

## THE UNITED STATES WITHDRAWAL FROM UNESCO\*

U.S. Letters to the Director-General of UNESCO

THE SECRETARY OF STATE

WASHINGTON

December 20, 1984

Dear Mr. Director General:

After serious review of developments during 1984, the United States Government has concluded that its decision to withdraw from membership in the United Nations Educational, Scientific and Cultural Organization will stand. Regrettably, the evidence that could have persuaded us to rescind or modify our original withdrawal notice is not present. As provided in Article II, paragraph 6, of the Constitution, therefore, the United States shall cease to be a member of the Organization at the end of the current calendar year.

With further regard to Article II, paragraph 6, of the Constitution, the financial obligations of the United States owed to the Organization on December 31, 1984, shall be unaffected by withdrawal. In this respect, the United States is unaware of any financial obligation to the Organization not covered by credits due to the United States. Moreover, the credits due to the United States in fact exceed outstanding United States obligations as of December 31, 1984. The precise amount, therefore, to be paid to the United States remains to be determined.

The Honorable

Amadou-Mahtar M'Bow,

Director General of the

United Nations Educational,

Scientific and Cultural Organization,

Paris.

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\*[The documents reproduced in this issue of I.L.M. were obtained from the U.S. Department of State and the Washington Office of UNESCO. The U.S. letter of December 20, 1984, and the follow-up letter of January 10, 1985, concerning the observer mission, begin the documentation. These are followed at I.L.M. page 492 with UNESCO's acknowledgment, stating that the communications would be before the Executive Board at its 4th Special Session, to be held February 12-16, 1985. Agenda item 2 of that Special Session was entitled "Consequences of the Withdrawal of a Member State from UNESCO". The UNESCO Director-General's report on this item appears at I.L.M. page 493. The Executive Board's decision on this item appears at I.L.M. page 528.]

[The U.S. letters of December 29, 1983, concerning withdrawal appear at 23 I.L.M. 218 (1984). The UNESCO letter of January 18, 1984, appears at 23 I.L.M. 224 (1984).]

Following the effective date of United States withdrawal from membership, we intend to maintain an observer mission at the Headquarters of the Organization. The primary purpose of that mission shall be to facilitate such participation in the activities of the Organization as may be appropriate under the procedures and practices of the Organization and its organs, including the General Conference and the Executive Board. In addition, that mission shall serve to represent the United States in connection with any matters ancillary to the United States withdrawal from membership in the Organization, including any residual financial questions, should they arise.

My government will announce its intention to name a reform observation panel of distinguished Americans, the purpose of which will be to assess and report to the Department of State on events and developments within UNESCO. It should serve, also, to facilitate the active cooperation of the United States with member states -- and with the Organization itself as such cooperation may be appropriate -- in order to advance efforts at reform.

You will know from our presentations to you, to the Executive Board, and to other interested parties, just what changes in UNESCO we now deem necessary. We hope that the reform process will continue, even though the changes made in 1984 were insufficient to warrant revision of our prior decision. Sufficient reform in 1984 would have caused a change in our view; sufficient reform in the future could lead us, once again, to join in the important work that ought to be, and once was, UNESCO's pride.

We will, for the benefit of others, and as a contribution to Third World development, continue to make a significant and concrete contribution to international cooperation in education, science, culture, and communications. To advance that cause, we will seek to use other existing methods and work through other existing means. In those efforts, we would welcome any cooperation with UNESCO that you and we find mutually appropriate.

In closing, I would urge you to use your considerable influence to help bring about the reforms and improvements in UNESCO which alone will enable the Organization once again to command the enthusiastic support of its membership.

Sincerely yours,



George P. Shultz

UNITED STATES OF AMERICA  
OBSERVER MISSION AT UNESCO

January 10, 1985

The Honorable Amadou Mahtar M'Bow  
Director-General  
United Nations Educational, Scientific and  
Cultural Organization  
UNESCO House

Dear Mr. Director-General:

The Honorable Gregory J. Newell, Assistant Secretary of State, has requested that I transmit the following message to you:

"Dear Mr. Director-General:

Further to Secretary of State Shultz' letter of December 19 to you, I wish to advise you that we have established an observer mission to maintain liaison with UNESCO and the Member States in Paris. The specific responsibilities of this mission will be those outlined in the Secretary's letter; it will be under the direction of Mr. Richard W. Aherne, formerly Deputy Permanent Representative of the United States to UNESCO.

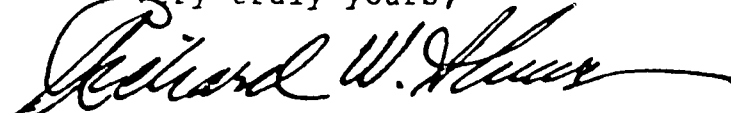
Mr. Aherne and his colleagues will be at your disposition to convey such views, information, or other communications which you may wish at any time to provide to the United States Government, or to me personally. I trust that they will also enjoy such access to UNESCO meetings and other activities as is appropriate for an observer mission representing a Member State of the United Nations. May I also express the wish that they enjoy your full faith and confidence, as they do mine.

Sincerely yours,

Gregory J. Newell"

With the assurances of my highest consideration,

Very truly yours,



Richard W. Aherne  
Minister-Counselor  
United States Observer  
at UNESCO

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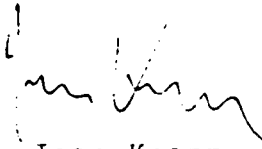
28 JAN. 1985

Dear Sir,

I have the honour to acknowledge receipt of your communication concerning the establishment of an observer mission, which was transmitted to the Director-General through Mr. Richard W. Aherne's letter dated 10 January 1985.

Your communication will be put before the Executive Board at its 4th Special Session which is to be held from 12 to 16 February 1985.

Yours sincerely,



Jean Knapp

The Honourable Gregory J. Newell  
Assistant Secretary of State  
Department of State  
Washington, D.C. 20202  
U.S.A.

UNESCO Director-General's Report on the Consequences of the  
Withdrawal of a Member State\*

United Nations Educational,  
Scientific and Cultural Organization

Executive Board

Fourth Special Session

4 X/EX/2  
PARIS, 28 January 1985  
Original: French

CONSEQUENCES OF THE WITHDRAWAL OF A MEMBER STATE FROM UNESCO:  
REPORT BY THE DIRECTOR-GENERAL

INTRODUCTION

1. This document has been prepared in pursuance of 120 EX/Decision 3.1, section III, paragraph 4, in which the Executive Board, at its 120th session, requested the Director-General:

'to study and report to the members of the Executive Board as soon as possible, and as far as possible, before the 121st session of the Board, on all the likely consequences of the withdrawal of a Member State from Unesco, in the light of precedents, if any, in Unesco as well as other United Nations agencies, to enable the Executive Board to consider, take and suggest to the General Conference, the Member States and their National Commissions, such steps as may be necessary to meet such consequences'.

2. The following matters will be considered in turn in this document:
- I. Constitutional provisions relating to withdrawal and precedents;
  - II. The withdrawal of a Member State and the various organs of Unesco;
  - III. Possible relations between the Organization and States withdrawing;
  - IV. Impact of withdrawal on the activities of the Organization;
  - V. Budgetary and financial consequences of withdrawal.

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\*[Reproduced from UNESCO Document 4 X/EX/2 of January 28, 1985. The corrigenda of February 1, 1985, and February 5, 1985, have been incorporated in the text. The letters annexed to this document have been reproduced at I.L.M. pages 489-492.]

## I. CONSTITUTIONAL PROVISIONS RELATING TO WITHDRAWAL AND PRECEDENTS

## A. CONSTITUTIONAL PROVISIONS

3. The Constitution of Unesco did not originally contain any provision for the withdrawal of a member. The same was and still is the case with the United Nations Charter, to which the Constitution of Unesco refers in assigning to the Organization the objectives of international peace and of the common welfare of mankind which the Charter proclaims. Those who drafted the United Nations Charter took the view that it should not make express provision either to permit or to prohibit withdrawal from the Organization. They deemed that 'the highest duty of the nations which will become members is to continue their co-operation within the Organization for the preservation of international peace and security. If, however, a member because of exceptional circumstances feels constrained to withdraw, and leave the burden of maintaining international peace and security on the other members, it is not the purpose of the Organization to compel that member to continue its co-operation in the Organization'.<sup>(1)</sup>

4. Similar considerations apparently prompted the decision by the Conference of Allied Ministers of Education, held in London in 1945 with a view to the establishment of Unesco, not to include in the Constitution a provision concerning the withdrawal of members.

5. Following decisions to withdraw notified to Unesco by Poland, Hungary and Czechoslovakia, the General Conference, meeting in July 1953 in extraordinary session, while 'hoping that Unesco will continue to adhere to the principle of universality of membership', requested the Director-General and the Executive Board 'to consider the matter of withdrawals from the Organization and if appropriate, draft amendments to the Constitution to provide for such withdrawals'.

6. In March 1954, the Executive Board, having before it the study prepared by the Director-General, noted that in accordance with the Constitution no draft amendment to the Constitution could be adopted by the General Conference unless the text had been communicated to Member States at least six months in advance of the session.

7. The Board therefore requested the Director-General to prepare and circulate to Member States within the regulation period alternative draft amendments on the subject, to enable the General Conference to adopt them if it saw fit.

