. (6.3.2.).

[2] EMR/EBWG/3, p. 12 [not reproduced] and Annex F [*see pp. 93-100, supra*].

Egypt Agreement, the next best standard comparison is the WHO-Switzerland Agreement concerning the Central Headquarters of the WHO in Geneva, whose character as a headquarters agreement cannot be put in doubt.

A careful analysis of the content of the two agreements reveals a near identity between them in the sense that every specific subject or item treated in the WHO-Switzerland Agreement is also treated in the WHO-Egypt Agreement, which moreover adopts in the large majority of cases the same solutions and even *the same wording ; subject to the following exceptions :*

(i) There is a difference in form arising largely from the fact that the WHO-Switzerland Agreement is composed of two instruments (the Agreement itself and the Arrangement for Execution), while the WHO-Egypt Agreement is drafted as one integrated instrument. Moreover, the items are not always included in the same place or order. But this difference does not affect the substance.

(ii) There is a provision concerning the continued applicability of former arrangements between the League of Nations and Switzerland (Article 20 of the Agreement), obviously referring to a specific historical situation, which has no parallel in the WHO-Egypt Agreement.

(iii) But perhaps the most significant omission in the latter agreement, is that it bears no parallel provision to Article 4 of the WHO-Switzerland Agreement which provides :

> "The Swiss Federal Council recognizes the ex-territoriality of the grounds and buildings of the World Health Organization and of all buildings occupied by it in connection with meetings of the World Health Organization or any other meeting convened in Switzerland by the World Health Organization."

Two observations should be made on this provision, however. The first is that this provision deals with privileges and immunities. Indeed, "ex-territoriality" is used here in the sense of the old legal theory explaining the basis of diplomatic privileges and immunities. This theory has been very heavily criticized and is now generally rejected [1].

Moreover, and this is the second observation, one cannot but accept Cahier's conclusion that such clauses are redundant ("font double emploi" [2]) because they add nothing to the provisions of the Agreement which define the privileges and immunities enjoyed by the Organization [3].

In other words, a general clause of ex-territoriality is both objectionable in theory and useless in practice ; which goes a long way to explain why it has

---

[1] See Cahier, *op. cit.*, pp. 193-195.

[2] *Ibid.*, p. 234.

[3] See for example Article 7 of the same Agreement, and similarly Sections 6 and 7 of the WHO-Egypt Agreement, which provides :

> "Section 6. (1). The premises of the Organization in Egypt or any premises in Egypt occupied by the Organization in connection with a meeting of the Organization shall be inviolable.
>
> (2) Such premises and the property and assets of the Organization in Egypt shall be immune from search, requisition, confiscation, expropriation ; and any other form of interference, whether by executive, administrative, judicial or legislative action.
>
> Section 7. The archives of the Organization, and in general all documents belonging to it or held by it in Egypt shall be inviolable."

remained an oddity rarely encountered in other headquarters agreements and most probably why it was not retained in the draft host agreement, and the subsequent host agreements for regional offices, including the one between the WHO and Egypt.

18. The above comparison warrants the conclusion that the WHO-Egypt Agreement materially covers all the questions regulated in the WHO-Switzerland Agreement. But the reverse is not true.

Indeed, the WHO-Egypt Agreement contains certain provisions which have no parallel in the earlier Agreement, and which make it even more "headquarters-centred" than the WHO-Switzerland Agreement.

Thus, Section 30 (1) provides :

> "The Organization will be supplied, in the premises placed at its disposal, with electricity, water and gas, and with service for the removal of refuse. In a case of force majeure entailing partial or total suspension of these services, the requirements of the Organization will be considered by the Government of Egypt to be of the same importance as those of its own administrations."

These are material, and not merely legal, facilities and services which presuppose the existence of, and can only be provided in connection with, a permanent site serving as a seat of on-going activities by the Organization.

In the same vein, Section 30 (2) provides :

> "The Government of Egypt will ensure the necessary police supervision for the protection of the seat of the Organization and for the maintenance of order in the immediate vicinity thereof. At the request of the Director-General, the Government of Egypt will supply such police force as may be necessary to maintain order within the building."

This provision is sufficiently explicit in its language and its reference to the "seat of the Organization" as not to call for any further comment.

19. Finally, the travaux préparatoires clearly reveal that the Parties did intend to conclude a "headquarters agreement", and not merely a privileges and immunities agreement.

Suffice it to mention here, on the part of the WHO, the declaration of Mr. Antoine Zarb, representing the Secretariat (subsequently legal adviser of the WHO), in the course of the discussion of the agreement in the Legal subcommittee of the Committee on administration, finance and legal matters of the Fourth World Health Assembly :

> "Asked by the Chairman to explain the background of the situation, Mr. Zarb, Secretary, said that the proposed agreement between the Egyptian Government and WHO, which had been unanimously approved by the Third World Health Assembly on 19 May 1950 (resolution WHA3.83), was similar to that signed between WHO and the Government of India and similar in content if not in form to that concluded between WHO and the Government of Switzerland [1]."

Commenting on some of the modifications requested by Egypt, he later added :

[1] WHO, *Official Records*, No. 35, *Fourth World Health Assembly*, pp. 313 ff.

> "The negotiations, which had been carried out in a spirit of mutual comprehension, had resulted in the Egyptian Government's agreeing to withdraw all basic modifications and to retain only certain modifications in form, of which the most important was the replacement of certain provisions in the Agreement between the Egyptian Government and WHO by corresponding provisions in the Agreement between the Swiss Government and WHO, the latter being more explicit [1] . . ."

The same intention comes out clearly on the Egyptian side, as can be revealed by the commentaries of the Egyptian Conseil d'Etat on the draft agreement, which reveal that most of their counter-proposals were inspired by other headquarters agreements such as the Agreement between Unesco and France and WHO and Switzerland [2] ; and by the parliamentary debates on the ratification of the Agreement, which will be discussed in the following section.

This brings out clearly the fundamental identity of nature which existed in the minds of the negotiators, between the WHO-Switzerland Agreement and the WHO-Egypt Agreement.

2. THE AGREEMENT OF 25 MARCH 1951 BETWEEN THE WHO AND EGYPT IS A HEADQUARTERS AGREEMENT FOR THE WHO REGIONAL OFFICE FOR THE EASTERN MEDITERRANEAN AT ALEXANDRIA

20. As mentioned above, the fact that "host agreements" were concluded with all the States, but only with those States which had on their territories regional or specialized offices (or "organizations") of the WHO, is a sufficient proof that these agreements were concluded in contemplation of the existence of the offices in those States and for the purposes of regulating the modalities of their functioning therein. In other words, the agreement has as its *rationale*, its raison d'être, the existence of the Regional Office at Alexandria.

21. The Agreement itself – though it does not provide *expressis verbis* that it is a headquarters agreement for the Regional Office for the Eastern Mediterranean Region at Alexandria – abounds with indications to that effect.

Thus the Preamble describes the intent of the Agreement as follows :

> "Desiring to conclude an agreement for the purpose of determining the privileges, immunities and facilities to be granted by the Government of Egypt to the World Health Organization, to the representatives of its Members and to its experts and officials in particular with regard to its arrangements in the Eastern Mediterranean Region, and of regulating other related matters."

Again, Article I (v) defines the term "principal and subsidiary organs" as including

> "the World Health Assembly, the Executive Board, the Regional Committee in the Eastern Mediterranean Region and any of the subdivisions of all these organs as well as *the Secretariat and the Regional Office in Alexandria*" (emphasis added).

---

[1] WHO, *Official Records*, No. 35, *Fourth World Health Assembly*, pp. 313 ff.

[2] Text deposited with the Registry. [Not reproduced.]

Article IX, Section 30 (2), speaks of

> "the necessary police supervision for the protection of *the seat of the Organization* and for the maintenance of order in the immediate vicinity thereof" (emphasis added).

Section 6 (1) by referring to the "premises of the Organization in Egypt or any premises in Egypt occupied by the Organization in connection with a meeting of the Organization", clearly distinguishes between the main permanent seat of the Organization in Egypt, and other premises which may be occasionally used for meetings.

References to the "Regional Director in Egypt and his Deputy" (Section 25), to the premises of the Organization in Egypt (Sections 6 and 30) and to meetings and conferences in Egypt (Sections 6 and 19) imply as much.

22. All these references clearly indicate that the purpose of the Agreement is not to regulate the activities of the Organization in Egypt in general, but basically the activities of the Regional Office in Alexandria. In other words, it is impossible to understand and give effect to the Agreement if one makes abstraction of the existence of this Regional Office.

23. This is further corroborated by the manifest intention and common understanding of the Parties at the time of negotiating and concluding the Agreement.

24. As far as Egypt is concerned, suffice it to mention here the following two significant indications.

(i) In the course of negotiations, Dr. Waheed Raafat, Conseiller d'Etat at the State Council (the instance which acts as legal adviser to the Government) concludes a letter addressed to the Director of the Regional Office of WHO for the Eastern Mediterranean with the following sentence :

> "I hope that the Host Agreement between the Egyptian Government and the World Health Organization will be signed in the near future, in order that the *privileges, immunities and facilities of the Regional Health Office for the Eastern Mediterranean* may be finally determined in respect of Egyptian law . . . [1]"

Clearly, in the minds of the legal advisers of the Egyptian Government, the Agreement was directed at the Regional Health Office, not the WHO in general.

(ii) During the Egyptian Parliamentary debate on the ratification of the Agreement (and in answering the criticism of several Representatives of the Agreement as reintroducing in favour of the Organization, in the form of privileges and immunities, something reminiscent of the abolished "capitulations" system) the Minister of Foreign Affairs stated :

> "When these [Specialized] Agencies such as FAO, WHO, etc. . . . open offices in any country, they request that the country grants privileges and immunities similar to those granted to the United Nations Organization itself . . .
>
> . . . . . .
>
> It should be known that many countries are endeavouring to transfer the

[1] Emphasis added. Letter of 23 March 1950, the translation of which is deposited with the Registry. [*See pp. 171-172*, infra.]

> WHO Regional Office for the Mediterranean to them. In all cases, the privileges and immunities which the Agreement grants are simple and restricted to enabling the Office carrying out its mission in complete freedom, and cannot be compared to the former foreign capitulations [1]."

This brings out clearly the causal relation, in the understanding of the Minister for Foreign Affairs between the existence of the Regional Office at Alexandria and the Agreement. In fact, the declaration clearly reveals that for the Egyptian Government, the existence of the Regional Office in Alexandria is the consideration *(le motif déterminant)* against which Egypt accepted to grant the privileges, immunities and facilities provided for in the Agreement.

25. As far as the WHO is concerned, it suffices to recall here another declaration by Mr. Zarb during the same discussions from which he was quoted above :

> "the Secretary stressed the fact that the Egyptian Government had so far shown a large measure of understanding and had in fact accorded the Organization most of the facilities necessary for the proper functioning of the regional office at Alexandria. However, although the Organization thus enjoyed the most courteous treatment, it would be highly desirable for such treatment to be accorded *de jure* and not only *de facto* [2]".

Here again it is evident that to the WHO negotiators, the focal point of the Agreement was the Regional Office at Alexandria, and its basic purpose was to provide a legal basis for the facilities already provided by the Egyptian Government for the proper functioning of that Regional Office.

26. The *travaux préparatoires,* especially the debates in the Legal Sub-Committee, are also very revelatory of the attitude and the expectations of the Parties as regards the Agreement in general.

During the same session in which Mr. Zarb made the declaration quoted in the preceding paragraph, Dr. Hashem, the Egyptian Representative, stated that :

> "His Government was very happy to have a WHO office on its territory and would lose no opportunity of serving it. Nevertheless, when it came to formulating a long-term agreement, the Egyptian Government had to become cautious . . .[3]"

It is clear from these converging statements that while from the beginning the relations between the Parties have been very cordial, and while the Regional Office came into being and was accorded by the Egyptian Government all the legal and material facilities necessary for its proper functioning without any agreement, both Parties still wanted to base their relations on a solid legal foundation in the form of the Agreement, with a view to achieving maximum stability and security in these relations.

Their subsequent practice, which was characterized by scrupulous and faithful observance, and even liberal implementation of the Agreement on the part of Egypt, contributed to the development of the "good-faith" legal régime of the Regional Office, which started before the Agreement was incarnated in it, and fully materialized through its liberal implementation.

---

[1] House of Representatives, *Official Records of the Thirty-third Session,* Monday, 25 June 1951, pp. 26-27. A copy and translation are deposited with the Registry. [*See pp. 173-181,* infra.]

[2] WHO, *Official Records,* No. 35, *Fourth World Health Assembly,* p. 315.

[3] *Ibid.,* p. 314.

It goes against the spirit and very essence of this "good-faith" legal régime, which structures the expectations of the Parties and provides them with a frame of reference for their mutual reliance, to admit, after over 30 years of consolidation, stability and loyal implementation, the possibility of suddenly bringing it to an end, by the unilateral act of one of the Parties only, without giving the other Party any advance warning or period for adjustment.

This "good-faith" legal régime which constitutes the legal environment which presides over the relations of the Parties in general, cannot but condition the interpretation of the specific provisions of the Agreement, including the denunciation clause in Section 37.

3. SECTION 37 OF THE 1951 AGREEMENT IS APPLICABLE IN CASE OF TRANSFER OF THE REGIONAL OFFICE FROM EGYPT

27. From the conclusion that the 1951 Agreement between the WHO and Egypt is a headquarters agreement for the Regional Office for the Eastern Mediterranean at Alexandria, it follows that a transfer of this Regional Office would strike at the heart and raison d'être of the Agreement and would constitute a denunciation of it, by depriving it of its subject-matter [1].

28. Can a contracting international organization unilaterally denounce a headquarters agreement to which it is a party ?

The Legal Adviser of the WHO is his statement before the thirty-third World Health Assembly referred, in this context, to the Commentary of the ILC on Article 56 of the Draft Articles on Treaties Concluded between States and International Organizations or Between Two or More International Organizations.

Draft Article 56, which is entitled "Denunciation of withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal", provides :

> "1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless : *(a)* it is established that the parties intended to admit the possibility of denunciation or withdrawal ; or *(b)* a right of denunciation or withdrawal may be implied by the nature of the treaty.
>
> 2. A party shall give no less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1."

In its Commentary on this draft article, the Commission gives headquarters agreements as an example of a category of treaties which "seem to be denounceable", or in other words as falling under the exception provided for in paragraph 1 *(b)* of the article [2].

---

[1] Even if we do not accept this obvious conclusion, the transfer of the Regional Office from Alexandria would at least necessitate the revision of those parts of the Agreement which refer specifically to the Regional Office in Alexandria (Section 1 (v)), the seat of the Organization (Section 30), the Regional Director in Egypt (Section 25), etc., and which would become without object ; it would thus still fall within the ambit of Section 37 of the Agreement.

[2] Report of the International Law Commission on the work of its Thirty-first Session, *GAOR*, Thirty-fourth Session, Suppl. No. 10 (A/34/10) (1979).

In this respect, two important points have to be noted :

(i) The draft article applies only to treaties which contain no provision on termination, denunciation or withdrawal ; or, in other words, the absence of such a provision is the *conditio sine qua non* for the application of the draft article. Thus, even if we assume that this draft article reflects general international law and, consequently, that it is immediately applicable, and if we accept *arguendo* that headquarters agreements are, by nature, denounceable, still the article will not be applicable to the 1951 Agreement between the WHO and Egypt, as this agreement contains a denunciation clause, namely Section 37.

(ii) Even in cases where the article would be applicable, it would not empower the Organization to denounce a treaty without notice and with immediate effect. A minimum 12 months' notice is required by paragraph 2 of the article ; which goes to show that even where subjective (para. 1 *a*) or objective (para. 1 *b*) conditions allow for denunciation, the security and stability of legal relations and the protection of legitimate expectations cannot be discounted and impose certain limitations on the exercise of this faculty.

