natural seabed boundary, the Court opened the door, even before the Convention enters into force, to the consolidated treatment of both areas regarding delimitation.

It would be an anomaly for the economic zone of one state to be superimposed on the continental shelf of another state, but state claims favoring that odd situation have to be noted. In areas up to 200 miles, that anomaly may now be eliminated as the consequence of the interaction of logic, expediency, and judicious interpretation of the new conventional rules. Beyond 200 miles, the continental margin may underlie the high seas.

(2) Feldman states that "[b]y this time, it is beyond dispute that 'equitable principles' form the foundation of the law of maritime boundary delimitation" (p. 228). However, the Judgment "does not identify any equitable principles as such" (p. 229).

As a matter of fact, the Judgment does not specify any equitable principles as a concrete legal basis for the determination of the delimitation line. There are many references in the Judgment to equitable principles, but they are not spelled out. In the *North Sea Continental Shelf* cases, it was unnecessary to specify the equitable principles. The Court did not apply them but advised the parties to take them into account in order to achieve a negotiated and agreed delimitation. In the *Libya-Tunisia* case, the Court itself determined the dividing line of the continental shelf by applying equitable principles. As Feldman states, the general rule that the delimitation "is to be effected in accordance with equitable principles, and taking account of all relevant circumstances," is "too general in itself to provide much guidance for future cases" (p. 238).

It may be expected that in future cases the Court will wish to specify the equitable principles it applies to the delimitation of the continental shelf and the economic zone. Otherwise, as several scholars and the dissenting members of the Court in the *Libya-Tunisia* case fear, the Court may increasingly make decisions *ex aequo et bono* in this undefined area of general rules of law. The subtitle of Feldman's article is meaningful: *Geographic Justice or Political Compromise?*

REYNALDO GALINDO POHL

TO THE EDITORS-IN-CHIEF:

July 12, 1983

Ebere Osieke's article, *The Legal Validity of Ultra Vires Decisions of International Organizations* (77 AJIL 239 (1983)), discusses the interesting and troublesome question of the right of member states to reject decisions of international organizations when they regard the decisions as *ultra vires.* He concludes that there is no consensus recognizing such a right, and that it therefore cannot be regarded as a generally accepted principle of international law or of the law and practice of international organizations.

Osieke's article is a most valuable contribution. I agree that there is no broad right of rejection or of auto-interpretation exercisable by member states whenever they think an organization's act is *ultra vires.* I think, though, that there may be a right of rejection or of auto-interpretation in narrowly defined circumstances.

As Osieke has noted, the problem arises primarily when an organization makes a decision that purports to bind the member states. The decision is not properly subject to rejection or auto-interpretation by member states, even if it is made by a political organ and is not reviewable by any other body within the organization, when it (1) is made by an organ that clearly has authority to make a determination regarding matters of the kind in question; (2) may plausibly be said to be taken for a recognized purpose of the organization; *and* (3) is not contrary to a manifest restriction or prohibition in the organization's constituent instrument or established practice.

If condition (1) is not met, that is, if the organ does not have clear authority to make determinations in the field in question, the *Expenses* case seems to say that the determination may nevertheless bind members if it purports to do so. Some passages in the *Namibia* Advisory Opinion might be read to say the same thing. But the Court's reasoning on this point in the *Expenses* case seemed to confuse the internal and external effects of the *ultra vires* doctrine. Moreover, the subsequent failure of the organization effectively to challenge the French and Soviet rejection of the decisions in question suggests that there may be a right of rejection or auto-interpretation when the acting organ does not have clear authority to make a determination in the field in question.

Rarely is there a failure to meet condition (2) or (3). The instances in which such a failure has most arguably occurred are those involving South Africa's suspension or expulsion from specialized agencies of the United Nations. When the World Meteorological Organization suspends, or the Universal Postal Union expels, South Africa for reasons having nothing to do with meteorology or postal communications, it would seem to violate condition (2). Quite arguably, the WMO also violated condition (3), since it has an express provision in its constituent instrument on suspension of members, and its attempt to fit South Africa's suspension into that provision was far-fetched indeed. It is possible that the UPU violated condition (3) as well, since it has no provision in its constituent instrument for expulsion, and long-standing practice in the specialized agencies seemed to preclude expulsion without such a provision.

Members concerned about the lawfulness of international organizations' acts have not acquiesced in the suspension or expulsion of South Africa when condition (2) or (3) has not been met. One can certainly argue from their nonacquiescence, and from the negative inferences that may be drawn from language in the *Expenses* case, that there is a right of rejection or auto-interpretation when either of these conditions is not met.

Let me say finally that recognition of a right of rejection or auto-interpretation in the cases involving South Africa, mentioned above, implies nothing about approval of the South African practices that provoked the WMO and UPU majorities to do what they did. The point has to do strictly with the effect of *ultra vires* acts of organizations on their member states.

FREDERIC L. KIRGIS, JR.
Washington and Lee University School of Law