8. In July 1954 the Board considered the draft amendments prepared by the Director-General in accordance with the directives he had been given. Learning that the United Nations was going to examine its Charter with a view to its possible revision, the Board recommended that the General Conference defer consideration of the matter to its ninth session (1956) in order to be able to take account of the attitude that might be adopted by the United Nations regarding withdrawal.

9. However, at the eighth session of the General Conference, held in Montevideo from 12 November to 10 December 1954, a number of delegations - Japan, South Africa, Belgium, the United Kingdom, India and the United States of America - opposed postponement of consideration of the matter.

10. The General Conference then decided, on the proposal of Australia, to amend the Constitution by adding a new paragraph 6 to Article II, worded as follows:

(1) Decision of the San Francisco Conference meeting in plenary session on the report of its Committee 1/2. Cf. UNCIO documents.

'6. Any Member State or Associate Member of the Organization may withdraw from the Organization by notice addressed to the Director-General. Such notice shall take effect on 31 December of the year following that during which the notice was given. No such withdrawal shall affect the financial obligations owed to the Organization on the date the withdrawal takes effect. Notice of withdrawal by an Associate Member shall be given on its behalf by the Member State or other authority having responsibility for its international relations'.

11. This provision has not been modified since and thus remains in force today.

## B. PRECEDENTS

### (a) Withdrawal of Poland, Hungary and Czechoslovakia (December 1952-January 1953)

12. Even before the eighth session of the General Conference and the introduction into the Constitution of a clause providing for withdrawal, three Member States of Unesco - Poland, Hungary and Czechoslovakia - took the decision to withdraw from the Organization.

13. On 5 December 1952, the Charge d'Affaires ad interim of Poland in France informed the Acting Director-General by letter of the decision to withdraw taken by his government. In this letter, Unesco was accused inter alia of having 'begun to become a docile instrument of the cold war'.

14. On 31 December 1952, the Minister of Foreign Affairs of Hungary, and on 29 January 1953, the Ambassador of Czechoslovakia, also informed the Acting Director-General of the decision taken by their respective governments to withdraw from the Organization for reasons similar to those given above.

15. The communication of the Polish Government was sent to the Director-General while the seventh session of the General Conference was being held (November-December 1952) and the Acting Director-General was thus able to submit it direct to the Conference.

16. After considering this communication, the General Conference adopted resolution 7 C/O.13, which reads as follows:

#### 'Communication from the Government of Poland

The General Conference,

Having taken note of the communication addressed to the Director-General by the Charge d'Affaires ad interim of the People's Republic of Poland in France, announcing, on the orders of his government, Poland's decision to withdraw from the Organization;

1. Declares that the allegations contained in the aforesaid communication are completely unfounded; and

Considering that the Organization was set up to ensure the co-operation of all the nations of the world in the field of education, science and culture;



Considering that the Member States of Unesco have, in consequence, recognized the universal character of the purposes and functions of the Organization, which has always faithfully observed the principle of universality in all its activities;

2. Invites the Government of the People's Republic of Poland to reconsider its decision, and to resume its full collaboration in the Organization's activities.

Twenty-fifth plenary meeting  
11 December 1952.'

17. The communications from the Governments of Hungary and Czechoslovakia were submitted by the Director-General to the Executive Board at its 33rd session, which took place from 8 to 18 April 1953.

18. The Board decided to include the question on the provisional agenda of the second extraordinary session of the General Conference, recommending 'that it adopt regarding these communications a position similar to that already taken at the seventh session on the communication received from Poland (cf. 7 C/Resolutions, 0.13), refuting the allegations contained in the communications and inviting the governments concerned to reconsider their decision;'

19. Resolutions 9.1 and 9.3 adopted by the General Conference at its second extraordinary session (July 1953) reflected in all respects the recommendations of the Executive Board.

20. Poland, Hungary and Czechoslovakia rejoined Unesco in 1954.

(b) Withdrawal of South Africa (1955)

21. On 5 April 1955, the Ambassador of the Union of South Africa in Paris addressed a communication to the Director-General informing him of the decision of his government to withdraw from the Organization as of 31 December 1956. This decision, according to the South African authorities, was motivated by 'the interference in South Africa's racial problems by means of Unesco publications'.

22. This communication was submitted by the Director-General to the Executive Board at its 42nd session (November 1955), and the Board adopted a decision in which it:

'Declares that, in the matter of race problems, as in all other spheres, the planning and conduct of Unesco's activities, as decided on by the General Conference, have never violated Article I, paragraph 3, of the Constitution, which prohibits the Organization from intervening in matters which are essentially within the domestic jurisdiction of the Member States;

Deeply regrets the decision of the Government of the Union of South Africa;

Urgently appeals to the Government of the Union of South Africa to reconsider its decision before it takes effect'.

23. South Africa ceased to be a member of Unesco on 31 December 1956 and has maintained no relations with the Organization since that time.

(c) Notice of withdrawal of Indonesia (1965)

24. On 12 February 1965, the Minister of Foreign Affairs of Indonesia notified the Director-General of the decision of his government to withdraw from the Organiz-



ation. A similar decision of withdrawal from the United Nations and FAO had also been taken by the Indonesian Government. The reason for these decisions was the founding of the State of Malaysia and its election to the United Nations Security Council.

25. On 30 July 1966, the Indonesian Government addressed a letter to the Director-General 'superseding the notice of withdrawal of 12 February 1965 which [had] not yet taken effect'.

(d) Withdrawal of Portugal (1971)

26. On 18 June 1971, the Minister for Foreign Affairs of Portugal notified the Director-General of the decision of his government to withdraw from the Organization.

27. The grounds for this decision were said to be that 'in recent years ... the Organization has deviated from its statutory purposes and taken a number of political decisions [which] were not only outside its terms of reference but were juridically forbidden to it. This decision was connected with the resolutions adopted by the General Conference concerning the Portuguese colonies (Angola, Cape Verde, Guinea-Bissau, Mozambique, Principe and Sao Tome).

28. Portugal resumed its place in Unesco on 11 September 1974.

29. These different States which withdrew from Unesco or regarded themselves as no longer members of Unesco did not maintain relations with the Organization and were not represented in it in any way until they returned to the Organization and fully resumed their activities as Member States.

(e) Withdrawal of the United States of America

30. On 28 December 1983, Mr Schultz, Secretary of State of the United States of America, addressed a letter to the Director-General in accordance with the provisions of Article II, paragraph 6, of the Constitution, notifying him of the withdrawal of the United States of America from the Organization. (The text of this letter was reproduced as an annex to document 119 EX/14.) The United States withdrawal took effect on 31 December 1984. In this connection, Mr Schultz addressed a communication to the Director-General on 20 December 1984, which the latter received on 4 January 1985 and the text of which is reproduced in Annex I to the present document.

II. CONSTITUTIONS OF THE OTHER SPECIALIZED AGENCIES

11. The Constitutions of the agencies listed below contain provisions concerning the withdrawal of Member States:

International Labour Organisation (ILO);

Food and Agriculture Organization (FAO);

International Telecommunication Union (ITU);

Universal Postal Union (UPU);

International Civil Aviation Organization (ICAO);

World Meteorological Organization (WMO);

Work Bank, and

International Monetary Fund.

32. On the other hand, there is no clause in the Constitution of the World Health Organization (WHO) which relates to the withdrawal of a Member State. It should be noted, however, that the resolution of the Congress of the United States of America, quoted in the instrument of ratification which the United States deposited on becoming a member of the World Health Organization, contains a provision which expressly reserves its right to withdraw, one year after giving notice, in view of the absence of any withdrawal clause in the Constitution. Several States have given notice of their decision to withdraw from WHO, including the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic, Bulgaria and Albania (1949-1950). They subsequently resumed their place within WHO.

33. The withdrawal of these Member States was not considered as effective by the World Health Assembly, which repeatedly invited them to take part in the activities of the Organization. In May 1956, therefore, to assist them to resume their participation, and given the absence of constitutional provisions or regulations concerning withdrawal and, consequently, the financial obligations of a State giving notice of withdrawal, the World Health Assembly took the following decisions:

'The Ninth World Health Assembly,

Having studied the recommendations of the Executive Board in resolution EB17, R27,

Desiring to find ways and means of enabling those members who have not been actively participating in the work of the Organization rapidly to resume the exercise of their rights and to fulfil their obligations,

Considering the provisions of the Constitution governing the financial obligations of members, together with the provisions of the Financial Regulations,

Having considered the principles and policies which should apply to the settlement of the arrears of contributions of those members,

Considering that, during the period in which those members were not actively participating in the work of the Organization the members who were actively participating carried the financial burden of the Organization, bore the cost of acquiring assets which now belong to the Organization, and of providing to members not actively participating certain services of the Organization,

1. Decides that contributions must be paid in full for the years during which the members participated actively in the work of the Organization (including the year during which the intention of the member concerned no longer to participate in the work of the Organization was communicated to the Organization;
2. Decides that, for those years during which the members did not actively participate in the work of the Organization, a token payment of 5 per cent of the amount assessed each year shall be required which shall, upon payment, be considered as discharging in full the financial obligations of those members for the years concerned;

3. Decides that the payments required under paragraphs 1 and 2 above must be paid in US dollars or Swiss francs; and may be paid in equal annual instalments over a period not exceeding ten years beginning with the year in which active participation is resumed if the members concerned wish to take advantage of this provision of the resolution; and that payment of those annual amounts shall be construed as preventing the application of the provisions of Article 7 of the Constitution;
4. Decides that in accordance with Financial Regulation 5.6, payments made by the members concerned shall be credited first to the Working Capital Fund; and, further,
5. Decides that, notwithstanding the provisions of Financial Regulation 5.6, payments of contributions for the years beginning with that in which the members return to active participation shall be credited to the year concerned;
6. Requests the Director-General, as the token payments established in paragraph 2 above are received, to so adjust the accounts of the Organization as is appropriate under the terms of this resolution in respect of those years;
7. Requests the Director-General to inform the members concerned of these decisions;
8. Expresses the hope that this decision of the Health Assembly will facilitate the resumption by the members concerned of active participation in the work of the Organization.