29. The clear conclusion, then, is that if the WHO wants to denounce the 1951 Agreement, by transferring the Regional Office from Egypt, it has to proceed according to Section 37 which provides :

> "The present Agreement may be revised at the request of either party. In this event the two parties shall consult each other concerning the modifications to be made in its provisions. If the negotiations do not result in an understanding within one year, the present Agreement may be denounced by either party giving two years' notice."

30. It could be argued, however, that Section 37 is not a denunciation but a revision clause. It would apply exclusively to cases of denunciation subsequent to failure to reach agreement on certain demands for revision, but not

> "to a situation in which one of the parties is not seeking to make changes to the existing arrangements between an agency and a host government, but in which it is rendering those arrangements null and void by transferring away from the host country the institution whose presence constitutes the reason for the existence of the agreement [1]".

31. This line of reasoning does not stand close scrutiny, however [2]. For if in case of a request for revision, even an minor one, the Agreement provides serious guarantees and time-limits, in the form of a requirement to negotiate for a year, before the party can give the two years' notice for denunciation, it would be absurd to maintain that such guarantees do not apply in case of a denunciation *tout court*, which is the limiting case or rather the most radical form of revision by annihilation. In other words, if the Agreement surrounds minor threats to its stability with a set of guarantees, these guarantees apply *a fortiori* in case of the major threat of denunciation.

---

[1] Statement of the Legal Adviser of the WHO, at the Fifteenth Plenary Session of the thirty-third WHA, on 20 May 1980 (A/33/VR/15) ; a copy of the English translation is deposited with the Registry. [Not reproduced.] It should be noted, however, that the Legal Adviser gave the version quoted in the text as one possible interpretation, not as his own interpretation of Section 37.

[2] But even if we accept it, Section 37 would still be applicable in the circumstances and for the reasons described in note 1, p. 165, above.

32. Nor can such a restrictive reasoning draw any support from the fact that in some headquarters agreements revision and denunciation clauses are included in separate articles, or in separate paragraphs of the same article, while in others they are combined in the same provision.

The combination may have been motivated by considerations of economy or *elegantia juris*. But more probably, it reflects a concern to reinforce the stability of the agreement ; a concern which a reasonable reading of Section 37 can easily bring out. Indeed, the sequence clearly indicates that what is meant by revision is a renegotiation of the Agreement as a means of preventing its denunciation ; and only if this fails can denunciation intervene, with a two years' notice.

It would indeed go against common sense and the whole "good-faith" legal *régime* governing the relations between the Parties, to interpret the Agreement as allowing a Party, by adopting the most radical attitude and proceeding directly to an unmotivated or categorical denunciation, to slip through all the guarantees and requirements.

This is the more unacceptable in view of the fact that the interests of the parties which are safeguarded by these guarantees are the same whether the denunciation is preceded or not by a request for revision. In fact, the need for their protection may be more urgent and imperative in the latter than in the former case.

33. Another reason for dismissing the restrictive interpretation of Section 37 which limits it to revision is the dangerous and absurd results it leads to.

The establishment of headquarters is a long, complex and costly affair. An unchecked faculty to denounce a headquarters agreement would put the international organization in a situation of permanent insecurity. It would mean a permanent risk of suddenly finding itself faced with the unenviable choice between maintaining its headquarters in the denouncing State, but without the guarantees necessary for its effective functioning, or transferring the headquarters to another country, but without having a sufficient adjustment period for that purpose. Either way, the effectiveness of the organization would be impaired. And even without denouncing the agreement, the mere existence of such a possibility would undermine the effectiveness of the guarantees provided by it. Similar misgivings can also exist on the part of the host State.

Clearly such a situation would be unsatisfactory to both parties, which means that it cannot be presumed to reflect their implied common will.

34. Can it be argued – in order to maintain the restrictive interpretation of Section 37, while avoiding its absurd and dangerous results for the international organization referred to in the preceding paragraph – that the right of unilateral denunciation (when it does not follow on a request for revision) can be exercised only by the international organization, but not by the host State ?

Such a patent discrimination between the parties – given its complete contradiction with the synallagmatic character of the very concept of agreement and its potential antagonism with the fundamental principle *pacta sunt servanda* – cannot be merely posited, but its legal basis has to be strictly proved.

35. It could be alleged that an implied clause to this effect can be read into headquarters agreements (or in other words that the common intention of the parties can be thus interpreted) because these agreements are not typical treaties based on an exchange of considerations, but are rather similar to what is called in French civil law a unilateral contract (*contrat unilatéral* [1]), by which one party

[1] French Civil Code, Art. 1103 ; cf. Planiol, Ripert et Boulanger, *Traité élémentaire de droit civil*, Vol. 2, 4th ed. (Paris, LGDJ, 1952), p. 28, para. 69.

acquires certain rights without incurring any obligations, while the other assumes all the obligations without acquiring any rights. In other words, headquarters agreements would be exclusively to the benefit of the international organization and at the expense of the host State. In these circumstances, it would be reasonable to assume that the international organization can renounce unilaterally these rights and benefits by denouncing the agreement, and that the host State would have no objection to being thus released from its obligations under the agreement without any of its rights or interests being impaired. But because of the asymmetrical nature of the situation, the reverse cannot be assumed.

36. This reasoning has to be rejected, however, for two basic reasons :

(i) International law does not recognize a category of "unilateral treaties", in relation to which it establishes a differential treatment of the parties. Neither in the Vienna Convention on the Law of Treaties of 1969 nor in the draft articles on treaties concluded between States and international organizations or between two or more international organizations can we find any reference to such a category or any provision whose content could be said to be inspired by such a classification.

(ii) In any case, even if this category did exist, it would be wrong to assert that headquarters agreements belonged to it. It is true that most of the provisions of these agreements deal with the privileges, immunities and facilities that the host State accords to the organization. But this is not without a consideration. Indeed, there are many advantages for the host State in having the headquarters of an international organization on its territory [1]. Most, but by no means all, of these advantages are of the immaterial kind ; but this type of advantages and interests are of great importance in international law and relations.

Moreover, once the headquarters of the organization are established in the territory of a State, the State develops a basic interest in avoiding large scale and abrupt changes, such as a sudden transfer of headquarters.

In a recent report by the Director-General of the WHO entitled "Outline of a Possible Study of the Feasibility of Relocating WHO Headquarters", it is written :

> "The introduction of the headquarters of a major international organization and its staff in a new country location could have a significant socio-economic impact on the new host country, or on a particular urban or rural area of the country. It would bring an influx of people with a wide range of cultural and linguistic backgrounds. Travel to and from other countries would be increased. Introduction of the WHO headquarters would attract foreign currencies, provide local training opportunities, promote local growth and provide jobs. At the same time, the absorption of new people, demands on housing, transport, commodities, services, educational and other facilities, diplomatic immunities, and cultural influences would all combine to affect the life style, structures and economy of the new host country [2]."

The socio-economic environment which adjusts to the presence of the headquarters and evolves around it, would be severely perturbed by its sudden

[1] See Cahier, *op. cit.*, pp. 199 ff. See also the statement of the Egyptian Minister for Foreign Affairs, quoted in paragraph 24 above.

[2] EB65/18, Add.3, 3 December 1979, para. 3.14.

removal. Suffice it to mention here the prospects of unemployment among the local staff.

All of which clearly proves that headquarters agreements cannot be considered as "unilateral contracts", and that host States too have legitimate interests which have to be protected by the agreement against sudden changes decided unilaterally by the other party.

37. Nor can such a unilateral right of denunciation for the international organization be based on a customary rule. The existence of such a rule has to be proved. But we are here in an area where no precedents or practice exist, except for the provisions of the headquarters agreements themselves ; and these do not reflect a consistent pattern, but divergent solutions ; not to mention the necessity of proving the existence of the *opinio juris*.

38. The only possible legal basis at present for the recognition of a unilateral right of denunciation for the international organization (but not for the host State) is an explicit provision in the treaty itself.

Such a provision can be found in some headquarters agreements. For example, Sections 23 and 24 of the United Nations headquarters agreement with the United States provide :

> "The seat of the United Nations shall not be removed from the headquarters district unless the United Nations should so decide.
>
> This agreement shall cease to be in force if the seat of the United Nations is removed from the territory of the United States, except for such provisions as may be applicable in connection with the orderly termination of the operations of the United Nations at its seat in the United States and the disposition of its property therein [1]."

39. In the absence of such an explicit provision, it is impossible to assume a unilateral right of denunciation exclusively in favour of the international organization, especially in the context of *an agreement which does recognize to either party* the right to denounce it, but in accordance with the procedures and the guarantees it prescribes for such a serious step.

Indeed, it would be absurd to assume the existence within the same agreement of a duality of solutions to the same problem of denunciation : one which recognizes the right to either party, following on the failure to agree on certain revisions, and which is surrounded by guarantees and time-limits ; the other which recognized the right only to the international organization in cases of denunciation *tout court*, without any prior requirements, guarantees or notice period.

Such an interpretation is so far-fetched that, given its unusual character, if it really corresponded to the intention of the parties, they would not have failed to provide for it explicitly by specifying the different conditions of denunciation in the two cases. But the mere contemplation of how such a provision would read immediately brings out the fact that the interpretation in question is not only legally unfounded, but most of all logically inconsistent as to be practically unworkable.

In practice, there can be no divergent solutions within the same legal instrument for the same legal problem ; based moreover in one case on an explicit legal provision, while derived in the other by implication from an as yet unidentified and unproven source.

[1] 11 *UNTS*, p. 12 ; cf. Art. 52 of the Headquarters Agreement of the IAEA with Austria, 339 *UNTS*, p. 110.

What we do find in practice is two different solutions to the question of denunciation, both based on explicit provisions included in headquarters agreements. And if one or the other provision figures in an agreement, it covers all cases of denunciation under that agreement, to the exclusion of any other explicit or implied provision or solution [1].

The assumption of implied clauses or solutions in one direction or the other can thus only be envisaged in the absence of any explicit provision on the matter.

CONCLUSION

40. In view of the foregoing considerations, the Egyptian Government respectfully submits

- that the Agreement of 25 March 1951 between the WHO and Egypt is a Headquarters Agreement for the WHO Regional Office for the Eastern Mediterranean in Alexandria ;
- that the provisions of Section 37 of the Agreement are fully applicable to the transfer of the Regional Office from Egypt ; and that any such transfer without regard to these provisions would constitute a violation of the Agreement.

---

[1] The United Nations Headquarters Agreement with the United States does not include any other provision than Section 24, dealing directly or indirectly with denunciation (or revision for that matter) ; and in the WHO-Egypt Agreement (and the many other agreements adopting the same solution) there is no other provision than Section 37 referring to denunciation.

ANNEXES TO THE WRITTEN STATEMENT OF THE GOVERNMENT OF EGYPT [1]

LETTER FROM THE STATE ADVISER (ADVISORY DEPARTMENT FOR THE MINISTRIES OF FOREIGN AFFAIRS AND JUSTICE) TO THE WHO REGIONAL DIRECTOR, CAIRO, 23 MARCH 1950

[Translation]

Subject : Draft Agreement between the Egyptian Government and the World Health Organization Regional Office.

With reference to your Excellency's letter dated 10 March 1950 enclosing a copy of the draft "Host Agreement" to be signed between the Egyptian Government and the World Health Organization on the subject of the privileges and immunities of the Regional Office for the Eastern Mediterranean, I have the honour to inform your Excellency that it is apparent, from studying the clauses of this Draft Agreement, as phrased by the World Health Organization, that the Organization has conceded to most of the suggestions made by the Advisory Department concerning the original Draft Agreement which was presented by the Organization, and that the Organization has to incorporate the necessary amendments in this last Draft Agreement, in accordance with the previously expressed opinions of the Advisory Department. On the other hand, it is also apparent that the Organization did not agree to certain suggestions made by the Advisory Department, the reason for which is contained in the explanatory memorandum attached to your Excellency's letter and the new text of the Draft Agreement.

It appears that opinions differ on the following subjects :

(1) Immunity of property owned by the Organization in Egypt, for use as premises of the Regional Office for the Eastern Mediterranean, from expropriation for public interest (Article 4, Section 6 (2) of the new amended Draft Agreement presented by the Organization) ;

(2) Exemption of the Organization from indirect taxation (Article 4, Section 11) ;

(3) Submission of the officials of the regional office who are of Egyptian nationality to Egyptian Criminal Law, in matters not relating to their official duties (Article 8, Section 25, 1,2) ;

(4) Liberty of Access into Egypt of representatives of member States and officials of the Organization (Article 9, Section 27).

Your Excellency will remember that during our conversation we succeeded in overcoming the difficulties concerning the two subjects, mentioned above under (3) and (4) when your Excellency agreed – and so has the Organization – to the exchange of two letters at the time of signing the Agreement between the Egyptian Government and the Organization, stating that exemption from subjection to Egyptian Criminal Laws will not apply, under any circumstances to

[1] Received in the Registry on 15 September 1980.

employees of the Regional Office with Egyptian nationality, irrespective of their grades, in matters not relating to their official duties. Liberty of access into Egypt of representatives of World Health Organization member States, to attend conferences and meetings within the sphere of activity of the Regional Office, and liberty of access of experts and officials of the Organization to fulfil their official duties in Egypt, exempts neither the former nor the latter from health quarantine measures imposed in the interest of maintaining public health.

In view of this, the Advisory Department no longer holds its previous opinion concerning the subjects mentioned above under (1) and (2), i.e., in relation to the expropriation of property owned in Egypt by the Organization or its Regional Office, and the subject of exemption from indirect taxation. This is so since it was made clear from your Excellency's conversation that the Organization does not own any property in Egypt and does not intend to do so. Furthermore, since the building occupied by the Organization's Regional Office in Alexandria is in fact the property of the Egyptian Government, it is therefore not liable, at any time, to expropriation for public interest.

Concerning exemption from indirect taxation, the Advisory Department is encouraged to cede its previous opinion in this connection, owing to the contents of Article 7 (Section 10 of the Convention) where it is stated that the Organization does not intend, as a general rule, to claim exemption from excise duties and from taxes on the sale of movable and immovable assets, and that if its official duties necessitated the making of important purchases, the prices of which included such duties and taxes, then the Organization shall negotiate with the Egyptian Government for reimbursement of taxes or duties paid by the Organization, whenever possible.

Finally I have the honour to inform your Excellency that I have forwarded to the Ministry of Foreign Affairs a copy of this letter and of your Excellency's above-mentioned letter, and I hope that the Host Agreement between the Egyptian Government and the World Health Organization will be signed in the near future, in order that the privileges, immunities and facilities of the Regional Health Office for the Eastern Mediterranean may be finally determined in respect of Egyptian Law. If this is achieved, it would then be possible to use this Agreement as a model for other similar host agreements.

(Signed) Waheed RA'FAT,
State Adviser.

MINUTES OF THE THIRTY-THIRD OPEN MEETING OF THE EGYPTIAN CHAMBER OF DEPUTIES HELD IN CAIRO ON 25, 26 AND 27 JUNE 1951

(Translation from the Arabic)

Reference was made to the following letter :

"H.E. the President of the Chamber of Deputies,

I have the honour to submit herewith to Your Excellency the report of the Foreign Affairs Committee on the draft decree approving the Host Agreement between the Egyptian Government and the World Health Organization, signed in Cairo on 25 March 1951, which I kindly request Your Excellency to put before the Chamber.

The Committee appointed Dr. Riad Shams Rapporteur.

Yours, etc.,

(Signed) Yasin Serag EL DINE,
Chairman of the Committee."