In May 1957, the tenth session of the World Health Assembly noted with satisfaction that Albania, Bulgaria, Poland, the Ukrainian SSR and the USSR had resumed full participation in the activities of the Organization.

34. At the International Labour Organisation (ILO), the withdrawal of a Member State does not take effect until two years after notification, which should be submitted to the Director-General, and provided that the member which withdraws has fulfilled all its financial obligations (Article 1.5 of the Constitution). The United States of America, which withdrew from the ILO on 6 November 1977, resumed its place on 18 February 1980.

35. At the International Food and Agriculture Organization (FAO), the withdrawal of a member nation takes effect one year after the date of its communication to the Director-General. The member nation which withdraws must pay its contribution for the entire calendar year in which notice takes effect (Article XIX). However, although its sessions are biennial, the General Conference of the FAO adopts two separate draft programmes, each covering one year. The budget of the second year is purely provisional and has to be approved by the Council.

36. In the following organizations:

International Telecommunication Union (ITU);

International Civil Aviation Organization (ICAO);

Universal Postal Union (UPU);

World Meteorological Organization (WMO)

the withdrawal of a Member State takes effect one year after notification is given.

37. The Constitutions of these four agencies make no explicit reference to the financial obligations of a member which withdraws.

38. The withdrawal of a Member State from an international organization presents a wide variety of problems, involving among other things its obligations the organization in question e.g. its possible participation or that of its nationals in the work or activities of the organization and its possible representation within the organization. In fact, the withdrawal of a Member State from an international organization radically alters the status which it had vis-a-vis that organization and has an undoubted effect on the budget of the organization.

39. These problems are examined below.

## II. THE WITHDRAWAL OF A MEMBER STATE AND THE VARIOUS ORGANS OF UNESCO

40. Article III of the Constitution states that Unesco has three constitutional organs: the General Conference, the Executive Board and the Secretariat.

### The General Conference

41. The General Conference consists of the representatives of the States Members of the Organization. A State whose withdrawal from the Organization becomes effective ipso facto loses the right to be represented by a delegation at the sessions of the General Conference. Consequently, it is also unable to belong to the subsidiary bodies of the General Conference, i.e. the commissions (programme commissions, administrative commission) and committees (in particular the Legal Committee or the Headquarters Committee). It should be noted that at each of its ordinary sessions, the General Conference elects the Member States which will sit on the Legal Committee or the Headquarters Committee until the end of the next ordinary session.

42. States which are not members of Unesco may, however, be invited to send observers to the sessions of the General Conference, in accordance with Rule 6 (4) of the Rules of Procedure of the General Conference which states that:

'The Executive Board shall before each session of the General Conference decide upon the list of States not members of Unesco which are to be invited to send observers to that session. This decision shall be taken by a two-thirds majority. The Director-General shall notify the States which appear on this list of the convening of the session and shall invite them to send observers'.

### The Executive Board

43. In accordance with Article V.A.1 of the Constitution, 'the Executive Board shall be elected by the General Conference from among the delegates appointed by the Member States and shall consist of 51 members each of whom shall represent the government of the State of which he is a national'.

44. It is clear from the wording of the relevant provisions of the Constitution, as well as from their context, that only the representatives of the governments of Member States sit on the Executive Board as members.

45. The Constitution states in Article V.A.3 that the members of the Executive Board shall serve from the close of the session of the General Conference which

elected them until the close of the second ordinary session of the General Conference following that election. This is a standard clause which lays down a specific length of time for the term of office.

46. The withdrawal of a State represented on the Executive Board is not specifically mentioned in Article V.A.4 of the Constitution as one of the instances where the term of office of a member of the Board ends before its normal conclusion. However, when a State withdraws from the Organization, its representative automatically loses the essential qualification to be a member of the Board, namely to be the representative of a Member State, since non-Member States are not and cannot be represented on the Executive Board.

#### The Secretariat

7. The Constitution states, inter alia, in Article VI that:

'1. The Secretariat shall consist of a Director-General and such staff as may be required.

.....

4. The Director-General shall appoint the staff of the Secretariat in accordance with Staff Regulations to be approved by the General Conference. Subject to the paramount consideration of securing the highest standards of integrity, efficiency and technical competence, appointment to the staff shall be on as wide a geographical basis as possible.

5. The responsibilities of the Director-General and of the staff shall be exclusively international in character. In the discharge of their duties they shall not seek or receive any instructions from any government or from any authority external to the Organization. They shall refrain from any action which might prejudice their positions as international officials. Each State Member of the Organization undertakes to respect the international character of the responsibilities of the Director-General and the staff, and not to seek to influence them in the discharge of their duties'.

8. Furthermore, the Staff Regulations and Staff Rules state in Rule 104.2, entitled Limitations on employment:

'(a) Except when another person equally well qualified cannot be recruited, an appointment shall not be granted to a candidate who is not a citizen of a Member State'.

No provision of the Constitution or of the Staff Regulations and Staff Rules makes reference to the case of staff members engaged as citizens of a Member State who are still employed when the withdrawal of that Member State becomes effective.

Nothing in the existing Rules and Regulations implies that the situation of these staff members and the rights arising out of their contracts of employment can be affected by the withdrawal of the Member State of which they are citizens.

However, it is clear that the number of staff members who are citizens of a State which has ceased to be a member and the importance of the offices they hold cannot fail to have an effect on, and may even result in some disturbance in, the operation of the quota system established in implementation of the decisions of the General Conference.

Furthermore, it is clear that in accordance with Rule 104.2 (a) of the Staff Regulations and Staff Rules, new staff members who are citizens of a State whose withdrawal has become effective can be recruited only in quite exceptional circumstances.

The total number of staff of United States nationality is 143 (98 staff in the Professional category and above and 45 General Service staff). The distribution of the Professional staff according to grade is as follows:

1 ADG  
 2 D-2  
 8 D-1  
 25 P-5  
 28 P-4  
 21 P-3  
 13 P-1/P-2

Among the staff in the Professional category and above listed above, 81 are paid from the regular budget of the Organization. They are therefore part of the quota allotted to the United States as a Member State.

49. It should be pointed out that, when the International Labour Office was obliged to eliminate a number of posts and not to renew a number of contracts in order to cope with the budget difficulties resulting from the withdrawal of the United States of America during the period from 6 November 1977 to 18 February 1980, no special measures were taken in respect of United States staff members. They were treated in the same way as officials of other nationalities. However, the Deputy Director-General, a United States national, was invited by the Director-General to submit his resignation.

50. A major problem arises in connection with the reimbursement of the tax levied on the salaries of United States staff members of Unesco currently in service. Under the provisions of Staff Rule 103.18, the Organization is required to reimburse to its staff members the amount of income tax levied on their salaries and emoluments by the States of which they are nationals. That provision is worded as follows:

- '(a) Income tax levied by the authorities of the country of which the staff member is a national on salaries and emoluments received by him from the Organization shall, subject to the provisions of (b) below, be reimbursed by the Organization.
- (b) The amount of the reimbursement shall be the difference between the tax payable on the staff member's total income, including Unesco earnings, and the tax which would be payable on his income excluding Unesco earnings'.

Such reimbursements are based on the principles which require that all officials of international organizations should receive equal remuneration in their respective pay categories, independent of the influences of tax legislation. In this regard it should be pointed out that Unesco's Constitution incorporates, through its Article XII, Articles 104 and 105 of the United Nations Charter, the latter of which stipulates that officials of the Organization shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions.

51. Accordingly, Article VI, Section 19 of the Convention on the Privileges and Immunities of the Specialized Agencies provides for exemption from taxation in



respect of the salaries and emoluments paid by the Specialized Agencies to their officials.

52. Not having ratified that Convention, the United States Government levies income tax on the salaries of its nationals who are officials of agencies of the United Nations system.

53. Nevertheless, by the terms of an agreement concluded by an exchange of letters in 1972, the United States Government undertook to pay to Unesco the amount that the Organization is required to pay to its staff members in accordance with the provisions of the Staff Rule governing the reimbursement of tax levied on salaries and emoluments.

54. That agreement was denounced on 14 October 1981 by the United States Government, which proposed that it be replaced by a new arrangement, one that would be less favourable inasmuch as it would result in changing the method of calculating the amount to be reimbursed by the United States, reducing that amount in relation to the amount which the Organization is itself required, under its Staff Rules, to pay to the staff members concerned. Since 31 December 1982, no reimbursement has been made to Unesco in this respect by the United States Government.

55. As the same problem has arisen in the other agencies of the United Nations, consultations have been held among the various organizations concerned, within the Administrative Committee on Co-ordination, and negotiations are currently under way between the United Nations Secretariat, acting on behalf of all the organizations of the United Nations system, and the competent authorities of the United States.

56. It should be noted that total reimbursements of income tax on salaries made by Unesco to its United States staff members amounted in 1983 to US \$166,738.48, of which \$105,098.05 was paid as advances on income tax payable in 1983.

### III. POSSIBLE RELATIONS BETWEEN THE ORGANIZATION AND STATES WITHDRAWING

57. Article VII of Unesco's Constitution, relating to National Co-operating Bodies, contains the following provisions:

- '1. Each Member State shall make such arrangements as suit its particular conditions for the purpose of associating its principal bodies interested in educational, scientific and cultural matters with the work of the Organization, preferably by the formation of a National Commission broadly representative of the government and such bodies.
2. National Commissions or National Co-operating Bodies, where they exist, shall act in an advisory capacity to their respective delegations to the General Conference and to their governments in matters relating to the Organization and shall function as agencies of liaison in all matters of interest to it.
3. The Organization may, on the request of a Member State, delegate, either temporarily or permanently, a member of its Secretariat to serve on the National Commission of that State, in order to assist in the development of its work'.



58. The existence and legal status of National Commissions are therefore governed by the domestic legislation of Member States. Accordingly, the fate of the National Commission of a Member State that withdraws from Unesco depends on the domestic legislation by which it was set up.

#### Permanent delegations

59. In accordance with a well-established practice, many Member States have accredited permanent delegations to Unesco. According to the terminology used in the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character - which has not yet come into force - "permanent mission" means a mission of permanent character, representing the State, sent by a State member of an international organization to the Organization' (Article 1, paragraph 1 (7)).

When a State loses its membership of Unesco, its permanent delegation also loses its raison d'être. It ceases to be sent by a Member State and, consequently, its functions as representing that State come to an end. As a result, the arrangements between the Organization and the State concerned as regards its mission and in particular the facilities it enjoys (rental of premises, distribution of documents, etc.) no longer stand. By analogy with the practice in regard to diplomatic relations, a certain 'winding-up period' could be granted to the State concerned to enable it to settle all the problems related to the closing of its mission.

#### Possibility, for a non-Member State, of establishing a permanent observer mission at Unesco

60. Under the terms of Article II of its Constitution, Unesco has only Member States or Associate Members. There is no constitutional provision for the accreditation to the Organization of non-Member States or of States which, having been members of the Organization, have decided to withdraw.

61. Article 5.2 of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character provides that non-Member States of an international organization may, if the rules of the Organization concerned so allow, establish permanent observer missions for the performance of certain functions in respect of that Organization. It should be noted that under the Vienna Convention - which is quoted here for documentary purposes only; it is not yet in force, as there have not been a sufficient number of ratifications - the expression 'rules of the Organization' means, in particular, the constituent instruments, relevant decisions and resolutions, and established practices of the Organization' (Article 1, paragraphs 1-34).

62. As far as Unesco is concerned, the issue of admitting permanent observers of a non-Member State was considered by the Executive Board at its second session in 1947. In the report which he submitted to the Board on the subject, the Director-General referred to the possibility of extending certain facilities enjoyed by the representatives of Member States to delegates who might be accredited to the Organization by certain States which were not yet members. The report stated: 'Such extension may, in some cases, seem advisable from the diplomatic point of view, and may facilitate the progressive participation in Unesco activities of States which, for one reason or another, have not been able yet to accept the Constitution. The fact that a State which has not yet joined Unesco appoints a delegate to the Organization is a sign of interest. It would therefore be advisable to give such representatives and delegates the broadest possible facilities in the accomplishment of their mission'.

63. However, it was not until 6 February 1951 that the Executive Board approved the principle of the possible admission to Headquarters of permanent observers from non-Member States (25 EX/SR.14).

64. On 27 July 1951, following the report of its External Relations Committee, the Executive Board authorized the Director-General to grant observers from non-Member States the facilities indicated in document 26 EX/22. These facilities were as follows:

- '(a) observers are issued with a laissez-passer authorizing them to attend all public meetings of the various organs of Unesco, subject to the proviso that observers may neither sit at the meeting table "or make comments except at the express invitation of the competent authority, and in accordance with the regulations in force";
- (b) observers receive all documents supplied to permanent delegations;
- (c) observers have access to all the various working rooms, restaurants and bars arranged for the use of permanent delegations'.

It should be noted that although it refers in general terms to non-Member States, this decision, its context and, in particular, the report of the Director-General which it approves, indicate that it is concerned with States that have not yet accepted the Constitution. The case of States which are no longer members of the Organization - having withdrawn of their own free will - does not seem to have been envisaged. The subsequent discussion refers to non-Member States, making no distinction between those that may not yet have accepted the Constitution and those that have withdrawn from the Organization.

65. The renting of offices to permanent delegations was the subject of special regulations adopted by the Executive Board at its fiftieth session. This text refers only to the permanent delegations of Member States. Nevertheless, it should be noted that offices have been leased to the Holy See and to the Palestine Liberation Organization (PLO), as well as to intergovernmental organizations and to international non-governmental organizations.

66. With respect to the privileges and immunities which a permanent observer mission might enjoy, this issue would have to be settled mainly between the sending State and the host State. The Headquarters Agreement concluded between Unesco and the French Government contains no special provision for observers from non-Member States. That Agreement provides only that the French authorities shall not impede the transit to or from Headquarters of any persons having official duties or invited there by the Organization (Article 9, paragraph 1).

67. With respect to the precedent of American withdrawal from the International Labour Organisation, it should be noted that the Government of the United States did not set up a permanent observer delegation to the organization from which it had withdrawn. Nevertheless, the United States has a Permanent Delegation to the United Nations Office at Geneva which provides liaison with all the agencies of the United Nations system having their headquarters in Geneva.

68. The International Labour Organisation (ILO) Office in Washington continued to operate throughout the period of withdrawal of the United States from that organization. The United States sent unofficial delegations to sessions of the International Labour Conference held during the period of withdrawal. Those delegations had no specific status and are not mentioned in the Records of the Conference.

69. As regards the establishment of a 'United States observer mission to Unesco', the Director-General wishes to inform the Executive Board that on 11 January 1985 he received the communication reproduced in Annex II. The reply to that communication is given in Annex III.

#### IV. IMPACT OF WITHDRAWAL ON THE ACTIVITIES OF THE ORGANIZATION

##### 1. Impact on the Organization's activities in the United States

70. A major international organization can conduct its activities in a country only if its legal status is recognized there and if it enjoys a certain number of immunities and privileges there. The Constitution of Unesco also stipulates in Article XII that 'the provisions of Articles 104 and 105 of the Charter of the United Nations Organization concerning the legal status of that Organization, its privileges and immunities, shall apply in the same way to this Organization'.

71. The Convention on the Privileges and Immunities of the Specialized Agencies defines their legal status in Member States and grants them the status and the rights, privileges and immunities required for the performance of their functions in their territories.

72. The United States of America has not, however, acceded to this Convention, and it is by virtue of a federal act passed by the United States Congress in 1945 (The International Organizations Immunities Act) that Unesco enjoys, in the United States, the status, immunities and privileges required for the performance of its functions on United States territory.

73. 'The International Organizations Immunities Act' defines the international organizations to which its provisions apply as those 'in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate executive order', which is nevertheless subject to revocation.

74. The International Organizations Immunities Act was made applicable to Unesco by Executive Order No. 9863, 12 Fed. Reg. 3559 (1947).

75. Unesco has established two liaison offices in the United States: one in New York, the other in Washington.

76. Unesco's Liaison Office in New York is the central body for liaison with the United Nations. It ensures that Unesco is represented at the United Nations General Assembly and on its committees and commissions, at ECOSOC and in its subsidiary bodies, and at CPC. It also provides liaison between the various units of the United Nations Secretariat and the Secretariat of Unesco. It is located on the premises of the United Nations, and this allows Unesco staff members, their families and experts designated by the Organization to enjoy the right of access to Headquarters and transit, in accordance with the provisions of the Headquarters Agreement concluded on 14 December 1946 between the United Nations and the United States. However, although staff of the Office in New York and members of their families are authorized, under that Agreement, to reside in the United States, the other immunities and privileges which they enjoy, including exemption from taxation on the salaries paid to them by Unesco, are granted to them through the International Organizations Immunities Act.

77. The Washington Office, set up in 1963 and closed two years later, was reopened in 1978.

78. It is responsible for liaison with the International Bank for Reconstruction and Development, the International Development Association, the International Monetary Fund and the Organization of American States. It also liaises with the authorities of the United States and, in particular, the United States National Commission for Unesco. The status of the Washington Office and the immunities and privileges enjoyed by its officials are governed by the International Organizations Immunities Act.

79. It should be recalled, however, that the essential role of the Unesco Office in New York is to provide liaison with the United Nations and that of the Unesco Office in Washington is to provide liaison with several international organizations that have their headquarters in that city. The functions of these offices therefore concern the United Nations and the organizations located in Washington as much as they do Unesco itself. The United States continues to be a member of these various organizations and its withdrawal from Unesco does not seem to have affected the operations of the other organizations involved, which should continue to enjoy appropriate facilities for their relations with Unesco. Moreover, the United Nations maintains close and constant relations with many organizations to which the United States does not belong, in particular the European Economic Community and the Council for Mutual Economic Assistance, both of which have observer status to the United Nations General Assembly and enjoy, in that capacity, certain facilities, privileges and immunities in the United States.