12 June 1951

President :

Do you agree that the report should not be read, it being sufficient to include it in the minutes ?

(General approval.)

President :

Does any Honourable Member object in principle to this draft decree ?

Hon. Member Ibrahim Tal'at :

Honourable Members of the Chamber : the reasons for which I objected to the decree concerning the exchange of technical assistance, under the Point Four Programme, apply now also, because I do not believe in the mission of the United Nations Organization which has been the cause of all the misfortunes which befell the weak nations. I therefore call upon you to reject the decree submitted to us. *(Applause.)*

Hon. Member Abdel Mageed Abdel Haq Bey :

Honourable Members, if you referred to this Agreement, you would find that its purpose is to impose obligations on the Egyptian Government without mentioning anything in return for these obligations.

This decree is an important one. It aims at determining the privileges, immunities and facilities to be granted to all member States of the Organization, to its experts and officials. It is clear from Article II that the Organization possesses juridical personality and legal capacity and has in particular the right to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings. I do not care whether the Organization shall have the right to acquire immovable or movable property, but what I care about is that the provisions include the right of the Organization to institute legal proceedings. That is not all. In referring to Article IV of the Agreement, one finds that the Organization, its property and assets in Egypt shall enjoy immunity from every

form of legal process unless this immunity is waived by the Director-General of the Organization or the Regional Director, as his duly authorized representative. How can the Organization have the right to institute legal proceedings while it enjoys immunity from every form of legal process ? Furthermore, it is stated in clause 2 of Section 6 that the premises, the property and the assets of the Organization in Egypt shall be immune from search, requisition, confiscation and expropriation. While the Organization enjoys such immunity it shall have the right to contract with any individual from amongst us for the purchase of property, whether agricultural or not. If disputes arose, to what legal authority is one to appeal ?

The answer is found in Section 33 of Article IV [*sic ;* ? XI] of the Agreement which states :

> "The Organization shall make provision for appropriate modes of settlement of :
>
> *(a)* disputes arising out of contracts or other disputes of a private law character to which the Organization is a party ;
>
> *(b)* disputes involving any official of the Organization who, by reason of his official position, enjoys immunity, if immunity has not been waived by the Director-General in accordance with the provisions of Section 26."

If these provisions were imposed, we would find ourselves in a situation similar to that we had to put up with in relation to the British Forces during the last war, when every contract with them was immune from legal process and not subject to the jurisdiction of the national or mixed courts. As a result of this, any person claiming his rights will be prohibited from appealing to the courts and will have no alternative, according to the provisions of this Agreement, but to come to an amicable arrangement with the Director of the Organization, who is at liberty to settle the dispute in accordance with Section 33 of Article XI, which I have just read out to you.

What is really strange is that the provisions of Article VI cover also immunity from legal process in respect of words spoken or written and all acts performed by representatives of member States, in their official capacity, and who are not Egyptian nationals.

I realize that this would be logical in matters of common law, but it is not so in criminal matters. Although I presume that no State has evil intentions, yet it is possible that there may be found a person who believes in subversive principles, and who may while enjoying this immunity, make during a meeting statements that are contrary to our principles and convictions. A person may incite public opinion to revolutionary acts and our Government will have its hands tied and will not be able to do anything about it.

It is also strange that the immunity granted to experts, and who fall into four categories, shall continue to be accorded even after their period of service is over.

I also believe that it is dangerous that the Agreement should allow the Organization's officials and experts to use a code themselves, although this may be an accepted means of communication between one embassy and another.

Section 25 of Article VIII states that :

> "In addition to the immunities and privileges specified in Section 22, the Director-General, the Deputy Director-General, the Assistant Directors-General, the Regional Director in Egypt and his Deputy shall be accorded in

respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law and usage."

Clause 2 of Article IX states that among those to be offered facilities of entry into, residence in and departure from Egypt are representatives of member States, whatever may be the relations between Egypt and the Member concerned. This means that Egypt has to instruct its embassies to facilitate the entry into Egypt of persons whose presence in Egypt may be undesirable.

To whom are these provisions to apply? They apply to their spouses and dependants, as is stated in Clause 4 of this same Article.

Article X deals with the security of Egypt and contains the following: "Nothing in this present Agreement shall affect the right of the Egyptian Government to take the precautions necessary for the security of Egypt."

Is this a consequence of preceding provisions or is it a confirmatory clause?

The Agreement and its text do not prejudice any of the rights relating to the security of the Egyptian Kingdom.

In other words, the Egyptian Government may, under such circumstances, take the necessary measures to ensure the security of Egypt, in spite of the Agreement. But the Article itself may have two interpretations; firstly, the recognition of a fact and the non-prejudicing of any of the rights pertaining to the security of Egypt; the second is that the Egyptian Government is free to take any measures contrary to the provisions of the Agreement. I believe that the provisions of the Agreement put the Egyptian Government under an obligation which could not be eluded by virtue of Article X which could admit to more than one interpretation. Subsidiarily, I might mention that the letter addressed to H.E. the Minister of Foreign Affairs by the Director-General of the Organization contained several items which do not exempt us from any of the existing obligations. Foremost among these is the Director-General's agreeing that the Organization, according to Section 8, may hold gold and, through normal channels, receive and transfer it to and from Egypt, yet if shall not transfer from Egypt more gold than it has brought in. The second item concerns his acceptance of the determination of the categories of officials and the nature and extent of facilities and privileges to be accorded to them, etc.

The third item reads as follows:

> "I agree that the Organization will not claim on behalf of officials, assigned to the staff of the Regional Office in Egypt, who are Egyptian Nationals, irrespective of grade, immunity from the criminal jurisdiction of the Egyptian Courts in respect of words spoken or written and acts performed by them in so far as these words or acts are not spoken or written or performed by them in their official capacity."

Perhaps this reservation provides an explanation for my words and removes any doubt as to the interpretation that there shall be immunity as regards all crimes, crimes of words spoken or written or acts performed. This is clear from the phrase "in their official capacity". Egyptians, in their official capacity, also are immune as regards such crimes.

The fifth item in the letter reads as follows:

> "I take note of your statement to the effect that notwithstanding the provisions of Section 27, the Egyptian Government may, in accordance with Section 31, take, as regards nationals of countries whose relations with

Egypt are not normal, all precautions necessary for the security of the country."

The relations between Egypt and certain countries are not normal, as is the case with Israel for example, which has no political relations with us. It may also be that the principles propagated in certain countries are contrary to our principles. However, if the person, who may be undesirable, comes from say, England or America, then we cannot, according to this Agreement, take any measures against him.

In any case, this is what I understood and I may be mistaken. At the same time I am prepared to let myself be persuaded, but as I understand it this Agreement aims at the establishment of a governmental organization with full powers. It will not be subject to Egyptian jurisdiction, police or executive measures, even if its Director waives the immunity.

The Agreement then, as I see it, affords no advantages to make me accept it.

Hon. Member Soliman Abdel Fattah :

I object to this decree for reasons similar to those put forward by the previous speaker. I ask your kind permission to allow me to repeat the statement with which the Hon. Member Abdel Mageed Abdel Haq Bey ended his speech, namely that, in accordance with this Agreement we shall impose on our country everlasting obligations to grant privileges to a party that is not subject to the jurisdiction of our courts, to our laws or our constitution. We shall be at one end and this Organization, which is set up in our country, will be at another end, enjoying special privileges and having special codes which shall distinguish it from the Egyptians who own this land.

President :

You mean that this Agreement reintroduces the system of foreign Capitulations.

Hon. Member Soliman Abdel Fattah :

In fact this Agreement leads to the granting of privileges more harmful than the foreign Capitulations, which have been abolished.

The first clause of Article IX states :

"1. The Government of Egypt shall take all measures required to facilitate the entry into, residence in and departure from Egypt of all persons having official business with the Organization, i.e. :

(a) Representatives of Members, whatever may be the relations between Egypt and the Member concerned.
(b) Experts and consultants on missions of the Organization, irrespective of nationality.
(c) Officials of the Organization.
(d) Other persons, irrespective of nationality, summoned by the Organization."

According, to these provisions the Organization may, while we are still regarded to be at war with Israel, summon, by virtue of this Agreement, representatives from Israel to come and live with us and enjoy, according to this immunity, the right to send without any control cables in a special code containing all the information collected about Egypt. Are we to stand with our hands tied, in accordance with this Agreement, unable to do anything ?

I believe that the Chamber agrees with me to reject this Agreement in order to preserve the honour of Egypt and prevent these everlasting privileges being granted.

Hon. Member Ahmed Hamady :

Honourable Members of the Chamber : most probably my colleagues and especially the lawyers among us remember the history of the foreign Capitulations in Egypt, as they will undoubtedly remember that, according to that system, each foreign consul and each foreign embassy, no matter how insignificant the country they represented was, had the right to protect any person who sought such protection, even though he were a national of this country. What used to happen was that brawlers and swindlers would seek refuge in these consulates and obtain such protection as to enable them to escape the judgments passed on them. When the execution of the judgment was to be carried out such people would face the courts' officers saying that they were under the protection of such and such consul.

It is possible that such conditions may return in accordance with this Agreement, which gives the Organization the right to extend its protection to whomsoever it wishes, even if he were an Egyptian. The Egyptian who will enjoy the immunity granted to the Organization regarding freedom of speech, of action and of writing, may attack and harm others. In this lies a great danger and I call upon you to reject such a principle.

My colleague Abdel Mageed Abdel Haq Bey asked whether the Organization has to offer any advantages to Egypt and I would like to reply by saying that the first advantage was that the Organization took over from the Egyptian Government the Quarantine Administration building in Alexandria at a nominal rent of £E1, although it cost the nation over 100,000 Egyptian Pounds. The result was that the Quarantine Administration at which foreign visitors call was removed to a quarter in Alexandria which is regarded as dirty.

Honourable colleagues, this age will never forget that the Wafd abolished the foreigners' privileges accorded by the Montreux Convention. It is not fitting for us ; and especially when the Wafd holds power, to accept this Agreement and bring back such privileges in their ugliest form.

Rapporteur :

Honourable Members of the Chamber : the fact is that my honourable colleagues who have spoken, have exaggerated the extent of the privileges to be accorded to representatives of member States, by virtue of this Agreement. The provisions of the Agreement contain all the assurances necessary to prevent the misuse of this immunity : all the clauses, you will find, contain a statement similar to the following : "not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions in connection with the Organization".

What is laid down in this Agreement is that such immunities will be enjoyed by the person concerned only within the limits of his official function.

President :

Who is to determine such limits?

Rapporteur :

Article XI deals with such limits and specifies that :

"Any differences between the Organization and the Egyptian Govern-

ment arising out of the interpretation or application of the present Agreement or of any supplementary arrangement or agreement which is not settled by negotiation shall be submitted for decision to a Board of three arbitrators ; the first to be appointed by the Egyptian Government, the second by the Director-General of the Organization, and the third, the presiding arbitrator, by the President of the International Court of Justice, unless in any specific case the parties hereto agree to resort to a different mode of settlement."

This Board undoubtedly offers all the necessary safeguards.

Hon. Member Abdel Hameed Abdel Haq Bey :

It appears that the differences lie in the interpretation of the Agreement ; the provisions themselves seem to be quite clear.

Rapporteur :

The provisions are clear and they are in the interest of Egypt. The purpose of these privileges and immunities is to protect certain individuals belonging to an international organization, to enable them to carry out, in the best way, their duties, each within his own field.

H.E. the Minister of Foreign Affairs :

In fact the question under discussion concerns the work of the United Nations Organization, the organization which directs the policies of the whole world. Because of this it was agreed that it should enjoy such privileges and immunities to enable it and to enable its officials to carry out their functions in complete freedom. Egypt has in fact agreed to a special agreement dealing with such privileges and immunities which has been ratified by the Egyptian Parliament.

It is known that the United Nations has several branches, the Specialized Agencies, such as the Food and Agriculture Organization, the World Health Organization, etc. When such agencies set up offices in a certain country, they request that country to grant them privileges and immunities similar to those accorded to the Organization itself.

No one can claim that the United States of America, which is the greatest of all nations, accepted to commit itself to the granting of privileges to foreigners similar to those hateful privileges which Egypt has rid herself of, just because it accepted to be the host to the United Nations Organization and granted it such privileges and immunities.

Similarly, it cannot be said that Egypt, which has accepted to be the host to the WHO Regional Office for the Eastern Mediterranean, is inaugurating a new era of foreign privileges if it grants this Office the privileges and immunities according to international practice.

This would be an exaggerated statement which, I hope, the honourable Chamber will reject.

The provisions of this Agreement before you are standard provisions, which have been laid down to be implemented in every country which becomes host to any of the Specialized Agencies or any of their branches. Egypt has succeeded, in spite of this, in making certain reservations concerning the provisions of the Agreement before you, to which the appropriate bodies have agreed. Since the provisions of the conventions on privileges and immunities of Specialized Agencies are standard ones, as I have just stated to you, therefore Egypt's reservations have not taken the form of amendments of the text itself, but they have been laid

down in a letter sent by the Director-General of the WHO Regional Office to the Egyptian Minister of Foreign Affairs, a translation of which you will find as an annex to the Agreement.

The main reservation contained in the letter is that relating to the right of the Egyptian Government to take all precautions necessary for the security of the country, in respect of nationals of countries whose relations with Egypt are not normal.

There is nothing else to worry our minds with except perhaps the point raised by the Honourable Member Abdel Hameed Abdel Haq Bey relating to immunity from legal process.

Hon. Member Ahmed Hamady :

The law prohibits foreigners to own property, therefore the Agreement contradicts the law.

H.E. the Minister of Foreign Affairs :

It is necessary for the Office to carry out its functions to own, rent and transact. It needs, for example, offices for its employees, and it may purchase such offices, but it cannot of course purchase property for profit purposes. In other words what property the office may purchase will never be very much.

Hon. Member Abdel Hameed Abdel Haq Bey :

Articles VI and VIII cover the immunities and privileges to be enjoyed by representatives of member States who are not Egyptian nationals, and officials irrespective of nationality, such as immunity from arrest and seizure of their personal baggage, the right to use codes in their correspondence, immunity of officials from legal process in respect spoken or written, and all acts performed by them in their official capacity, etc. These immunities are such that we could not possibly agree to them under any circumstances.

H.E. the Minister of Foreign Affairs :

The purpose of such immunity is to enable officials of the Organization to perform their duties freely. It is not to exempt them from criminal responsibility in ordinary crimes such as assault or theft.

Hon. Member Abdel Hameed Abdel Haq Bey :

But Article XI states that officials are covered by immunities in all acts performed by them, as Section 33 states that :

> "The Organization shall make provision for appropriate modes of settlement of :
>
> *(a)* Disputes arising out of contracts or other disputes of a private law character to which the Organization is a party.
> *(b)* Disputes involving any official of the Organization who, by reason of his official position, enjoys immunity, if immunity has not been waived by the Director-General in accordance with the provisions of Section 26."

The main thing I wish to draw the attention of H.E. the Minister of Foreign Affairs to is that such arrangements as the Organization can take in accordance with this Agreement are not to be found anywhere except in Syria, the Lebanon and Trans-Jordan.

H.E. the Minister of Foreign Affairs :

On the contrary they are to be found in Italy where the Headquarters of the Food and Agriculture Organization are. It must be borne in mind that many countries are trying to get the WHO Regional Office for the Eastern Mediterranean moved to their territory. Anyway, the privileges and immunities which the Agreement before you will accord, are minor ones and so limited as to enable the office to carry out its functions in complete freedom. They should not be compared with the outmoded foreign privileges.

Nevertheless, Egypt has taken the necessary precautions in order to refuse to grant the permission of entry to undesirables, such as Israeli citizens.