80. Unesco also has programme activities in the United States. During the 1984-1985 biennium, these included, in particular, the holding of meetings and the sending of fellowship holders to institutions of higher education.

81. There is no question but that it would become very difficult for Unesco to continue these activities on the territory of the United States if its legal status, immunities and privileges should cease to be recognized there.

82. The withdrawal of the United States from the Organization should not automatically make the International Organizations Immunities Act inapplicable to Unesco, as this would require formal revocation by the President of the United States of the 1947 Executive Order, mentioned earlier.

83. It should be noted that the United States continued to apply the Immunities Act to the International Labour Organisation after its withdrawal in 1977.

2. Consequences regarding multilateral conventions and agreements adopted under the auspices of Unesco

84. With the exception of the Beirut and Florence Agreements, conventions adopted by the General Conference are submitted to the Member States for ratification and are open to the accession of any non-Member State that is invited to accede to them by the Executive Board or the General Conference, as the case may be. The status of Member State of Unesco is thus a necessary condition for ratification; but while that status is required at the time when consent to be bound by the treaty is expressed, and while it determines the ratification procedure, it is not a condition of being or remaining party to the treaty. Consequently, a State which, in its capacity as a Member State, has ratified conventions adopted by the General Conference does not cease to be party to those conventions merely by the fact of its withdrawal from Unesco.

85. The Beirut and Florence Agreements, as well as all conventions adopted by international conferences of States, are open not only to the Member States of Unesco but also to every Member State of the United Nations or one of its Special-

ized Agencies, or even to any State without qualification, as the case may be. Membership of Unesco is thus not a condition for the expression of consent to be bound by these conventions. Nor is the status of Member State required in order to be or to remain party to these conventions. Consequently, a State whose withdrawal from Unesco has become effective does not cease to be party to these conventions or agreements merely by the fact of that withdrawal.

86. As regards bodies established by conventions and agreements to which a State that has withdrawn from Unesco is party, there is nothing to prevent that State from becoming or remaining a member of such bodies for as long as it remains party to the convention concerned. The bodies in question are the World Heritage Committee established by the Convention for the Protection of the World Cultural and Natural Heritage and the Intergovernmental Copyright Committee established by the Universal Copyright Convention. Each of these conventions provides that its committee shall be composed of States parties to the convention. Membership of Unesco is thus not required in these instances.

87. The Convention for the Protection of the World Cultural and Natural Heritage stipulates that the World Heritage Committee shall be established under the auspices of Unesco. This, however, does not make the Committee a subsidiary body of Unesco. It was established by the general assembly of only the States parties to the Convention, and the fact that the Convention had been adopted by the General Conference makes no difference.

88. It should be noted that invitations to the general assemblies of parties to the Convention for the Protection of the World Cultural and Natural Heritage are issued by the Director-General of Unesco. The Intergovernmental Copyright Committee is convened on the initiative of its Chairman. Invitations to sessions of the Committee are sent out by the Director-General of Unesco, the Organization providing the secretariat of the Committee.

89. The United States of America is party to:

the Agreement for Facilitating the International Circulation of Auditory Materials of an Educational, Scientific and Cultural Character, adopted by the General Conference at its third session, on 10 December 1948 (Beirut Agreement);

the Agreement on the Importation of Educational, Scientific and Cultural Materials, adopted by the General Conference at its fifth session, on 17 June 1950 (Florence Agreement);

the Universal Copyright Convention and Protocols 1, 2 and 3 annexed thereto, adopted on 6 September 1952 by an international conference of States convened by Unesco;

the Convention concerning the Exchange of Official Publications and Government Documents between States, adopted by the General Conference at its tenth session, on 3 December 1958;

the Convention concerning the International Exchange of Publications, adopted by the General Conference at its tenth session, on 3 December 1958;

the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference at its sixteenth session, on 14 November 1970;



the Universal Copyright Convention as revised at Paris on 24 July 1971 and Protocols 1 and 2 annexed thereto, adopted on 24 July 1971 by an international conference of States convened by Unesco;

the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, adopted on 29 October 1971 by an international conference of States convened by Unesco;

the Convention for the Protection of the World Cultural and Natural Heritage, adopted by the General Conference at its seventeenth session, on 16 November 1972.

90. According to the general information contained in paragraphs 84 and 85 above, the United States has not ceased to be a party to these conventions or agreements by the mere fact of its withdrawal from Unesco. As stated in paragraph 86 above, it can still become a member of the subsidiary bodies established under the conventions or agreements to which it is a party, or remain a member of such bodies.

91. Furthermore, the United States of America is a signatory to:

the Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted on 14 May 1954 by an international conference of States convened by Unesco;

the Convention relating to the Distribution of Programme-carrying Signals Transmitted by Satellite, adopted on 21 May 1974 by an international conference of States convened by Unesco. They deposited the instrument of ratification of this Convention with the Secretary-General of the United Nations on 7 December 1984. Under the terms of the Convention, the latter will enter into force for the United States of America three months after the deposit of that instrument;

the Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region, adopted on 21 December 1979 by an international conference of States convened by Unesco.

92. Among these conventions, a distinction should be drawn between:

- (i) The Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region, which is open 'for signature and ratification by the States of the Europe region which have been invited to take part in the diplomatic conference entrusted with the adoption of this Convention ...'. On withdrawal from Unesco, the United States will cease to belong to the 'Europe region' as defined by Unesco. It follows that the ratification procedure can no longer be open to it. On the other hand, it can accede to the Convention if so authorized by the ad hoc committee for which provision is made to that end under the Convention.
- (ii) The Convention for the Protection of Cultural Property in the Event of Armed Conflict, which the United States has signed but not yet ratified, and which remains open for ratification by the United States since, in accordance with its provisions it is submitted to the signatory States for ratification.

Consequences of the withdrawal of a Member State on the financing of secretariat activities relating to the Unesco Conventions to which that State is a party

93. No Unesco Convention, whether adopted by the General Conference or by a con-

ference convened by the General Conference, contains provisions concerning the financing by the States parties to the convention of the Secretariat activities entailed thereby.

94. Only the Convention for the Protection of the World Cultural and Natural Heritage institutes a fund to which the States Parties to the Convention must contribute. The resources of the fund are not allocated under the Convention to coverage of the Secretariat costs of the Convention, or to coverage of the costs of the Secretariat of the World Heritage Committee entrusted to the Director-General. However, further to a decision of the World Heritage Committee, which is responsible for managing the fund, a substantial sum (\$90,000 in 1985) drawn from the fund is earmarked for the remuneration of temporary staff.

95. While the Unesco conventions contain no provisions making the States parties responsible for financing Secretariat activities consequent upon the conventions, all these instruments entrust the Organization with specific assignments which may be more or less onerous:

Secretariat of an intergovernmental committee instituted under the Convention (Universal Copyright Convention, Convention for the Protection of the World Cultural and Natural Heritage, regional Conventions on the Recognition of Studies, Diplomas and Degrees in Higher Education, International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations);

Secretariat of a particular body (for example, the Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education); in addition, the Protocol (Article 9) makes the Organization responsible for the travel and per diem allowances of the members of the Commission;

convening of any revision conferences (Florence Agreement, Rome Convention, Madrid Convention for the Avoidance of Double Taxation of Copyright Royalties);

collection and circulation of reports by States on implementation of the convention, publication of information and studies on the subject (Beirut, Florence and Protocol, The Hague, Illicit Dealing in Cultural Property, World Heritage, Exchanges of Publications, Protection of Phonograms, Combating Discrimination in Education);

technical assistance for implementation of the convention (The Hague, Illicit Dealing in Cultural Property, Exchanges of Publications, Protection of Phonograms);

certificates (Beirut) and advice regarding the educational, scientific or cultural character of material (Beirut, Florence and Protocol);

offer of good offices for the settlement of disputes (Illicit Dealing in Cultural Property, The Hague);

preparation of official versions of the convention in different languages (Universal Copyright Convention, satellite conventions, Convention on the Double Taxation of Copyright Royalties).

96. In all these cases, the General Conference of Unesco has accepted the duties assigned to it in the draft convention; and in the light of that acceptance the



convention has been adopted. The question arises whether the Organization can require a State which is not a Member State but which is a party to a convention of this kind to contribute to the Secretariat costs when such a contribution to the costs is not provided for in the convention itself. It should be noted in this connection that conventions adopted within the framework of Unesco are usually open, with no financial conditions attached, to accession by States which are not members of the Organization.

97 One recent fact, however, needs to be pointed out: the Secretariat of the Convention on Wetlands of International Importance especially as Waterfowl Habitat, generally known as the Ramsar Convention, of which Unesco is the depositary, is provided by a non-governmental organization: the International Union for Conservation of Nature and Natural Resources (IUCN), which was assigned and accepted this task on a provisional basis. However, this work seems to be placing a heavy financial burden on IUCN, which has limited resources. In fact, the Ramsar Convention contains no provision for the financing of its Secretariat, and no State contributes to its operation. In so far as IUCN wishes to continue to provide the Secretariat of the Convention, it has no choice but to call for voluntary contributions or to request that the Convention be revised. It is working on this problem.

98. In the absence of binding provisions, it would therefore appear that only voluntary contributions to the financing of the Secretariat work entailed by Unesco conventions may be expected from States which, while being parties to these conventions, are not, or are no longer, members of the Organization. Equity nevertheless calls for a financial contribution from the above-mentioned States to cover such costs. In the absence of such a contribution, the total costs would be borne by the Member States of Unesco, while those States which had withdrawn from the Organization would continue to enjoy, free of charge, all the advantages and services contingent upon those conventions.

Possible participation by a State which has withdrawn from the Organization in the various categories of meetings convened by Unesco

99. Subject to any specific provisions contained in the regulations or agreements relating to the meetings themselves, and subject to decisions of the competent organs of Unesco concerning such meetings, participation in them is established by the Regulations for the general classification of the various categories of meetings convened by Unesco.

International conferences of States (category I)

100. With regard to international conferences of States or diplomatic conferences, Article 11, paragraph 1, of the above-mentioned Regulations provides that 'the General Conference, or the Executive Board, authorized by it, shall decide which States shall be invited'. The Regulations do not qualify the States at this point. However, paragraph 2 of the same Article states that 'Member States and Associate Members of Unesco not invited under paragraph 1 above may send observers to the conference'. Member States and Associate Members thus have a right to be represented by an observer at all the international conferences of Member States of Unesco, even without a special invitation. The Regulations make no reference to non-Member States. It should, however, be pointed out that the Executive Board has invited the Holy See to send an observer to the various conferences of States concerning the recognition of studies, diplomas and degrees in higher education. In one case, that of the Europe region, the Holy See was invited as a chief participant. Djibouti, a non-Member State, was similarly invited as a chief participant to attend the International Conference of States with a view to adoption of the Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in the African States.

Intergovernmental meetings other than international conferences of States  
(category II)

101. With regard to such meetings, Article 21, paragraph 1, of the relevant Regulations provides that 'subject to the existing regulations applicable, the Executive Board, on the Director-General's proposal, shall decide on the Member States and Associate Members whose governments are to be invited to the meeting'. Paragraph 2 specifies that 'Member States and Associate Members not invited under paragraph 1 above may send observers to the meeting'. The status of Member State or Associate Member is therefore required here, if the country concerned is to enjoy the right to participate fully in these meetings or if it is to send observers. However, by virtue of paragraph 3 of Article 21 of the Regulations: 'The Executive Board may designate non-Member States, and territories for whose international relations a Member State is responsible, to be invited to send observers to the meeting'.

Non-governmental conferences (category III)

102. Non-governmental conferences, in the sense of Article IV.B.3 of the Constitution, are conferences attended either by international non-governmental organizations, or by intergovernmental organizations, or by both international non-governmental and intergovernmental organizations, and addressing their conclusions either to the participating organizations or to Unesco (Article 28 of the Regulations for the general classification of the various categories of meetings convened by Unesco).

103. In accordance with Article 31 of these Regulations, Member States and Associate Members of Unesco may send observers. However, there are no provisions in the Regulations concerning non-Member States, whose participation appears to be excluded.

International congresses (category IV)

104. International congresses are meetings of specialists serving in an individual capacity. The results of their work are addressed to the Director-General who secures their distribution and utilization in the appropriate circles (Article 38 of the above-mentioned Regulations). Participants in congresses are designated individually by the Director-General, who may, for that purpose, enter into consultations with the competent authorities in Member States. Persons invited to participate in a congress must, as a general rule, be nationals of Member States of Unesco or of Member States of the United Nations, but the Director-General is authorized to extend invitations to congresses to nationals of States which are not members of Unesco or of the United Nations. For the selection of these specialists, the Director-General consults international non-governmental organizations having consultative status with Unesco. The specialists chosen by this means are invited through such organizations, and through the same channels make known their intention of participating in the congress.

Advisory committees (category V)

105. According to Article 47 of the above-mentioned Regulations, 'Advisory committees are standing committees governed by statutes approved by the Executive Board and are responsible for advising the Organization on special questions within their competence or on the preparation or implementation of its programme in a particular sphere'.

106. Members of these committees are specialists serving either in an individual capacity or as representatives of international non-governmental organizations.

They are appointed in accordance with the provisions of the statutes of these committees. Member States and Associate Members of Unesco may send observers (Article 50). On the other hand, no mention is made in the Regulations of non-Member States, whose participation appears to be excluded.

#### Expert committees (category VI)

107. According to Articles 56 and 57 of the Regulations, expert committees are committees set up on an ad hoc basis to submit suggestions or advice to the Organization on the preparation or implementation of its programme in a particular field. They are convened by the Director-General, and the participants, who serve in a private capacity, are appointed individually, either by the Director-General or by governments at his invitation.

108. As a general rule, meetings of expert committees are private. The Director-General may, however, if he considers it desirable from the programme point of view, invite Member States and international governmental or non-governmental organizations to follow their proceedings. The participation of non-Member States appears to be excluded.

#### Seminars and training or refresher courses (category VII)

109. According to Article 65 of the Regulations, the main purpose of these meetings is to enable participants to acquire a knowledge of some subject of interest to Unesco or to give them the benefit of experience gained in this field.

110. Participants, who are selected individually by the Director-General, are, as a general rule, nationals of Member States of Unesco or of States which are members of the United Nations or Associate Members of Unesco. As a general rule, meetings in this category are private. The Director-General may, however, if he considers it desirable from the programme point of view, invite Member States and international organizations to send observers to follow their proceedings. Non-Member States are not mentioned in the Regulations, and their participation appears to be excluded.

#### Symposia (category VIII)

111. These meetings, whose purpose is to provide for an exchange of information within a given speciality or on an interdisciplinary basis, do not usually lead to the adoption of conclusions or recommendations (Article 74).

112. Participants in these meetings are designated in accordance with rules identical to those for meetings in categories V, VI and VII (cf. paragraphs 105 to 110 of this document).

113. There is no mention, in this section of the Regulations, of observers from non-Member States, whose participation appears to be excluded.

#### Meetings convened jointly by Unesco and an intergovernmental organization whose membership includes a non-Member State of Unesco

114. The Regulations for the general classification of the various categories of meetings convened by Unesco remains applicable in this case. Since, however, these Regulations were drawn up for meetings convened by Unesco alone, account is normally taken of the relevant rules applied in the other intergovernmental organization acting jointly with Unesco.

115. Subject to the relevant General Conference resolutions and Executive Board decisions, the usual practice when a meeting is organized jointly by Unesco and

another intergovernmental organization is to invite the Member States of both organizations jointly either as chief participants or, if appropriate, as observers according to the category of the meeting in question.

#### Place of meeting

116. With regard to countries where meetings can be held, the Regulations relating to meetings convened by Unesco provide that, as far as categories I, II and III are concerned, the General Conference, the Executive Board, the Director-General or the body calling the conference, as the case may be, shall consider invitations received from Member States. Consequently, it does not appear possible for a non-Member State to host a meeting of categories I, II or III.

117. With regard to meetings in categories IV, V, VI, VII and VIII, the Regulations stipulate that the Director-General shall fix the date and place.

#### Intergovernmental councils and committees

118. The General Conference has instituted various intergovernmental councils and committees to guide and supervise the preparation and implementation of certain specific parts of the Organization's programme. These bodies, whose meetings are assimilated to category II meetings, are as follows:

Council of the International Bureau of Education;

Intergovernmental Committee for Physical Education and Sport;

Intergovernmental Council of the International Hydrological Programme;

International Co-ordinating Council for the Programme on Man and the Biosphere;

Intergovernmental Council for the General Information Programme;

Executive Committee of the International Campaign for the Establishment of the Nubia Museum in Aswan and the National Museum of Egyptian Civilization in Cairo;

Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Cases of Illicit Appropriation.

International Programme for the Development of Communication

119. These various committees are made up of Member States elected or designated by the General Conference. Should a Member State elected by the General Conference (or by one of its committees) decide to withdraw from the Organization, it would cease to be a member of these committees as soon as its withdrawal took effect.

120. The case of the Intergovernmental Oceanographic Commission is different. Under Article 4, paragraph 1, of the Commission's statutes, membership is open to any Member State of any one of the organizations of the United Nations systems. A Member State that withdraws from Unesco does not lose the right to remain a member of the Commission and to continue to participate in its activities. However, as mentioned earlier (paragraphs 93 to 98) in connection with activities relating to Unesco's conventions, this question is solely one of equity. It is fundamental none the less.

Contractual arrangements (consultants, publications, studies, the purchase of equipment, fellowships)

(i) Consultants

121. Although they are not expressly mentioned in Rule 104.2 of the Staff Regulations and Staff Rules (which concern staff members only), it is a corollary of the standard practice of the Organization, and of item 2435 of the Manual in particular, that consultants are recruited from among nationals of Member States. If the same principle is applied as for the recruitment of staff members, a national of a non-Member State may be selected as a consultant only in quite exceptional circumstances, when it is impossible to find an equally well qualified person who is a national of a Member State. At all events, the arrangements between the Organization and the State which has withdrawn from it regarding consultations for the purpose of recruiting consultants become as a result null and void.

(ii) Publications

122. The printing of Unesco publications normally takes place in various countries, taking into account the quality and cost of the work, terms of delivery and the transport costs involved. Unless the quality of the work so warrants it, contracts for printing or type-setting operations will not be entrusted to firms situated in non-Member States of Unesco.