The immunity from legal process which the office and its officials will enjoy in Egypt, just as similar bodies enjoy in other countries, does not I believe involve any harm or danger, because the persons who shall approach the office to transact business will do so in full knowledge of the immunities and privileges it enjoys. They will therefore make it their purpose to safeguard all their rights when they commit themselves in any contract with the Office.

Most probably it will be the Office which will find itself compelled to satisfy the contracting parties and grant them, in advance, all their rights.

President :

The debate is over. Will all those objecting to the decree in principle please stand.

(A number of Members stood up, but it was not possible to see whether they formed a majority or a minority.)

President :

We shall take the vote in the reverse manner. Will all those who agree to the decree please stand up.

(The majority of the Members stood up.)

President :

We shall proceed to the discussion of the Article.

Rapporteur :

I shall read to the Honourable Members the text of the Article :

"*We, Farouk the First, King of Egypt*

The Senate and the Chamber of Deputies have ratified the following law and we hereby approve and issue it :

A Single Article

The Host Agreement between the Egyptian Government and the World Health Organization, signed in Cairo on 25 March 1951, the text of which is appended herewith, has been approved.

We order that this law shall bear the nation's seal and shall be published in the official gazette and enforced as one of the laws of the nation."

President :

Do you approve this Article ?

(General approval.)

President :

Let the text of the Agreement referred to in this Article be read.

(The text of the Agreement was read.)

President :

Do you approve this Agreement ?

(General approval.)

WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA [1]

27 August 1980.

INTRODUCTION

I. The Questions

On 20 May 1980, the Thirty-third Health Assembly adopted the following resolution :

"Having regard to proposals which have been made to remove from Alexandria the Regional Office for the Eastern Mediterranean Region of the World Health Organization,

Taking note of the differing views which have been expressed in the World Health Assembly on the question of whether the World Health Organization may transfer the Regional Office without regard to the provisions of Section 37 of the Agreement between the World Health Organization and Egypt of 25 March 1951,

Noting further that the Working Group of the Executive Board has been unable to make a judgment or a recommendation on the applicability of Section 37 of this Agreement,

Decides, prior to taking any decision on removal of the Regional Office, and pursuant to Article 76 of the Constitution of the World Health Organization and Article X of the Agreement between the United Nations and the World Health Organization approved by the General Assembly of the United Nations on 15 November 1947, to submit to the International Court of Justice for its Advisory Opinion the following questions :

1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt ?

2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement ?"

II. Jurisdiction of the Court

The jurisdiction of the Court derives from Article 65, paragraph 1, of the Statute of the Court, which provides :

"The Court may give an advisory opinion on any legal question at the

[1] Received in the Registry on 30 August 1980. *[Note by the Registry.]*

request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

Article 96, paragraph 2, of the Charter of the United Nations provides that :

"Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities [1]."

On 15 November 1947, the General Assembly approved an Agreement between the United Nations and the World Health Organization (WHO), which, in Article X, specifically authorizes the WHO to request advisory opinions of the International Court of Justice "on legal questions arising within the scope of its competence other than questions concerning the mutual relationships of the Organization and the United Nations or other specialized agencies". The Agreement came into force upon approval by the WHO on 10 July 1948 [2].

Each of these provisions requires that a request for an advisory opinion concern legal questions. The questions now before the Court are legal ones. The first question clearly concerns an issue of treaty interpretation, and the second question, by its very terms, requests the Court to set out the "legal responsibilities" of the WHO and Egypt during the two-year notice period specified in the Agreement.

While the Court has noted that, under its Statute, its power to give advisory opinions is discretionary, it has repeatedly indicated that, in the absence of compelling reasons, a proper request for an advisory opinion should not be refused. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16 ; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, p. 151 ; *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, Advisory Opinion, I.C.J. Reports 1956*, pp. 77, 86. Indeed, in no case has the Court declined a request to give an advisory opinion on a legal question referred to it in accordance with Article 96 of the Charter. In this case, the World Health Organization has requested the Court to assist it by giving an advisory opinion on important legal questions on which its own Working Group has been unable to advise. Since the request clearly falls within the advisory jurisdiction of the "principal judicial organ of the United Nations", the Court should give an opinion on the legal questions submitted to it.

STATEMENT OF FACTS

According to the WHO's Constitution, adopted in 1946, the World Health Assembly is the policy-making body of the Organization. The Assembly is

[1] Art. 76 of the WHO's Constitution is similar :

"Upon authorization by the General Assembly of the United Nations or upon authorization in accordance with any agreement between the Organization and the United Nations, the Organization may request the International Court of Justice for an advisory opinion on any legal questions arising within the competence of the Organization."

[2] WHO, *Official Records*, No. 13, pp. 81-82, 321.

empowered to establish regional organizations, with the consent of the countries of the region, to meet the special needs of such geographical areas as it may define. Each regional organization is to consist of a regional committee and a regional office. The purpose of the regional office is to be the administrative organ of the regional committee, and generally to carry out the work of the WHO in the area [1].

Pursuant to this mandate, the WHO has during the last 34 years established six regional offices, in Alexandria, Manila, New Delhi, Copenhagen, Brazzaville and Washington. Pursuant to authorization granted by the Assembly, the location of each of these offices was established by decison of the Executive Board of the WHO after consultation with the United Nations [2].

Two of the regional offices, those in Alexandria and Washington, were created by incorporating existing regional health organizations, the Alexandria Sanitary Bureau and the Pan American Sanitary Organization, respectively, into the WHO. Each of these organizations became the WHO regional office of its respective area. The Alexandria Sanitary Bureau, after its incorporation into the WHO, became the WHO's Eastern Mediterranean Regional Office (EMRO).

The World Health Assembly adopted the Convention on the Privileges and Immunities of the Specialized Agencies at its first meeting in 1948 [3], and many States Members of the WHO have acceded to the Convention [4]. The WHO considers all of its employees to be covered by the Convention's provisions, with the exception of those who are recruited locally and paid hourly rates [5]. The WHO also concluded specific privileges and immunities agreements with a number of countries in which it provides services, including Egypt [6]. In addition to these agreements, the WHO has concluded a separate agreement, known as the host agreement, with each of the countries that serves as host to a WHO regional office (except the United States) [7].

---

[1] WHO Constitution, Chapter XI – Regional Arrangements, Arts. 44-53.

[2] Regarding Executive Board Authorization, see WHO, *Official Records*, No. 13, p. 344 ; see also WHA resolution 1.72. Regarding consultation with the United Nations, see Sec. IV (3) of the final report of the WHO Working Group on the transfer of EMRO, doc. EB. 65/19, Rev.1, p. 5.

[3] The Convention, *UNTS*, Vol. 33, p. 261, was adopted on 17 July 1948. WHO, *Official Records*, No. 13, pp. 97, 332.

[4] Egypt acceded to the Convention. WHO, *Basic Documents* (1977), p. 144.

[5] See WHA resolution 12.41.

[6] E.g., Agreement of 17 Dec. 1951 for Health Projects in Guatemala, *UNTS*, Vol. 120, p. 133 ; Agreement of 25 Aug. 1950 for the Provision of Services by the WHO in Egypt, *UNTS*, Vol. 92, p. 39.

[7] The countries with which WHO has concluded host agreements concerning regional office arrangements are : India, signed 9 Nov. 1949, *UNTS*, Vol. 67, p. 43 ; the Philippines, signed 22 July 1951, *UNTS*, Vol. 149, p. 197 ; France (concerning arrangements in French territories in the African region), signed 23 July and 1 Aug. 1952, *UNTS*, Vol. 209, p. 231 ; Denmark, signed 29 June and 7 July 1955, *UNTS*, Vol. 247, p. 168 ; Egypt, signed 25 March 1951, *UNTS*, Vol. 223, p. 87.

Although there is no host agreement with the United States, the privileges and immunities of the Pan American Health Organization (PAHO), the successor to the Pan American Sanitary Organization, are protected under American law. See International Organizations Immunities Act, 59 Stat. 669 (1945), 22 U.S.C., secs. 288-288i. See also Exec. Order 9751, 11 Fed. Reg. 7713 (1946), as amended by Exec. Order No. 10083, 14 Fed. Reg. 6161 (1949).

The PAHO was specifically established in Washington in 1902 by agreement of several American States. It performs many functions for the American community in addition to serving as the regional office for the WHO. Thus, the WHO does not have

All of the host agreements, with minor exceptions not relevant to this case, are substantially identical. Each agreement, among other things : confers juridical and legal capacity on the WHO in the host country ; secures freedom of discussion and meeting for the WHO's organs, officials and delegates to meetings ; provides for immunity from process and inviolability of the WHO's premises ; exempts the WHO from taxation, customs and immigration restrictions ; and provides that the host country will supply the Organization's premises (that is, the regional office) with security, electricity, water, gas, and removal of refuse.

The agreements are for an indefinite duration, except that each host agreement contains a termination clause substantially similar to Section 37 of the Agreement of 25 March 1951 between WHO and Egypt, which reads :

> "The present Agreement may be revised at the request of either party. In this event the two parties shall consult each other concerning the modifications to be made in its provisions. If the negotiations do not result in an understanding within one year, the present Agreement may be denounced by either party giving two years' notice [1]."

In each host country the host agreement is the only agreement between the WHO and the host country concerning the establishment and maintenance of the regional office [2].

Records indicate that the incorporation of the Alexandria Sanitary Bureau into the Eastern Mediterranean Regional Office of the WHO (EMRO) was recommended by a committee to the first World Health Assembly in 1948, which approved the proposal and recommended that it be accomplished as soon as possible [3]. The WHO Executive Board, by resolution, accepted Alexandria as the EMRO site in 1949 [4].

At the time the WHO was considering whether to make the Alexandria Sanitary Bureau into a WHO regional office, the Legal Committee of the first World Health Assembly reported that it would be appropriate for the WHO to

---

the authority to transfer the PAHO out of Washington. The PAHO serves as WHO's regional office pursuant to an agreement with the WHO. The agreement has no termination clause. WHO, *Basic Documents* (1977), p. 38.

The Alexandria Sanitary Bureau, on the other hand, was, at the time it was assimilated into the WHO, under the authority of the Government of Egypt. See A. Stampar, "Report on the Sanitary Bureau at Alexandria", WHO, *Official Records*, No. 12, p. 65. The only international agreement concerning its establishment and maintenance is the WHO-Egypt host agreement.

In addition to the host agreements, the WHO has concluded an agreement with France concerning the office of the International Agency for Cancer Research (IACR). Agreement of 14 March 1967, *UNTS*, Vol. 743, p. 61. It is styled as a "headquarters agreement", but is otherwise similar to the regional office agreements.

[1] The only differences between the denunciation clauses in the respective agreements are : (1) the agreements with Denmark, India, the Philippines, and France (African Region) specify persons to whom notice may be sent, while the agreement with Egypt does not ; and (2) the notice period in the case of the African agreement is one year ; all the rest are two years.

[2] The United States has contacted all of the countries with which WHO has signed host agreements, and has inquired whether any of them has made a "supplemental agreement of any kind which provides for the establishment and maintenance of the regional office". None has provided evidence of any separate agreement or indicated that such an agreement exists.

[3] WHO, *Official Records*, No. 13, pp. 331-332.

[4] EB3R.30.

enter into host agreements with those countries in which it would have offices [1]. Negotiations with Egypt to secure a host agreement apparently began shortly thereafter ; the second Assembly passed a resolution authorizing the Director-General to continue those negotiations [2].

The WHO-Egypt agreement was signed on 25 March 1951 in Cairo and went into effect, after ratification by Egypt, on 8 August 1951. The text of the Agreement, like that of the other host agreements, is identical in all but minor details to a draft model host agreement [3] patterned after the Headquarters Agreement concluded in 1949 between the WHO and the Swiss Government [4]. This Headquarters Agreement was in turn modelled on the Headquarters Agreement of 11 March 1946 between Switzerland and the International Labour Organisation [5].

Throughout the history of the WHO, no regional office has ever been moved from one country to another, nor, so far as is known to the United States, was such a move ever proposed before 1979. In that year, a resolution was introduced in the Thirty-second World Health Assembly calling for the EMRO to be moved out of Egypt. The reason given for the proposal was that most of the countries in the Eastern Mediterranean region had decided to break diplomatic relations with Egypt and did not wish to conduct their WHO business through the Alexandria office. The United States and other countries opposed this action as an improper and costly political interference into the highly successful workings of a technical and non-political specialized agency.

In view of the differences among its members, and without prejudice to any eventual decision whether or not to move EMRO, the Assembly passed a consensus resolution that referred the issue to the WHO's Executive Board for a study of the effects of moving the office, and requested that a report of this study be presented to the Thirty-third World Health Assembly in May 1980 [6]. The Executive Board formed a six-member working group, one member from each of the WHO's regions, to conduct the study.

In its interim report [7] and again in its final report to the 1980 Assembly [8], the Working Group addressed the issue, first raised by the Egyptian delegation to the 1979 Assembly, whether Section 37 of the Host Agreement would be applicable to any decision to move the office, thereby requiring the party wishing to move the office to give two years' notice. The Working Group, after analysing the text and historical background of the Host Agreement, was unable to advise on whether Section 37 was applicable to a decision to move a regional office [9].

In the Thirty-third World Health Assembly, held in May 1980, a proposal was introduced to transfer the EMRO office from Alexandria to Amman, Jordan. During the Assembly discussion of this resolution, it became evident that there existed in the Assembly a genuine legal difference, on which the WHO needed

---

[1] WHO, *Official Records*, No. 10, p. 109.

[2] WHA.282.

[3] This model host agreement (EB65/19, Rev. 1, Annex F *[p. 93, supra]* has been provided to the Court.

[4] See WHO doc. IC/W.4 of Oct. 1946, p. 3, cited in EB65/19, Rev.1, p. 7.

[5] WHO's Headquarters Agreement with Switzerland is published in *UNTS*, Vol. 26, p. 331. The Swiss-ILO Headquarters Agreement is found at *UNTS*, Vol. 15, p. 377.

[6] WHA.32/1979/REC/1.

[7] EMR/EBWG/1 through 4 and annexes, hereinafter referred to as the interim report *[p. 86, supra]*.

[8] EB65/19, Rev.1, hereinafter referred to as the final report.

[9] Interim report, EMR/EBWG/2, p. 9 ; Final report, p. 7.

authoritative and impartial advice, whether the Assembly could legally move the EMRO from Egypt without regard to the notice provision of Section 37 of the Host Agreement with Egypt. On the one hand, Egypt and others maintained that the WHO could move the office out of Egypt only if it first gave two years' notice of what would amount to denunciation of the Host Agreement. On the other hand, some States contended that Section 37 of the Agreement applied only to negotiations over a change in the privileges and immunities of WHO officials in Egypt, and that it would not apply to a decision by either Egypt or the WHO to move the Regional Office. In order to resolve the difference of view on the applicability of Section 37 in a way that would assure the legality of any action which the WHO might decide to take, the United States introduced the resolution referring the present questions to the Court.

On 20 May 1980, the Assembly approved the United States resolution, which postponed any decision on removal of the regional office until after the Court gives its advisory opinion on the questions submitted to it. By requesting definitive guidance on the requirements of international law before taking any action, the Assembly acted to maintain a standard of legal integrity in its relationship with its member States.

INTEREST OF THE UNITED STATES

The United States is host to the United Nations, the Organization of American States, two Specialized Agencies of the United Nations [1], a regional office of the WHO, and other offices of international organizations [2]. Accordingly, the United States has a strong interest in the lawful determination of legal questions bearing on relations between international organizations and host countries, as well as a special concern with the problems and costs associated with the possibility of sudden and disorderly removal or expulsion of the offices of an international organization from a host State. It is for these reasons that the United States believes it appropriate that it comment on the questions submitted to the Court by the World Health Organization.

STATEMENT OF LAW

I. The Provisions of Section 37 of the Host Agreement of 25 March 1951 Are Applicable to any Removal of the Eastern Mediterranean Regional Office (EMRO) from Egypt

The argument made in the Assembly against the applicability of the denunciation clause to removal of the EMRO from Egypt was based on the contention that the Host Agreement does not commit the WHO to establish or maintain the office there. Cited in support of this contention was the fact that the agreement is not entitled "Headquarters Agreement" or even "Host Agreement", but instead :

> "Agreement between the World Health Organization and the Government of Egypt for the purposes of determining the privileges, immunities

[1] The International Monetary Fund and the International Bank for Reconstruction and Development.

[2] Including, *inter alia*, the Inter-American Development Bank, the International Telecommunications Satellite Organization, the International Secretariat for Volunteer Service, and the International Pacific Halibut Commission.

and facilities to be granted in Egypt by the Government to the Organization, to the Representatives of its Members and to its Experts and Officials."

It was contended that the Host Agreement is not a "headquarters agreement", but is instead merely an agreement by which Egypt extends privileges, immunities and facilities to the WHO and its officials in Egypt. Since the extension of these privileges and immunities was not expressly conditioned on the maintenance of the EMRO in Egypt and could, it was said, continue with respect to any WHO official who happened to be in Egypt, it was argued that the agreement created no rights or obligations with respect to the location of the Regional Office.

According to this argument, since the Agreement is solely concerned with privileges and immunities, removal of the Regional Office from Egypt is neither a revision nor a denunciation or termination of the Agreement. Consequently, Section 37 does not apply to the establishment, maintenance or removal of the EMRO, which are matters separate from the privileges and immunities regulated in the Host Agreement, and which are governed either by another agreement or by no agreement at all. Therefore, it was maintained that WHO was free to remove the EMRO from Egypt at any time without giving any prior notice to Egypt.

The United States submits that such an interpretation of the Host Agreement would defeat its primary object and purpose. That purpose was to establish the conditions under which the EMRO would be maintained in Egypt, including the privileges and immunities of WHO personnel and delegations from member States [1]. Removal of the EMRO from Egypt, by rendering the Agreement almost entirely ineffective, would be tantamount to denunciation. Section 37 makes clear that such action was contemplated only upon two years' notice to the other party.

A. The Host Agreement Is a "Headquarters Agreement" Whose Terms Indicate That the Parties Intended EMRO to Be Located in Egypt for the Duration of the Agreement

Headquarters agreements are "international instruments defining the legal status of an International Organization or of one of its bodies in the State on the territory of which it has its seat [2]". Some are styled "Headquarters Agree-

[1] While the Host Agreement particularly addresses privileges and immunities to be extended by Egypt, it is an Agreement which imposes obligations on both parties. Obligations are imposed upon the WHO by, *inter alia*, Sections 26, 31, 32, 33 and 34. Moreover, both parties have equal rights under Section 37.

[2] L. Bota, "The Capacity of International Organizations to Conclude Headquarters Agreements, and Some Features of these Agreements", in K. Zemanek, ed., *Agreements of International Organizations and the Vienna Convention on the Law of Treaties*, p. 57 (1971). Bota cites two similar definitions : "accords conclus entre une organisation internationale et un Etat dans le but d'établir le statut de cette organisation dans l'Etat où elle a son siège et de délimiter les privilèges et immunités qui lui seront accordés ainsi qu'à ses fonctionnaires", Cahier, *Etude des accords de siège conclus entre les organisations internationales et les Etats où elles resident*, p. 1 (1959) ; and "Gli accordi diretti a definire lo statuto giuridico di una organizzazione o di un suo organo decentrato nell'ambito dell'ordinamento interno degli Stati Membri ed eventualmente anche degli stati non membri in cui abbiano sede e ciò tanto in vista di un funzionamento duraturo, quanto in vista di reunioni a carattere provisorio", Socini, *Gli accordi internazionali delle organizzazioni intergovernative*, p. 83 (1962).

ment" and some are not [1], but, regardless of title, they all cover the same main points. Those points are, as authoritatively listed by the late C. Wilfred Jenks :

> "the immunity of international institutions from suit and legal process ; the inviolability of their premises and archives ; the immunity from civil and criminal jurisdiction of delegates and senior officials ; the immunity of all officials from suit and legal process in respect of their official acts ; the exemption of international funds from national taxation and exchange controls ; appropriate postal and telecommunication facilities, including the exemption from censorship of official correspondence ; appropriate travel facilities, including the issue of diplomatic or official passports and visas ; appropriate exemption from immigration, alien registration, and similar regulations and restrictions ; the general principle that facilities for the conduct of official business which States make available to each other individually should also be made available to international institutions as the organs through which States act collectively ; and a number of miscellaneous facilities and courtesies [2]".

Examination of the WHO-Egypt Host Agreement shows that it covers essentially the same points as a typical headquarters agreement, and confirms that its sole raison d'être is to deal with the special problems and circumstances created by the maintenance of the organization's seat in Egypt [3]. Indeed, since Egypt was already a party to two treaties generally providing for the privileges and immunities of WHO officials [4], the only conceivable reason to enter into another agreement was specifically to provide a legal régime for the EMRO office. This is illustrated by the report of the WHO Legal Committee to the first World Health Assembly, which stated that WHO was justified in entering into Host Agreements because :

> "Section 39 of the Convention [on Privileges and Immunities of Specialized Agencies] permits any specialized agency to enter into special agreements with States in which such agency has its headquarters or regional offices [5]."

It is true that some headquarters agreements state the parties' agreement to locate the headquarters in the host country more expressly than do the

---

[1] Headquarters agreements that are not titled "Headquarters Agreement" include the agreements between Switzerland and the ILO and Switzerland and the WHO on which the host agreements for WHO's regional offices are modelled. These were certainly considered headquarters agreements when they were made. See Statement of US representative to WHO Interim Commission of 31 March 1947, WHO IC/Min.3/2. Compare those agreements with the Agreement of 26 June 1947 between the United States and the United Nations, *UNTS*, Vol. 11, p. 11.

[2] C. W. Jenks, *The Headquarters of International Institutions : A Study of Their Location and Status*, p. 45 (1945).

[3] See, e.g., the following articles of the Host Agreement : Art. II (juridical personality) ; Art. III (freedom of action and speech) ; Art. IV (property, funds and assets) ; Arts. VII and VIII (privileges and immunities) ; Art. IX (immigration and office facilities) ; Art. X (security).

[4] The Convention on the Privileges and Immunities of the Specialized Agencies, and the Agreement for the Provision of Services by the WHO in Egypt, *op. cit.*

[5] WHO, *Official Records*, No. 10, p. 109.

WHO's host agreements. For example, the headquarters agreements between the United States and the United Nations [1] and between Austria and the International Atomic Energy Agency [2] specifically provide that the headquarters shall be located in the host country and make explicit provision that it remain there until otherwise decided by the international organization involved [3].

However, other headquarters agreements contain no such provisions, but merely refer generally to the legal status of the organization or to a decision to establish the office there [4]. Therefore, the fact that the Host Agreement does not contain language as specific as that in some other agreements cannot justify an inference that Egypt and WHO deliberately structured something less than a headquarters agreement for the Regional Office in Egypt.

In fact, both Egypt and the WHO have recognized that the host agreements are headquarters agreements. Egypt, when it considered signing the Agreement, made it clear that it considered the Agreement similar in character to the Headquarters Agreements of WHO and Unesco [5]. The WHO, in its reply to a questionnaire circulated by the International Law Commission in connection with the preparation of the draft articles on treaties between States and international organizations or between international organizations, used the phrase "accords de siège" to describe the host agreements [6].

In determining what rights and obligations a headquarters agreement creates with respect to the location of an office, an international tribunal must look first

---

[1] Agreement of 26 June 1947, *UNTS*, Vol. 11, p. 11.

[2] Agreement of 11 December 1957, *UNTS*, Vol. 339, p. 110.

[3] See also the Headquarters Agreement between France and Unesco, signed 2 July 1954, *UNTS*, Vol. 357, p. 3. Some headquarters agreements, whether or not they make specific provisions for the location of the office in the host country, make specific arrangements regarding the building the office will occupy, e.g., Agreement of 18 October 1965 between ICAO and Thailand, *UNTS*, Vol. 707, p. 299 ; Agreement of 22 December 1966 between the Philippines and the Asian Development Bank, *UNTS*, Vol. 615, p. 375.

[4] Agreement of 10 March 1955 between WMO and Switzerland, *UNTS*, Vol. 211, p. 277 ; Agreement of 11 March 1946 between Switzerland and ILO, *UNTS*, Vol. 15, p. 377 ; Agreement of 21 August 1948 between Switzerland and the WHO, *UNTS*, Vol. 26, p. 331 ; Agreement of 18 June 1958 between Ethiopia and the United Nations regarding the Headquarters of UNECA, *UNTS*, Vol. 317, p. 101 ; Agreement of 26 May 1954 between the United Nations and Thailand concerning the Headquarters of ECAFE, *UNTS*, Vol. 260, p. 35 ; Agreement of 25 July 1952 between the United Nations and Japan, *UNTS*, Vol. 135, p. 305 ; Agreement of 29 June 1951 between Switzerland and the IBRD, *UNTS*, Vol. 216, p. 347.

[5] The Egyptian Government, in its study of the proposed Host Agreement, decided to consult other agreements it considered to be similar – that is, "concluded, or in the course of conclusion, between a number of States and certain Specialized Agencies on the occasion of the latter taking up any of the said States as their seats or upon the establishment of Regional Offices in their territories". *Memorandum on Privileges, Immunities and Exemptions of the Regional Office of the World Health Organization*, prepared by the Contentieux of the Egyptian Ministry of Foreign Affairs and Justice, p. 53, *supra*.

[6] E.g., "L'accord de siège concernant le bureau régional de l'Afrique" at para. 6 of the WHO's reply. The reply was to a questionnaire circulated to international organizations by the Commission's Special Rapporteur, Professor Paul Reuter. The replies are unpublished, but the United States understands that the WHO's reply has been supplied to the Court by the WHO. *[See pp. 104-108, supra]*.

to the words of the agreement, interpreted in context and in the light of the object and purpose of the agreement [1]. In this regard, it is axiomatic that the tribunal must consider the agreement as a whole [2].

If the language of the agreement, taken as a whole, expresses a common understanding of the parties that the office will be located in the host country unless otherwise agreed or unless the treaty is properly terminated, then the written expression of that common understanding is, in essence, an agreement of the parties to establish and maintain the office there until the agreement is terminated in accordance with its own provisions or with the rules of international law concerning the termination of treaties.

Examination of the language of the Host Agreement between the WHO and Egypt indicates that the intention of the parties was that the EMRO be maintained in Egypt. The preamble states that the purpose of the Agreement is to determine the privileges and immunities to be given WHO officials and representatives in Egypt, "in particular with regard to its arrangements in the Eastern Mediterranean Region". The WHO's "arrangements" in the Eastern Mediterranean region refer, of course, to the EMRO office in Alexandria and to meetings taking place there. Section 1 (v) of the Agreement specifically refers to "the Regional Office in Alexandria". Section 25 provides for the privileges and immunities of "the Regional Director in Egypt and his Deputy". Sections 17 and 19 of the Agreement refer to meetings of the Organization in Egypt, which would be held there only because of the location of the Regional Office. Section 6 refers to the "premises of the Organization in Egypt", obviously meaning the Regional Office. Section 30 assures that electricity, gas and water, and refuse removal will be provided to "[t]he Organization ... in the premises placed at its disposal". This provision is not concerned with privileges and immunities at all, but can only refer to services supplied to the Regional Office. Even more important, Section 30 commits Egypt to ensuring necessary police protection "for the protection of *the seat of the Organization* and for the maintenance of order in the immediate vicinity thereof". Without the EMRO office, of course, there would be no "seat of the Organization" in Egypt.

These provisions, and others, plainly contemplate the establishment and maintenance of the EMRO in Egypt. They provide written expression of the parties' common expectation and understanding that the office would be located there during the life of the Host Agreement, and that the purpose of the agreement was to establish the conditions under which the office would be maintained.

It is possible, of course, to write a headquarters agreement in such a way that, although the headquarters is mentioned, the parties disavow the creation of obligations regarding its location. The headquarters agreement of the United

---

[1] See Art. 31, Vienna Convention on the Law of Treaties; Art. 31, draft articles concerning treaties concluded between States and international organizations or between international organizations, Report of the International Law Commission, UNGA, *Off. Rec.*, Supp. No. 10 (A/34/10).

[2] "In considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense." *Competence of the ILO in Agricultural Questions, Advisory Opinions, 1922, P.C.I.J., Series B, Nos. 2 and 3*, p. 23. See also McNair, *Law of Treaties*, pp. 381-382 (1961) and sources cited therein.

Nations [1] as well as those of the International Atomic Energy Agency in Austria [2], the International Civil Aviation Organization in Canada [3], and a number of headquarters agreements entered into by the United Kingdom [4], expressly allow only the organization to remove the office, and provide that the agreement is terminated when the office is removed, except for those provisions applicable to an orderly removal. A headquarters agreement of this type contemplates that the organization can terminate the agreement by removing the office. It thus embodies no mutual expectations that the office will be maintained in the host country until the parties agree otherwise or until the agreement is terminated by other means.

The WHO-Egypt Agreement, however, does not provide for termination by removal of the Office, but expressly provides in Section 37 that unilateral termination of the Agreement must be preceded by two years' notice. The language of the Agreement indicates a common understanding that the Office would remain in Egypt for the duration of the Agreement. The Agreement expresses mutually agreed expectations – that is, rights and obligations – concerning the location of the Office.

Accordingly, the parties agreed in the Host Agreement that the EMRO would be maintained in Egypt. It follows that removal of that Office, like any other attempt to modify or denounce the Agreement, is governed by Section 37. The party wishing to change the existing arrangement would be required to negotiate with the other party, and, if negotiations failed, give two years' notice of denunciations.

B. There Is only One Interpretation of the Host Agreement that Gives Effect to Section 37 and to the Object and Purpose of the Agreement

The principle of "effectiveness", expressed by the maxim *ut res magis valeat quam pereat*, is an established and fundamental principle of treaty interpretation. Simply stated, it means that a treaty provision should be interpreted so as to render it effective, not ineffective or illusory [5]. A more precise definition was included by the Special Rapporteur, then Professor Sir Humphrey Waldock, in his draft articles on the law of treaties submitted to the International Law Commission in 1964 :

---

[1] Agreement of 26 June 1947, *UNTS*, Vol. 11, p. 11.

[2] Agreement of 11 December 1957, *UNTS*, Vol. 339, p. 110.

[3] Agreement of 14 April 1951, *UNTS*, Vol. 96, p. 155.

[4] Agreement of 28 November 1968 between the United Kingdom and the International Wheat Council, *UNTS*, Vol. 668, p. 3 ; Agreement of 28 May 1969 between the United Kingdom and the International Coffee Organization, *UNTS*, Vol. 700, p. 97 ; Agreement of 29 May 1969 between the United Kingdom and the International Sugar Organization, *UNTS*, Vol. 700, p. 121.

[5] This is taken from a classic definition by Vattel : "L'interprétation qui rendrait un acte nul et sans effet ne peut donc être admise ... il faut l'interpréter de manière qu'il puisse avoir son effet, qu'il ne se trouve pas vain et illusoire." Vattel, *Le droit des gens ou principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains*, Sec. 283. For a list of citations to other authorities, from Grotius onward, who discuss the principle, see V. D. Degan, *L'interprétation des accords en droit international*, pp. 102-103 (1963), and H. Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties", XXVI *British Year Book of International Law*, p. 48 (1949).