(iii) Study contracts and other contractual arrangements

123. With regard to contracts for research, for writing articles or books, for public information or for organizing meetings and seminars, the choice of the contractor is made on the basis of technical competence, availability, cost considerations and other relevant factors. No existing rule requires that the individual, firm or institution concerned be located in a Member State of Unesco. At present, a large number of training courses and seminars are organized directly by Unesco or by universities or institutions of higher learning under contract (e.g. postgraduate courses listed in paragraphs 10154 and 10360 of 22 C/5 Approved). Since the institutions concerned are selected for their technical competence in certain specialized fields of study, their willingness to conduct such courses and the facilities available, the fact that they are located in a Member State which has withdrawn from Unesco does not seem to affect such choice.

(iv) Equipment and supplies

124. The main considerations which are taken into account in the award of purchase contracts are the related cost of equipment, the specific requirements of the recipient Member States, the after sales service available locally and the delivery terms offered by the suppliers. The general rule is for contracts to be awarded to the lowest bidder provided: (a) he can meet the exact specifications of the equipment needed by the Member State concerned; (b) the equipment supplied is compatible with the existing equipment; and (c) servicing and maintenance are readily available on the spot. There are no particular provisions for purchases in a non-Member State.

(v) Fellowships and grants

125. Whether Unesco will place a fellow in an institution of higher education or research situated in a non-Member State of Unesco or not depends, on the one hand, on the quality or academic standard of the institution and, on the other, on the desire expressed by the recipient Member State concerned. Cost factors as well as



the facilities available for administering the fellowship naturally play a significant role in the choice of the institution. This applied to fellowships and grants awarded from regular programme as well as from extra-budgetary sources. However, it is reasonable to assume that the Organization will have more difficulty in securing the various advantages or services referred to above in a State that ceases to be a member of Unesco.

#### V. BUDGETARY AND FINANCIAL CONSEQUENCES OF WITHDRAWAL

126. The questions to be considered here are, firstly, the payment of contributions to the regular budget on the basis of the assessments determined by the General Conference and, secondly, other financial matters.

##### Payment of contributions

127. The withdrawal of a Member State may take effect either at the end of a biennium or at the end of the first year of a biennium.

128. In the first case, the programme and budget voted by the General Conference before the withdrawal takes effect are not affected. Furthermore, the General Conference is informed, prior to the vote on the programme and budget for the following budgetary period, of the financial consequences of such withdrawal and can take the necessary measures to deal with them.

129. In the second case, it has become clear that the provisions of the Constitution (Article II, para. 6) can give rise to two interpretations. The Director-General accordingly set up a working group of four jurists, assisted as regards matters falling within their competence by the Comptroller and the Director of the Bureau of the Budget, to give an opinion on the matter.

130. The opinion submitted to the Director-General by the working group was as follows:

'In the light of the foregoing considerations, the working group concludes that, under the terms of Article II, paragraph 6, of the Constitution, a Member State of Unesco whose withdrawal becomes effective on 31 December 1984 will be legally bound to discharge all financial obligations, and, in particular, to make its full financial contribution to the Organization's regular budget for 1984-1985 as determined by the General Conference in resolution 16 and resolution 29.1 adopted at its twenty-second session'.

131. The considerations that prompted the working group to express that opinion are set out below:

- '3. The working group had before it two differing opinions from the legal service and examined in detail the respective arguments on which those opinions were based. In so far as the problem before it was linked to that of programme execution and the application of the Financial Regulations, it also took account of these aspects of the question in its opinion after hearing the explanations provided in that connection by the Comptroller and the representative of the Director of the Bureau of the Budget.
4. All but one member of the working group rejected the view that a State whose withdrawal from the Organization became effective at the end of the first year of the biennium would not be liable to pay the second half of its contribution. [This view, which was supported by one member of the working group, is set out below in paragraph 132.]

5. It indeed appeared to the other members of the working group that that view disregarded the fundamental distinction which is made in law between the coming into being of an obligation and the actual existence of a debt on the one hand, and the date on which it has to be settled, on the other. The fact that the contribution to the biennial budget is divided into two equal instalments, payment of which is required on two different dates, does not affect the fact of the existence of the debt owed by the Member State concerned to the Organization. It is current practice for a debtor to have time in which to make payment. His debt exists but it does not become due for settlement until the date laid down by the relevant law, decision or contract.
6. Article II, paragraph 6, of the Constitution, relating to the withdrawal of a Member State, provides that:
 

"Such notice shall take effect on 31 December of the year following that during which the notice was given. No such withdrawal shall affect the financial obligations owed to the Organization on the date the withdrawal takes effect".
7. The working group therefore discussed the date on which Member States' financial obligations as regards their contributions to the biennial budget come into being.
8. The answer to this question is given in Article IX, paragraph 2, of the Constitution, which says that "the General Conference shall approve and give final effect to the budget and to the apportionment of financial responsibility among the States members of the Organization". The English text of the Constitution makes it quite clear that the final effect of the decision taken by the General Conference in this respect applies to both the adoption of the budget and the apportionment of financial responsibility among the 161 Member States.
9. It is this decision of the General Conference that creates the financial obligation of Member States in regard to their contributions. The budget is adopted for a two-year financial period and the apportionment of Member States' financial responsibility covers the same period of two years. Furthermore, the programme voted by the General Conference is not divided into two equal parts to be apportioned between two years, and its execution may involve less expenditure during the first year than during the second and vice versa.
10. To allow exceptions to the rule of the unity of the programme and of the budget and admit any reduction in the financial obligations of a State that withdraws one year before the end of the financial period would be not only to abandon a claim that comes into being, legitimately and naturally, on the date of the "final" approval of the budget and the "final" apportionment of the scales of contribution, but also to call in question the budget and the scales of assessment as well as the programme approved by the General Conference. Here, practical arguments coincide with the logic of Article II, paragraph 6, of the Constitution, which clearly states that no such withdrawal shall affect the financial obligations owed to the Organization on the date the withdrawal takes effect.
11. As a result of this Article, and in accordance with 22 C/Resolutions 16 (the Appropriation Resolution for 1984-1985) and 29.1



(Scale of assessments), all the States that were members of the Organization at the time of the twenty-second session of the General Conference and remained so during 1984, became debtors to the Organization for their assessed share of the total budget adopted. The fact that this assessed share is divided into two in no way affects the legal existence of the debt they owe to the Organization, but enables them to have a longer period for payment of the second half of their debt.

12. This interpretation of Article IX of the Constitution corresponds to the interpretation given by the International Court of Justice to Article 17 of the United Nations Charter, the wording of which is almost identical to the wording of the Constitution. In its opinion of 20 July 1962 on certain expenses of the United Nations, the Court declared:

"By Article 17, paragraph 1, the General Assembly is given the power not only to 'consider' the budget of the Organization, but also to 'approve' it. The decision to 'approve' the budget has a close connection with paragraph 2 of Article 17, since thereunder the Assembly is also given the power to apportion the expenses among the Members and the exercise of the power of apportionment creates the obligation, specifically stated in Article 17, paragraph 2, of each Member to bear that part of the expenses which is apportioned to it by the General Assembly."

13. It cannot be over-emphasized that the arguments used to counter the view of the majority of the group and based on the fact that the two halves of the contributions are paid on different dates, are in opposition to the principle of the unity of the programme and of the budget permitting its execution. The Organization's practice, in accordance with the financial regulations, of dividing contributions into two halves payable at the beginning of each of the two years of the biennium, is motivated by considerations of financial convenience since Unesco has a Working Capital Fund and does not immediately need all the contributions, and since the contribution of States in most cases come from annual budgets. This practice in no way affects the unity of the biennial contribution nor the date on which Member States' obligations come into being. Article 5, paragraph 3, of the Financial Regulations clearly underlines the difference existing between the total "commitments in respect of contributions to the budget and advances to the Working Capital Fund" and the request to Member States at the beginning of the financial period to "remit one half of their contributions for the two-year financial period".
14. The working group also recalled that Article II, paragraph 6, of the Constitution, which deals with withdrawal, was not adopted until 1954 at the eighth session of the General Conference, i.e. two years after the Conference had decided that the Organization's programme, budget and financial period would henceforth cover a two-year period and had amended the Constitution and Financial Regulations accordingly.
15. The debates of the Legal Committee in 1954 have been taken to back up an interpretation of Article II, paragraph 6, of the Constitution as limiting the financial obligations of a State whose withdrawal became effective on 31 December 1984 to half of its contribution for the 1984-1985 biennium. The working group, however, considers that these debates show

that States which withdraw are required to pay the contributions due for the full financial period.

16. Reference should be made to the events and records of the eighth session of the General Conference.
17. On the instructions of the Executive Board, the Director-General submitted to the General Conference a draft amendment to Article 11 of the Constitution making it possible for any member to withdraw from the Organization, provided that one year's notice was given, to run from the date on which that notice was communicated.

The text of the amendment was as follows:

"Any Member State or Associate Member State of the United Nations Educational, Scientific and Cultural Organization may withdraw from the Organization by notice addressed to the Director-General. Such notice shall take effect one year after the date of its receipt by the Director-General. No such withdrawal shall affect the financial obligations owed to the Organization at the date of withdrawal".