"a term of a treaty shall be so interpreted as to give it the fullest weight and effect consistent –

(a) with its natural and ordinary meaning and that of the other terms of the treaty ; and

(b) with the object and purpose of the treaty [1]".

The effectiveness principle is especially important in situations in which the parties may not have clearly expressed their mutual intention, since, in such situations, it allows a tribunal to look at the object and purpose of the treaty in order to give effect to that purpose. In the words of another Special Rapporteur of the International Law Commission on the law of treaties, Judge Sir Hersch Lauterpacht :

"[The principle of effectiveness] is a major principle, in the light of which the intention of the parties must be interpreted even to the extent of disregarding the letter of the instrument and of reading into it something which, on the face of it, it does not contain – so long as that 'something' is not contradicted by available and permissible evidence of the intention of the parties [2]."

Both the Permanent Court of International Justice and this Court have recognized the principle of effectiveness [3], and have applied it to give effect to the intention of the parties. The Permanent Court, for example, in *Acquisition of Polish Nationality, Advisory Opinion, 1923, P.C.I.J., Series B, No. 7*, p. 17, stated that :

"[T]he Court has already expressed the view that an interpretation which would deprive the Minorities Treaty of a great part of its value is inadmissible."

Similarly, in *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, page 24, this Court, in holding that the purposes of the Genocide Convention required that certain reservations be allowed to the Convention, even though there was no express provision for them, stated :

---

[1] II *Yearbook of the International Law Commission 1964*, p. 53. The Commission later decided that the maxim *ut res magis valeat quam pereat* should not form the subject of a separate article, but only because it was considered to be included in the principle of interpretation in good faith. II *Yearbook of the International Law Commission 1966*, pp. 172, 219. See L. M. Sinclair, *The Vienna Convention on the Law of Treaties*, p. 75 (1973).

[2] H. Lauterpacht, *The Development of International Law by the International Court*, p. 228 (1958) ; see also H. Lauterpacht, "Restrictive Interpretation", *op. cit.*

[3] There are numerous cases which apply or discuss this rule of interpretation. For discussion of them, see H. Lauterpacht, *The Development of International Law*, *ibid.*, Chaps. 14 and 19 ; H. Lauterpacht, "Restrictive Interpretations", *ibid.* ; McNair, *Law of Treaties*, Chap. XXI (1961) ; T. O. Elias, *The Modern Law Treaties*, pp. 71-78 (1974) ; J. F. Hogg, "The International Court : Rules of Treaty Interpretation", 43 *Minn. L. Rev.*, p. 369, and 44 *Minn. L. Rev.*, p. 5 (1959) ; G. Haraszti, *Some Fundamental Problems of the Law of Treaties*, pp. 166-173 (1973). See also G. Fitzmaurice, "The Law and Procedure of the International Court of Justice", XXVIII *British Year Book of International Law*, pp. 18-20 (1951) ; G. Fitzmaurice, "The Law and Procedure of the International Court of Justice", XXXIII *British Year Book of International Law*, pp. 220-222 (1957) ; and E. Lauterpacht, "The Development of the Law of International Organizations by the Decisions of International Tribunals", *Recueil des cours*, Vol. IV, 1976, pp. 420-444.

> "The object and purpose of the Genocide Convention imply that it was the intention of the General Assembly and of the States which adopted it that as many States as possible should participate. *The complete exclusion from the Convention of one or more States would not only restrict the scope of its application, but would detract from the authority of the moral and humanitarian principles which are its basis. It is inconceivable that the contracting parties readily contemplated that an objection to a minor reservation should produce such a result.*" (Emphasis added.)

Of course, the doctrine of effectiveness does not give international tribunals unlimited discretion to extend the meanings of treaties in the name of making them effective. Judicial discretion is limited by the intention of the parties to the agreement, as manifested by the words of the treaty and its object and purpose. Thus, as this Court stated in *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase, Advisory Opinion, I.C.J. Reports 1950,* p. 229 :

> "The principle of interpretation expressed in the maxim : *ut res magis valeat quam pereat,* often referred to as the rule of effectiveness, cannot justify the Court in attributing to the provisions for the settlement of disputes in the Peace Treaties a meaning which, as stated above, would be contrary to their letter and spirit [1]."

If an interpretation is contrary to the clear meaning of the treaty itself or to the intent of the parties as determined from all sources, then it would not be proper to revise the treaty under the guise of making it effective. On the other hand, if the wording of the treaty does not clearly preclude an effective interpretation reflecting the intent of the parties, that interpretation is to be preferred. In other words, as stated by the International Law Commission :

> "When a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted [2]."

Section 37 of the Host Agreement between the WHO and Egypt would be rendered illusory by an interpretation that would allow either party to remove the EMRO from Egypt without following its provisions. The language of the Host Agreement, including its several references to the functions of the Alexandria Office, makes it clear that the object and purpose of the Agreement was to create a legal régime for the operation of that Regional Office, not merely for whatever operations the WHO might otherwise have in Egypt. It is equally apparent that Section 37 of the Agreement is meant to preclude either of the parties to the Agreement from suddenly and precipitately terminating the legal régime they created.

There is only one conceivable reason why the parties needed to be protected against hasty termination of the Agreement and the legal régime it established. Termination would have the effect of bringing about the closing of the Regional Office in Egypt, because without the facilities provided in the Agreement – legal

[1] See also, *Oscar Chinn, Judgment, 1934, P.C.I.J., Series A/B, No. 63,* p. 65.

[2] Commentary on Art. 28 of the draft Vienna Convention on the Law of Treaties, II *Yearbook of the International Law Commission 1966,* p. 219. See also, Elias, *op. cit.,* p. 74.

status, privileges and immunities, police protection, electricity, water, and gas – the Office could not function. Time would be needed to effect an orderly removal. It is impossible to believe that the parties would deliberately create a mechanism to provide time for transition arrangements to be made before terminating the Agreement and closing the Office, while simultaneously allowing a party to bring about closure, unilaterally and without any waiting period, simply by expelling or removing the Office from the territory of the host State.

Such an interpretation would lead to manifestly absurd results. For example, Egypt, if it wished legally to evade its obligation to admit certain States of the region to regional meetings, or to supply water or electricity to the Office, could order the immediate expulsion of the EMRO from its territory, thus vitiating the two-year notice requirement. Similarly, if WHO decided to denounce the Agreement on two years' notice, Egypt would nonetheless be free to order the immediate evacuation of the Office, thereby disrupting any orderly transition. On the other side of the coin, if Egypt denounced the Agreement on two years' notice, the WHO could remove the Office forthwith and so deprive Egypt of the adjustment time contemplated by Section 37. In effect, either party would have a means of terminating the effectiveness of virtually all provisions of the Agreement without observing the notice requirement of Section 37. If either party to the Agreement were free to remove the Office without notice, Section 37 would have little or no practical meaning or effect.

Similarly, the reference in Section 37 to denunciation by *either* party would be meaningless if Section 37 were interpreted not to apply to removal of an office. Egypt could conceivably live with an international organization that did not have the protections supplied by the host agreement, but no international organization would be likely to terminate the legal régime for a headquarters while planning to keep the headquarters in the host country [1]. It is apparent that Section 37 was intended to regulate the manner in which either party could end the existing host arrangement in the event that it became dissatisfied with that arrangement and was unable to secure satisfactory changes through negotiation. But if the dissatisfied party were the WHO, and if it failed to secure desired changes, its only real choices would be to continue under the unsatisfactory régime or to remove the Regional Office. Accordingly, if Section 37 does not regulate the manner in which the WHO may exercise its right to remove the EMRO, a two-year notice and denunciation requirement for the WHO is for all practical purposes meaningless.

There is nothing in the language of the Host Agreement, or in the intentions of the parties, that stands in the way of an interpretation that would make the Agreement effective. The Agreement may not be so well drafted that it removes all doubt about whether Section 37 applies to the removal of the EMRO, but it does not even suggest any deliberate decision to allow the EMRO to be removed or expelled without notice. Moreover, as will be discussed below, common sense and international practice, as well as the history of the WHO's host agreements, indicate that the parties intended that Section 37 apply to removal of a regional office from the host State.

---

[1] An international organization might conceivably do so if the legal régime in effect were no better than the absence of any special régime at all. There is, however, no basis for the belief that the WHO took such a view of the EMRO régime. On the contrary, the WHO signed the Host Agreement because a special régime was thought essential.

C. For Practical Reasons, as Illustrated by International Practice, It Is unlikely that the Parties Intended to Allow Removal of the Regional Office without Notice

It took the Executive Board's Working Group one year to complete its study of the implications of moving the EMRO from Alexandria. The study concluded that the move would cost between US$1,361,100 and US$4,358,300 depending on where the new office was established [1]. Approximately 50 professionals would have to be relocated, and 100 general service employees would probably lose their jobs [2]. In addition, the move would disrupt the work of the regional office, with potentially serious effects on the implementation of the Organization's technical co-operation programme [3]. These facts illustrate that, even with regard to a small regional office such as the EMRO, removal of an office involves difficult administrative, logistical and financial problems, and entails serious economic and human impact on both the host State and the international organization involved.

Common sense and practicality therefore suggest that it is unlikely that an international organization or host State would deliberately sign an agreement that would allow either party to force sudden and unplanned removal of a headquarters or regional office. In fact, since removal of an office requires considerable time to be carried out successfully, it is precisely the type of situation for which a notice period would logically be intended.

This conclusion is supported by international practice. International organizations and host States have used several different mechanisms to provide for the termination of headquarters agreements and the removal of headquarters, but, to the knowledge of the United States, they have never deliberately left both parties to an agreement free unilaterally to remove a headquarters or regional office without some degree of protection, for both the organization and the host State, from the consequences of sudden termination of the headquarters arrangement.

Host and headquarters agreements fall into three categories [4]. The first category includes agreements, such as the agreement between Austria and the International Atomic Energy Agency [5], that contain a denunciation provision similar to the following :

---

[1] EB65/19, Add.1, Annex 2, pp. 6-7.

[2] EB65/19, Rev.1, Annex 2, pp. 3-4.

[3] EB65/19, Rev.1, p. 9.

[4] Not included in these categories are a few agreements regarding certain offices of the ILO which provide that they shall remain in force as long as the office remains in the host country, and appear to allude to separate understandings concerning the location of the office in the host country. These agreements, which appear to have been used only by the ILO, concern small field offices, not the headquarters of or regional offices of the ILO. The field offices in question generally consist of five or six persons. See Agreement of 6 April 1967 between the ILO and Algeria, *UNTS*, Vol. 595, p. 99 ; Agreement of 7 May 1967 between the ILO and Cameroon, *UNTS*, Vol. 596, p. 209 ; Agreement of 14 May 1966 between the ILO and Lebanon, *UNTS*, Vol. 600, p. 69 ; Agreement of 21 November 1962 between the ILO and Ceylon, *UNTS*, Vol. 449, p. 263 ; Agreement of 14 January 1959 between the ILO and Nigeria (UK), *UNTS*, Vol. 355, p. 283.

The host agreements for the ILO's regional offices contain provision for notice of termination. See Agreement of 1 November 1961 between Thailand and the ILO, *UNTS*, Vol. 422, p. 125 ; Agreement of 22 June 1960 between Peru and the ILO, *UNTS*, Vol. 423, p. 175. *[See pp. 123-124,* supra.*]*

[5] Agreement of 11 December 1957, *UNTS*, Vol. 339, p. 110.

"This Agreement shall cease to be in force : (i) by mutual consent of the IAEA and the Government ; and (ii) if the permanent headquarters of the IAEA is removed from the territory of the Republic of Austria, except for such provisions as may be applicable in connexion with the orderly termination of the operations of the IAEA at its permanent headquarters in the Republic of Austria and the disposal of its property therein [1]."

In some cases these agreements expressly provide that the office shall remain in the host country until removal *by the organization* ; others may permit removal by the host country as well [2]. Nevertheless, all of them protect both the host country and the organization from precipitate removal of a headquarters office, since, in the event of such a removal, they expressly provide for continuation of key obligations during an indeterminate transition period.

The second, and most numerous, category of headquarters agreements includes those that, like the WHO agreements, contain notice requirements. The notice requirement is sometimes, but more often not, coupled with a stipulation that provisions applicable to an orderly termination will continue in force after the notice period has expired [3]. The same notice requirements are found in agreements that expressly and unmistakably concern the establishment and maintenance of a headquarters (sometimes even including specific building lease arrangements) as well as in others like the WHO host agreements, in which the relevant language is arguably more ambiguous [4]. Since all host countries and

[1] Sec. 52, *UNTS*, Vol. 339, p. 171.

[2] The Austria-IAEA Agreement reserves the right of removal only to the organization, as do the Agreement of 13 April 1967 between the United Nations and Austria regarding Headquarters of UNIDO, *UNTS*, Vol. 600, p. 93, and the Agreement of 22 December 1966 between the Philippines and the Asian Development Bank, *UNTS*, Vol. 615, p. 375. An Agreement that contains a similar termination clause, but does not expressly reserve removal to the organization, is the Agreement of 14 April 1951 between Canada and the ICAO, *UNTS*, Vol. 96, p. 156. See also the agreements with similar clauses discussed in Section I-A.

[3] Agreements with a notice requirement plus an "orderly termination" provision include : Agreement of 30 November 1965 between UNICEF and Chile, *UNTS*, Vol. 596, p. 215 ; Agreement of 18 October 1965 between ICAO and Thailand, *UNTS*, Vol. 707, p. 299 ; Agreement of 18 June 1958 between the United Nations and Ethiopia regarding the headquarters of UNECA, *UNTS*, Vol. 317, p. 101 ; Agreement of 1 November 1961 between Thailand and the ILO regarding the ILO Liaison Office with ECAFE, *UNTS*, Vol. 422, p. 125 ; Agreement of 6 September 1961 between Thailand and Unesco concerning the Asian Regional Office, *UNTS*, Vol. 410, p. 125.

Besides the WHO agreements and the ILO agreement on which they were modelled, agreements that contain a notice provision without an "orderly termination" requirement include : Agreement of 24 July 1968 between Denmark and the International Council for the Exploration of the Sea, *UNTS*, Vol. 657, p. 159 ; Agreement of 14 April 1967 between France and the Malagasy Coffee Organization, *UNTS*, Vol. 717, p. 297 ; Agreement of 10 March 1955 between Switzerland and the WHO, *UNTS*, Vol. 211, p. 277 ; Agreement of 14 December 1946 between the United Nations and the Swiss Federal Council, *UNTS*, Vol. 1, p. 163 ; Agreement of 22 June 1960 between the ILO and Peru, *UNTS*, Vol. 423, p. 165 ; Agreement of 20 December 1956 between the ICAO and Mexico, *UNTS*, Vol. 497, p. 3 ; Agreement of 27 August 1953 between Egypt and the ICAO, *UNTS*, Vol. 215, p. 371 ; Agreement of 25 July 1952 between the United Nations and Japan, *UNTS*, Vol. 135, p. 306 ; Agreement of 5 January 1955 between Mexico and the ILO, *UNTS*, Vol. 208, p. 225 ; Agreement of 29 June 1951 between Switzerland and the IBRD, *UNTS*, Vol. 216, p. 347.

[4] Agreements with unequivocal establishment provisions coupled with a notice requirement include : Agreement of 18 October 1965 between Thailand and the ICAO, *UNTS*, Vol. 707, p. 299 ; Agreement of 5 January 1955 between the ILO and Mexico,

international organizations that enter into headquarters agreements have similar essential interests to project, it is not likely (and there is no evidence) that the various countries and organizations involved in these agreements employed identical denunciation provisions with very different purposes in mind. It is much more reasonable to assume that all the denunciation clauses were meant to accomplish one cardinal purpose – to prevent removal of the office without sufficient time for orderly termination and relocation of its function.

The third category includes agreements, such as the headquarters agreement between Unesco and France [1], that contain no provision for either removal of the office or termination of the agreement. Since they contain no denunciation clause, such agreements arguably cannot be denounced except in accordance with general international law. Under this view, if the agreement provides for establishment of a headquarters, neither party would generally have the right to remove it. However, in commenting on the draft articles on treaties concluded between States and international organizations or between international organizations, the Special Rapporteur of the International Law Commission has taken the view that headquarters agreements, because of their nature, "seem to be denounceable" since :

> "[F]or an international organization, the choice of its headquarters represents a right whose exercise is not normally immobilized ; moreover, the smooth operation of a headquarters agreement presupposes relations of a special kind between the organization and the host State, which cannot be maintained by the will of one party only [2]."

Significantly, even in indicating that international organizations may have an implied right to move their headquarters, the Commission provided that the exercise of that right should be subject to a one-year notice requirement [3]. This

---

UNTS, Vol. 208, p. 225 ; Agreement of 6 September 1961 between Unesco and Thailand, *UNTS*, Vol. 410, p. 125 ; see also Agreement of 20 December 1955 between Mexico and the ICAO, *UNTS*, Vol. 497, p. 3 ; Agreement of 1 November 1961 between Thailand and the ILO, *UNTS*, Vol. 422, p. 125.

Notice provisions can also be used when an agreement expressly allows the organization to transfer the office from the host State. For example, the ILO Agreement with Turkey concerning the Manpower Field Office reads :

> "The Office shall be free, at its discretion, to transfer the Manpower Field Office from Turkey to any other country or altogether to wind up the Field Office. In case of such transfer or winding up, however, the Office shall give the Government three months' notice thereof and shall return to the Government, as they stand, the building and the furniture placed at its disposal in accordance with Article 3 above." (Unpublished *[see pp. 123-124,* supra*].)*

[1] Agreement of 2 July 1954, *UNTS*, Vol. 357, p. 3. See also Agreement of 22 December 1966 between the Philippines and the Asian Development Bank, *UNTS*, Vol. 615, p. 375.

[2] Commentary to Art. 56 of the draft articles concerning treaties concluded between States and international organizations or between international organizations, Report of the International Law Commission, UNGA, *Off. Rec.*, Supp. No. 10 (A/34/10), p. 436. This commentary was submitted by the Special Rapporteur and was adopted by the Commission without discussion. Whether or not it reflects customary international law, this commentary applies only to those agreements with no denunciation or termination provisions, not to those, like the WHO-Egypt Agreement, that expressly provide a termination procedure.

[3] See para. 2 of Art. 56, *ibid.*, p. 435.

recognition of the unreasonableness of removal of a headquarters without notice is strong evidence that it is not plausible that the parties to a headquarters agreement would knowingly allow such removal without a notice period or some other form of protection from the consequences of precipitate removal.

Thus, in practice, international organizations and host countries have often relied on the notice requirement or other transitional arrangements to protect themselves from the risk of sudden and arbitrary removal of headquarters and regional offices. The practice is sufficiently widespread that the International Law Commission has adopted a notice requirement as a protection in cases in which headquarters agreements without denunciation clauses are denounced pursuant to Article 56 of the draft articles on treaties between States and international organizations or between international organizations. It is reasonable to assume that a country or international organization normally would not deliberately conclude an agreement that left both of them vulnerable to removal of an office without notice or other protection and that, when the WHO and Egypt included the notice requirement in the Host Agreement, they meant it to apply to removal of the Regional Office.

It is also worth noting that the parties to the WHO-Egypt Agreement probably would have been even less likely than most to allow the Regional Office to be suddenly removed or expelled from the host State. The Alexandria Sanitary Bureau is one of the oldest "international organizations" in the world. Under various names and authorities, it has performed international functions with respect to health since 1831, and was recognized as an international authority in 1852 in the first international sanitary convention [1]. Among its functions has always been the important task of preventing the spread of epidemics among and by travellers making pilgrimages to Mecca [2]. It is difficult to believe that the parties to the Host Agreement intended that the work of this venerable institution could be disrupted at will.

D. The History of the Host Agreement Confirms that the Parties Intended that Section 37 apply to the Removal of the Regional Office from Egypt

As already noted, Section 37 of the Host Agreement is modelled on language originally employed in the Headquarters Agreement of 1946 between Switzerland and the International Labour Organisation and subsequently reproduced in the Swiss-WHO Headquarters Agreement of 1949. While the WHO, as the Organization requesting the Court's advisory opinion, has provided the Court with the relevant historical data it has found concerning its headquarters agreement with Switzerland, the ILO has not been requested by the Court to provide any documentation in its possession concerning the preparation and approval of its headquarters agreement. The United States believes that the intention of the

---

[1] International Sanitary Convention, signed 3 February 1852, *Consolidated Treaty Series* (Parry), Vol. 107, Arts. 74-75, p. 345.

[2] For more detailed history of the Alexandria office, see generally N. Goodman, *International Health Organizations, and Their Work*, pp. 234-237 (1952) ; Vetta, "Droit sanitaire international", *Recueil des cours*, Vol. 33, pp. 545, 585-588 (1930) ; Stampar, *op. cit.* ; Memorandum of the Egyptian Minister of Public Health, "The Pan Arab Regional Health Bureau : Its Origin and History", WHO, *Official Records*, No. 6, p. 173 (1947).

parties to the latter agreement could only have been to require notice before removal of the ILO's headquarters from Switzerland. Since the notice provision in that agreement is identical to, and was the model for, that in the WHO-Egypt Host Agreement, any documentation concerning its meaning would be highly relevant to the issues before the Court. Accordingly, the United States requests the Court to invite the ILO to place before it any documentation it possesses bearing on the negotiation of the notice provision of the ILO-Swiss Agreement [1], particularly as it may relate to possible removal of the ILO's headquarters from Switzerland.

When Switzerland and the Interim Commission of the WHO used the Swiss-ILO Agreement as the model for negotiating the WHO's Headquarters Agreement with Switzerland, the Interim Commission was concerned that the conclusion of such an agreement should not prejudice the right of the permanent governing body of the WHO, once created, to locate its permanent headquarters outside Switzerland [2]. This concern was, according to the WHO Working Group on the transfer of the Regional Office for the Eastern Mediterranean, based on the perception that, pursuant to such an agreement, "the Organization might become contractually bound vis-à-vis the host country to maintain its offices there until proper termination of the Agreement [3]". Apparently in order to allay this concern, Switzerland assured the Interim Commission that, for the life of the Commission, Switzerland would "continue the application of the Agreement . . . even though the seat of the Organization is established outside Switzerland [4]". The fact that this assurance was required indicates that the WHO recognized at an early date that the language of the termination article, in the absence of the assurance, would require notice and a transition period when the headquarters was moved.

When the Interim Commission went out of existence, the Swiss assurance expired according to its own terms [5]. The WHO, however, made no attempt to renegotiate its agreement with Switzerland to obtain a renewal of that assurance, nor did it attempt to include any such assurance in any of the subsequent host agreements it negotiated. In spite of the fact that many headquarters agreements existed on which the WHO could have modelled a provision to allow unilateral removal of the Office without a two-year notice period, the WHO chose to retain, and repeatedly to employ, the language it had treated as meaning that an office could be removed only by proper termination of the Host Agreement.

This Court has declared :

> "Interpretations placed upon legal instruments by the parties to them, though not conclusive as to their meaning, have considerable probative value when they contain recognition by a party of its own obligations under an instrument." (*International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, pp. 135-136 [6].)

---

[1] *Infra*, p. 325.

[2] See, e.g., Statement of US Representative to Interim Commission, WHO/IC/Min.3/2, 31 March 1947.

[3] Interim report, EMR/EBWG/2, p. 8.

[4] Report of the Temporary Panel of Legal Consultants on Privileges and Immunities, WHO, IC/71, Rev.1, p. 3, paras. 4 and 8 ; see also Interim report, *ibid.*, p. 7.

[5] See Report of the Temporary Panel of Legal Consultants on Privileges and Immunities, *op. cit.*

[6] This is as true for international organizations as for other parties to international legal instruments. See E. Lauterpacht, *op. cit.*, pp. 447-464.

That maxim applies here. The WHO, because it was concerned that its Headquarters Agreement with Switzerland might require proper termination before removal of an office, requested an assurance that removal of the headquarters without notice would not be taken as a ground for terminating the treaty. When that assurance clearly expired, the WHO, by continuing to use the same precise language without obtaining renewed assurances, indicated that it had recognized, "its own obligations under an instrument", that is, it recognized that it would give two years' notice in the event of a future decision to move the office.

There is, to the knowledge of the United States, no evidence whatever to suggest that, in negotiations with any of the regional host States, the issue of removal of the regional office was ever raised by the negotiating parties. In accepting the denunciation clause, the parties appear to have routinely relied on the model host agreement. This is certainly true of Egypt, which made only a few changes in the draft Host Agreement, and appears not to have questioned the language of Section 37 [1]. The host States, by accepting the language of Section 37, without analysis or debate, were relying on the terms and equitable import of the model host agreement, and on the good faith of its author, the WHO. The WHO should not now be free to change its interpretation of the Host Agreement to the prejudice of the host States that accepted its terms in the circumstances which have just been described.

II. Section 37 Imposes Legal Responsibilities on the Parties during any Two-Year Notice Period

A. The Agreement Remains fully in Force during the Two-Year Notice Period

If either the WHO or Egypt were to give notice of denunciation pursuant to Section 37, the Agreement, pursuant to its terms, would remain fully in force during the two-year period between notice and termination. In accordance with the principle of *pacta sunt servanda*, both parties would be bound by the Agreement and would be required to perform it in good faith. The analysis of the responsibilities of the parties during the two-year period must begin with these propositions.

As the predicate for a discussion in Sections B and C below of the content of the obligations of the parties during the two-year period, this Section addresses arguments that might be put forth to defeat the conclusion that the Agreement remains fully in force.

In the view of the United States, neither party could invoke the doctrine of fundamental change of circumstances to avoid its responsibilities during the two-year period. The accepted law of this doctrine is enunciated by Article 62 of the Vienna Convention on the Law of Treaties, which reads in pertinent part :

> "A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless :

[1] See Contentieux of the Departments of Foreign Affairs and State of Egypt *[p. 53, supra]* ; see also letter of 23 March 1950 from Waleed Ra'fat, State Adviser to the Director of the WHO's Regional Office in Alexandria *[see pp. 171-172, supra]*.

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty ; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty."

As this Court has recognized, Article 62 "may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances". *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Jurisdiction of the Court, Judgment, I. C. J. Reports 1973,* p. 18 [1].

The work of the International Law Commission and the Vienna Conference on the Law of Treaties establishes that the doctrine of fundamental change of circumstances generally has no application where the treaty in question contains a provision for negotiation and termination on two years' notice. Judge (then Professor) Gros made this point during the Commission's discussions of the draft that became Article 62 :

> "Most treaties contained either a revision clause or a denunciation clause, so that they did not raise the problem of *rebus sic stantibus,* a doctrine which had formerly been justified by the non-existence of an organized international society and by the defectiveness of the technique by which treaties were concluded . . . [The doctrine] was useful as a residuary rule in the case of treaties having no revision or denunciation clause . . . [2]"

The Commission's report on the Article stated that "for obvious reasons" the rule "would seldom or never have relevance for treaties of limited duration or which are terminable upon notice [3]". The delegates to the Vienna Conference also recognized that the article under discussion would not operate to defeat treaty provisions providing by their terms for mechanisms for dealing with changing circumstances. As the Australian delegate noted, "it was highly desirable that [Article 62] should not prejudice the operation of the provisions for consultation and review which many treaties contained [4]". Thus, the Agreement's negotiation and notice provisions supplant the justification for the fundamental change of circumstances doctrine and preclude its applicability to the present case.

Moreover, even if the doctrine were considered to have some residual usefulness with respect to treaties containing such provisions, the conditions established by Article 62 for invocation of the doctrine have not been and cannot be met in the present case. Article 62 requires that the alleged fundamental change

---

[1] The Convention which entered into force 27 January 1980, applies by its terms (Art. 2 *(a)*) to agreements between States and not to agreements between a State and an international organization. However, in many of its provisions (including this one), the Convention generally expresses customary international law. Art. 62 of the International Law Commission's draft articles on treaties concluded between States and international organizations or between international organizations is essentially in accord with Art. 62 of the Vienna Convention.

[2] I *Yearbook of the International Law Commission 1963,* p. 153.

[3] II *Yearbook of the International Law Commission 1966,* p. 259.

[4] Vienna Conference on the Law of Treaties, *Summ. Rec.,* A/CONF/39/11, p. 373. The ILC's draft articles on treaties between States and international organizations or between international organizations, and the commentary thereto, are wholly in accord. See A/CN4/L.314/Add.1, pp. 5-11.

of circumstances be one "which was not foreseen by the parties". The parties to the Host Agreement not only foresaw the possibility of circumstances indicating the desirability of a change in location of the EMRO, but also provided for that and other contingencies by including Section 37 in the Agreement [1]. As the discussion in Part I above demonstrates, a principal purpose of Section 37 was to establish the procedures to be followed in the event either party wished the office to be removed from Egypt.

Article 62 also requires that the change in circumstances be one the effect of which "is radically to transform the extent of obligations still to be performed under the treaty [2]". Neither party could justifiably claim such a change in the present case. Egypt has never deviated from its willingness to perform all its obligations under the Agreement, and the WHO's obligations thereunder cannot be transformed – let alone "radically transformed" – simply because of changing and possibly evanescent political attitudes among some of its membership, attitudes which are unrelated to the achievement of the WHO's constitutional objectives. In short, if the WHO wishes to alter the legal régime that has governed the parties' relations since 1951, it must do so by following the procedures established by the Agreement itself.

Another argument that might be raised in an attempt to defeat the effectiveness of the Agreement during the two-year period is that the severance of diplomatic relations between Egypt and a number of member States of the WHO somehow relieves the Organization of its treaty responsibilities. The United States submits that the severance of these relations can have no effect on the legal relations between Egypt and the Organization itself. It is now established customary international law, as reflected in Article 63 of the Vienna Convention, that severance of diplomatic relations does not affect treaty relations "except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty". In this case, the host State remains entirely willing to continue to extend full facilities for the Regional Office and for all members of the Regional Committee. Any State that has severed diplomatic relations with Egypt is perfectly free to send health delegations to Alexandria without prejudice to its position on diplomatic relations. The absence of diplomatic relations between some States and the host government may make some day-to-day dealings more cumbersome, but it can hardly be said that the existence of diplomatic relations is "indispensable" to the on-going functioning of the Organization in the territory of the host.

---

[1] The Australian delegate to the Vienna Conference described the relationship between Article 62 and negotiation and notice provisions in these terms: "It was common practice to include in treaties intended to operate for long periods a provision for consultation or review at regular intervals or at the request of either party. In practice, those provisions greatly facilitated relations between the States concerned . . . Perhaps an indirect allusion to [such provisions] could be seen in the statement in paragraph 1 that the fundamental change of circumstances invoked must be one which had not been foreseen by the parties at the time of the conclusion of the treaty." A/CONF.39/11, p. 373.

[2] In *Fisheries Jurisdiction (United Kingdom v. Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, p. 21, the Court described such a change as one that has

> "increased the burden of the obligations to be executed to the extent of rendering the performance something essentially different from that originally undertaken".

To the contrary, it has and will often be the case that the government acting as host to an international organization will not have diplomatic relations with some of the members of the organization, but this fact in no measure affects the vitality of its headquarters agreements. For example, it is common for delegations of member States of the United Nations that do not enjoy diplomatic relations with the United States to take part in United Nations meetings at its New York headquarters. They do not thereby prejudice their position on diplomatic relations or affect the legal régime applicable to the headquarters.

A third argument that might be raised against the continuing effectiveness of the Host Agreement during the two-year period is supervening impossibility of performance. Under Article 61 of the Vienna Convention (and Article 61 of the draft articles on treaties concluded between States and international organizations or between international organizations), a party

> "may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty."

In the present case, the object of the Host Agreement, the EMRO office in Alexandria and its facilities, has not disappeared. Egypt remains a member of WHO and of its Eastern Mediterranean Regional Organization, ready and willing to continue to perform its obligations to the WHO and to the members of the EMRO under the WHO Constitution and the Host Agreement. The Office itself, fully staffed and equipped, continues to function in Alexandria. The fact that some States in the region may be unwilling to take part in regional committee meetings in Alexandria does not bring about the disappearance of an object "indispensable" to the application of the treaty. At most, it creates a political situation that might (but need not) prompt the orderly removal of the Office contemplated by the parties and provided for in Section 37 of the Host Agreement.

Accordingly, unless the Agreement is terminated at an earlier date by consent of the parties, it will remain fully in force until the expiration of the two-year period [1].

---

[1] This conclusion conforms with Article 54 of the Vienna Convention, which reads :

> "The termination of a treaty or the withdrawal of a party may take place :
>
> *(a)* in conformity with the provisions of the treaty ; or
> *(b)* at any time by consent of all the parties after consultation with the other contracting States."

The International Law Commission found it unnecessary to include in its final draft of this article a provision that would have read : "When a party has denounced a bilateral treaty in conformity with the terms of the treaty, the treaty terminates on the date when the denunciation takes effect." See II *Yearbook of the International Law Commission 1963*, p. 199. Most governments commenting on this provision of the earlier draft thought it was self-evident that the treaty would remain in force until termination took effect. Thus this language was deleted. II *Yearbook of the International Law Commission 1966*, p. 25.

B. During the Two-Year Period the Parties Are Bound by the Agreement and Must Perform It in Good Faith

The principle of *pacta sunt servanda* naturally governs the conduct of the parties as long as the Agreement remains in force. This principle is reflected in Article 26 of the Vienna Convention, which reads : "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." The principle has also been repeatedly reaffirmed by the decisions of this Court and its predecessor [1].

In the present case, the rule of *pacta sunt servanda* entails, first of all, an obligation to give effect to all the provisions of the Agreement according to its terms. Thus, for example, if notice of termination were given by either party, Egypt would be bound to afford to the Organization all the privileges, immunities and facilities specified in the Agreement, and the Organization for its part would be equally bound to comply with all of its specified obligations, up through the date termination became effective [2].

Equally importantly for present purposes, if notice were given, both parties would be obliged to refrain from acts that would defeat the object and purpose of the Agreement for so long as it remained in force [3]. This obligation is another manifestation of the principle of good faith, which is the cornerstone of the *pacta sunt servanda* rule. The International Law Commission, in its discussion of *pacta sunt servanda*, relied heavily on the jurisprudence of this Court in support of the principle that the obligation to act in good faith "must not be evaded by a merely literal application" of treaty clauses [4].

As the discussion in Part I above demonstrates, the object and purpose of the Agreement is to provide for the maintenance under appropriate conditions of the Regional Office in Egypt. Thus, during any notice period both parties would be obliged to continue to accord to the Office in Alexandria the status of the seat of the Organization in the Eastern Mediterranean. Any actions taken by either party concerning the Organization's arrangements during the two-year period must be consistent with this view. Egypt may not eject the Office from its territory, and the Organization may not suddenly remove it, unless both parties consent to the change. Contrary actions would defeat the Agreement's purpose in violation of the principle of good faith.

C. The Parties Must Negotiate during the Two-Year Period for an Orderly Transition to a New Legal Régime

The responsibilities discussed in Section II-B arise out of general principles of international law and came into being at the beginning of the relationship between the parties. Upon the giving of notice by either party to the Agreement, a

---

[1] *Rights of Nationals of the United States of America in Morocco, Judgment, I.C.J. Reports 1952*, p. 212 ; *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44*, p. 28 ; *Minority Schools in Albania, Advisory Opinion, 1935, P.C.I.J., Series A/B, No. 64*, pp. 19-20.

[2] Compare Art. 18 of the Vienna Convention, which reflects a comparable obligation during the period prior to entry into force of a treaty.

[3] The WHO's obligations are reflected in several sections of the Agreement, including Sections 26, 31, 32, 33 and 34.

[4] II *Yearbook of the International Law Commission 1966*, p. 211.

more particularized set of responsibilities would also come into being. These additional responsibilities would stem from the need to ensure an orderly transition to a new legal régime. The giving of notice would reflect the fact that a one-year period of negotiations between the parties had not resulted in a mutually satisfactory understanding on modification of the Agreement, but the giving of notice would not signify the end of negotiations. Rather, it would add special importance and urgency to the negotiation process.

Assuming that a notice of termination was not to be withdrawn, many problems would need to be resolved during the two-year period. On the one hand, the Organization would wish to ensure appropriate protection of any interests it might have in Egypt after the end of the two-year period. For example, it would need to preserve its records and continue its programme until a new office could be established. On the other hand, Egypt would wish to ensure that the disestablishment of the Office and the withdrawal or discharge of its staff did not unduly disrupt the community in which the Office and its predecessors have been functioning for some 150 years. Transition arrangements could include transfer of property interests to new holders, mechanisms for the settling of outstanding financial accounts, provisions for relocating displaced employees, and co-operation in minimizing disruption of important regional programmes.

The drafters of the Agreement included the negotiation and notice provisions of Section 37 precisely to ensure time for negotiating and implementing of transition arrangements. The duty to negotiate reflected in Section 37 is a specific manifestation of the general obligation under international law to negotiate in good faith to resolve problems arising out of changing relationships. *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, pp. 201-203. The task before the parties would be to conduct their negotiations on the basis that each must in good faith pay reasonable regard to the legal rights of the other, to the facts of the particular situation, and to the interests of other States.

CONCLUSIONS

I. The provisions of the Host Agreement – interpreted in good faith in light of the object and purpose of the Agreement, the practical interests of the parties, international practice, and the history of the Host Agreement – indicate that the parties intended that the EMRO be located in Egypt and maintained there for the life of the Agreement. Therefore, it would be a breach of the Agreement to remove the Office except by proper termination of the Agreement pursuant to its termination clause. Accordingly, the United States respectfully suggests that the Court answer the first question posed to it in the affirmative.

II. If either Egypt or the WHO should give notice of denunciation, the Host Agreement would remain in force for the two-year period between denunciation and termination. In such a situation, the rule of *pacta sunt servanda* would require that the obligations imposed by the Agreement be honoured in good faith during the notice period. These obligations would be to keep the existing legal régime in existence until termination of the Agreement, and to provide for an orderly closing of the Regional Office. Accordingly, the United States respectfully suggests that the Court declare that, if either party were to denounce the Host Agreement, the parties would have the following legal responsibilities during the two-year period between denunciation and termination :

A. Egypt would be required to provide the EMRO with the agreed-upon facilities, privileges, immunities, and other benefits of the Host Agreement ;

B. The WHO would be required to accord to the EMRO the status of the seat of the Organization in the Eastern Mediterranean, and to continue to perform its other obligations under the Host Agreement ; and

C. Both the WHO and Egypt would be required to co-operate, in good faith, in the gradual disestablishment of the Regional Office over the two-year period.

EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA RÉPUBLIQUE ARABE SYRIENNE [1]

Damas, le 23 août 1980.

Ayant pris note de l'ordonnance du 6 juin 1980 relative au délai fixé pour présenter des exposés écrits sur l'*Interprétation de l'accord du 25 mars 1951 entre l'OMS et l'Egypte* en ce qui concerne le transfert du Bureau régional de la Méditerranée orientale à Alexandrie, ainsi que de la décision de l'Assemblée mondiale de la Santé de demander l'avis consultatif de la Cour internationale de Justice sur les questions suivantes :

« 1. Les clauses de négociation et de préavis énoncées dans la section 37 de l'accord du 25 mars 1951 entre l'Organisation mondiale de la Santé et l'Egypte sont-elles applicables au cas où l'une ou l'autre partie à l'accord souhaite que le Bureau régional soit transféré hors du territoire égyptien ?

2. Dans l'affirmative, quelles seraient les responsabilités juridiques tant de l'Organisation mondiale de la Santé que de l'Egypte en ce qui concerne le Bureau régional à Alexandrie, au cours des deux ans séparant la date de dénonciation de l'accord et la date où celui-ci deviendrait caduc ? »

Le Gouvernement de la République arabe syrienne, conformément à l'article 66, paragraphe 2, du Statut de la Cour, présente les observations écrites suivantes sur la question, se réservant le droit d'en avancer d'autres, au cours de la phase orale qui pourrait avoir lieu à une date ultérieure :

1. La situation de plus en plus tendue et troublée qui sévit dans la région de la Méditerranée orientale et qui a rendu nécessaire le transfert du Bureau régional trouve sa cause dans les accords signés aux Etats-Unis d'Amérique, à Camp David le 17 septembre 1978. Ces accords ont, en effet, empêché la région de parvenir à une paix globale et véritable, réclamée par les Etats arabes et admise enfin aujourd'hui par la communauté internationale tout entière (voir, par exemple, résolution n° 7/2 du 29 juillet 1980, septième session extraordinaire de l'Assemblée générale de l'ONU). Ils ont aussi encouragé Israël à continuer d'occuper les territoires arabes, de méconnaître les droits nationaux arabes et de recourir à ses pratiques agressives et expansionnistes dans la région. Ces accords ont, en outre, écarté l'Egypte du rang des pays arabes, en emmenant le Gouvernement égyptien, sur le territoire duquel se trouve le siège actuel du Bureau régional de la Méditerranée orientale, à conclure, au défi de tous les autres Etats arabes, un traité de paix avec Israël et à continuer progressivement de normaliser ses relations avec lui dans tous les domaines.

Comment dans ces conditions, et alors que les Etats arabes ont rompu leurs relations avec le Gouvernement égyptien, le Bureau régional pourra-t-il fonctionner normalement et mener à bien ses activités qui, du fait même de son mandat, s'étendent à tous les pays arabes de la Méditerranée orientale.

Comment, alors que l'état de belligérance persiste entre les Etats arabes et

[1] Parvenu au Greffe le 3 septembre 1980. *[Note du Greffe.]*

Israël et tandis que le Gouvernement égyptien traite directement avec ce dernier, un esprit de collaboration confiante et une atmosphère de sécurité certaine peuvent-ils régner au sein du Bureau régional à Alexandrie ? N'est-ce pas d'ailleurs dans ce souci de sécurité que le Gouvernement égyptien, à l'époque de la signature de l'accord du 25 mars 1951, a jugé nécessaire et à bon droit d'introduire cette garantie de securité dans l'article X de l'accord, comme dans des accords similaires conclus avec d'autres organisations internationales ?

2. La demande de transfert du Bureau régional par les pays concernés à un autre pays de la région est donc, à la lueur de ces faits concrets, compréhensible et justifiée. La décision à prendre appartient de droit et entièrement à l'Assemblée mondiale de la Santé. Cette décision est fondée sur la Constitution de l'OMS, notamment sur son article 44. L'Assemblée cependant se doit de connaître l'opinion des pays de la région directement concernés, conformément aux principes mêmes de la Constitution : les pays arabes ont fait connaître la leur, en demandant le transfert, à la suite d'un sommet que les chefs d'Etat arabes ont tenu en novembre 1978. Les pays non arabes de la région ont exprimé le même désir par la voie de l'organisme régional compétent. C'est, en effet, le sous-comité A du Comité régional qui, lors de sa session extraordinaire tenue le 9 mai 1980 à Genève, a recommandé à l'Assemblée mondiale de la Santé, et à la quasi-unanimité de ses membres (19 voix contre 1, celle de l'Egypte) : « le transfert du Bureau régional de la Méditerranée orientale à Amman, en Jordanie ». Ce même organisme a aussi indiqué à l'attention de l'Assemblée :

> « que le coût total du transfert du Bureau régional à Amman ainsi que les dépenses accrues de fonctionnement pour une période de cinq ans seront couverts par des contributions volontaires des Etats membres de la région de la Méditerranée orientale » (EM/RC-SSA 2/3).

Enfin un groupe de travail établi par le Conseil exécutif et composé de six éminents experts représentant les six régions géographiques de l'Organisation a signalé les disponibilités adéquates qui s'offrent au transfert du Bureau régional.

3. Toutes les conditions étaient donc réunies pour que l'Assemblée prenne sa décision sans retard, afin de permettre au Bureau de continuer normalement l'accomplissement de ses activités et d'une façon satisfaisante au profit de tous les peuples de la région.

Cependant, l'Assemblée a jugé bon de consulter la Cour internationale de Justice sur l'applicabilité des clauses de négociation et de préavis énoncées dans la section 37 de l'accord du 25 mars 1951, au cas où l'une ou l'autre partie à l'accord souhaite que le Bureau régional soit transféré hors du territoire égyptien ; d'après ces clauses, le délai de négociation est d'un an, celui du préavis de deux ans : au total donc une durée limite de trois années.

Nous estimons de notre part, étant donné qu'aucun des articles dudit accord n'a trait ni à l'établissement du siège du Bureau régional, ni au transfert de ce siège, que les clauses de négociation et de préavis susindiquées s'appliquent, exclusivement, au régime existant entre l'Organisation internationale et le pays hôte. Dans le cas en cause ce régime est réglementé par des dispositions consacrées uniquement aux privilèges, immunités et facilités accordés en Egypte par le Gouvernement égyptien à l'Organisation, aux représentants de ses membres, à ses experts et à ses fonctionnaires.

Bien entendu, pour des raisons d'opportunité et de commodité, et une fois la décision de transfert prise, les dispositions de l'accord du 25 mars 1951 pourront

continuer d'être mises en application jusqu'à une date à convenir entre les deux parties pour son extinction.

4. Notre conclusion est donc la suivante :

- étant donné la situation de plus en plus tendue et troublée qui sévit dans la région,
- tenant compte de la demande exprimée par les pays directement concernés pour le transfert du Bureau régional,
- prenant en considération les disponibilités offertes pour permettre la réalisation de cet objectif,
- vu que les clauses de négociation et de préavis de l'accord du 25 mars 1951 ne sont pas applicables, pour les raisons que nous avons indiquées, à ce transfert,

l'Assemblée mondiale de la Santé peut et doit se décider sur le choix du nouveau siège du Bureau régional, sans donner à l'exercice de sa volonté souveraine en la matière les limites de temps indiquées dans les clauses de négociation et de préavis de l'accord du 25 mars 1951.

L'étude que prépare la Commission du droit international, relative aux traités conclus entre les Etats et des organisations internationales, concorde avec notre point de vue, puisque dans son rapport à l'Assemblée générale de l'ONU, cité au document A33/VR/15, nous lisons :

> « le choix de son siège par une organisation internationale correspond pour elle à l'exercice d'un droit dont il est normal de ne pas immobiliser l'exercice ; d'ailleurs le fonctionnement harmonieux d'un accord de siège suppose entre l'organisation et l'Etat hôte des relations d'une nature particulière dont le maintien ne peut être assuré par la volonté d'une partie seulement ».