18. When submitting this draft amendment, the Legal Adviser pointed out "that it had given rise to three proposed amendments, submitted by the Belgian, United States and Australian delegations respectively. The third of those proposals had been withdrawn ... The Belgian delegation's draft amendment(1) provided for the withdrawal of a Member State on 31 December of the year following that during which notice was given. The United States delegation's amendment(2) stipulated that the financial obligations of the State should continue throughout the financial period in which its withdrawal took effect". The Legal Adviser concluded that those two draft amendments were in keeping with the spirit of the draft amendment to the Constitution. He added that, in conformity with the Financial Regulations and the Constitution, Member States were required to pay the contributions due for the whole financial period, and he asked the Committee to examine the Belgian and United States drafts in turn. (Records of the fifth meeting of the Legal Committee, 26 November 1954.)
19. This latter statement, which the working group thought it relevant to stress, was not disputed. The Belgian amendment led to a modification in the wording of the draft submitted by the Director-General, such that the date on which notice took effect was deferred until 31 December of the year following the year in which the notice was given.
20. With regard to the financial obligations of the State concerned, however, the amendment finally adopted corresponded perfectly in spirit with the draft for which the Legal Adviser had given the above-mentioned

- (1) The text of the amendment submitted by Belgium is as follows:  
'Replace the sentence: "Such notice shall take effect one year after the date of its receipt by the Director-General", by the following:  
"Such notice shall take effect on 31 December of the year following that during which the notice was given".'
- (2) The text of the amendment submitted by the delegation of the United States of America, to be added at the end of the first paragraph, is as follows:  
'The financial obligation to the Organization of a Member State or Associate Member State which has given notice of withdrawal shall include the entire financial period in which the notice takes effect'.

interpretation without being contradicted. The two statements by the Belgian and American delegates, at least in the form in which they were reported, were certainly somewhat ambiguous, and the withdrawal of the American amendment may be interpreted in various ways. It seems reasonable to suppose that the General Conference and no doubt the American delegation itself were of the view that the interpretation given by the Legal Adviser made any further clarification unnecessary. In any case, the withdrawal of the American amendment, and two isolated statements - which can in any case be interpreted in two different ways - cannot be used as grounds for saying that the budgetary obligations of the State whose withdrawal might take effect on 31 December 1984 would be confined to one half of its contribution for the 1984-1985 biennium.'

132. As stated above (in paragraph 4 of the quotation contained in paragraph 131), one member of the working group expressed a dissenting view, which is reproduced below:

'In support of the thesis that the financial obligations of the United States of America for the 1984-1985 budget are confined to 1984, the following arguments may be put forward:

A. While it is true that, in conformity with paragraph 6 of Article II of the Constitution, the withdrawal of the United States of America - which may take effect on 31 December 1984 - "shall not affect the financial obligations owed to the Organization on the date the withdrawal takes effect", this is a general provision which must be applied to all categories of financial obligations, namely:

(i) legal obligations, the legal basis for which is:

either the Constitution (financial contribution to the budget provided for by Article IX, para. 2);

or a normative instrument (such as the Convention for the Protection of the World Cultural and Natural Heritage);

(ii) contractual obligations, the legal basis for which is an agreement between Unesco and the United States of America (such as the memorandum concerning IPDC, dated 30 September 1983);

(iii) obligations contracted unilaterally, the legal basis for which is a unilateral undertaking by the United States of America to provide a voluntary contribution (such as its commitments concerning Moenjodaro).

The withdrawal of the United States of America will clearly not have identical effects on these various categories of financial obligations for several of these obligations, the legal basis will not be affected by discontinued membership of the United States of America. This applies to contractual obligations and all unilaterally contracted obligations, and all legal obligations whose legal basis is not the Constitution. The United States of America will therefore have to continue to meet them even after date of withdrawal.

B. With regard to financial contributions to the regular budget of the Organization, their legal basis is neither contractual nor unilateral,

but solely the Constitution. Accordingly, the fact that a Member State voted for or against the budget at the General Conference, or that it was absent, in no way alters its legal obligation to contribute financially to that budget, precisely because the legal basis for that obligation is not its participation in the vote on the resolution, but the Constitution itself.

- C. The Appropriation Resolution of the General Conference therefore serves merely to give effect to the legal obligation imposed by the Constitution itself; the resolution does not give rise to the obligation, which derives from the membership of Unesco of the State concerned; the resolution is concerned merely with distributing budgetary income by apportioning "financial responsibility among the States Members of the Organization" as provided for in Article IX, paragraph 2, of the Constitution.
- D. Since the legal basis of the obligation to contribute to the budget of the Organization is the Constitution, it is also in the Constitution that the reason and grounds for the legal obligation accepted by the United States of America are to be sought. It is in fact in terms of its membership of Unesco that the financial obligation requiring the United States of America to contribute to the budget is defined. This conclusion, which may be deduced both from the context and from the actual text of Article II, paragraph 6, of the Constitution ("Membership"), is borne out by the provisions of Article IX ("Budget"), paragraph 2 of which stipulates quite naturally that "the General Conference shall approve and give final effect to the budget and to the apportionment of financial responsibility among the States Members of the Organization...". In other words, the very text of the Constitution implies that the extent of financial obligations concerning the regular budget of the Organization must be the consequence of membership, and not the consequence of the duration of the financial period of the Organization. It follows that if the grounds for the obligation cease to exist, the obligation itself cannot but lapse, unless the treaty has expressly provided for it to continue for a certain period of time - which is not the case with Unesco. The very basis for the financial obligations binding on the United States of America in regard to its contribution to the budget thus necessarily confines such obligations to the period during which it remains a member, in other words until 31 December 1984.
- E. The preparatory work for paragraph 6 of Article II of the Constitution, and more specifically the discussions of the Legal Committee at the eighth session of the General Conference (Montevideo, 1954), in any case leave little doubt as to the extent of the obligation binding on a withdrawing State. The statement made by the Legal Adviser to the Committee that is being quoted to justify the obligation for such a State to pay its full contribution cannot stand, because it was only the lead-in to a discussion in which it was very clearly contradicted by the statements of the representatives of Belgium, the United Kingdom and the United States of America. The fact is that the Committee did not adopt the United States draft amendment, the effect of which would indeed have been to dissociate the date on which the financial obligations accepted by a State by virtue of its membership ceased to be effective - the point being that the United States amendment provided expressly that a withdrawing State should meet its financial obligations until the end of the financial period. That amendment was withdrawn. The preparatory work

therefore confirms that it was the Committee's intention that the two dates should coincide, which means that a withdrawing State's financial participation in the budget is confined to the period during which it remains a member of the Organization.

- F. It may moreover be asked what, in the last analysis, would be the practical consequences of the provision of the Constitution that clearly specifies the date on which the withdrawal takes effect, if that date were to have no effect on the amount of the contribution to the regular budget: a State would forfeit, by definition, all its rights as a member while nevertheless continuing to assume its obligations as a member in relation to the regular budget.
- G. It may be asked, finally, whether the application of the provisions of the financial regulations envisaging the possibility of supplementary estimates does not render "manifestly... unreasonable" (according to the expression in the Vienna Convention on the Law of Treaties) the interpretation that would involve extending the financial obligations of the United States to include 1985, even though that country will no longer be a member of the Organization, will no longer have a representative on the Executive Board and will obviously not be represented at the 1985 General Conference. Article 3.9 of the Financial Regulations provides for the possibility of supplementary estimates, with the provisional approval of the Executive Board, to a total of 7.5 per cent of the existing appropriation and subject to the final approval of the General Conference at the end of the financial period in question, particularly if the estimates exceed this percentage. If the financial obligations of the United States under the regular budget were also to encompass 1985, it would follow that the General Conference could, retroactively, and in the total absence of the State concerned, increase its financial obligations for 1985. This situation is the inevitable consequence of the rule of budgetary unity, which is recognized by the United Nations and Unesco alike.'

133. If one examines withdrawals from the Organization in the past, one finds that all the States that have withdrawn from Unesco, or which have considered themselves to have done so, have paid in full their assessed contribution for the financial period under way or ending on the date of their withdrawal.

134. On rejoining the Organization, Poland, Hungary and Czechoslovakia had to pay their budgetary contribution for the period during which they had decided not to belong to Unesco. By a decision of the General Conference, they were allowed to repay by instalments the amounts due by way of arrears of contributions. Repayment was made in full, although Poland and Czechoslovakia initially maintained that they had ceased to be members of the Organization in 1953 and that they did not therefore intend to pay that part of their contributions for the period 1953-1954 which fell due in 1953. The Contributions Committee and the General Conference itself did not accept that point of view (cf. Resolutions 1954 - Report of the Administrative Commission - Collection of Contributions).

135. With regard to South Africa, whose withdrawal became effective on 31 December 1956, all the contributions owing from that country were paid in full before the effective date of the withdrawal (rate of contribution for 1955-1956: 0.70 per cent; 1955: \$66,440 and 1956: \$73,560).

136. With regard to Portugal, whose withdrawal - notified on 18 June 1971 - became effective on 31 December 1972, full payment of its contribution for the financial period 1971-1972 was made on 30 October 1974.



137. The withdrawal of the United States of America confronts the Organization with a serious financial problem which has implications not only for the execution of the programme for 1984-1985 but also for future activities. The financial contribution of the United States of America amounts to \$43,087,500 for each of the years of the budgetary period 1984-1985.

138. It is for the Executive Board to indicate the measures that should be taken to cope with the financial situation arising from the withdrawal of the United States of America.

139. With regard to the budget for the period 1984-1985, the divergence of views and interpretations of the constitutional texts and regulations that may occur as to whether the United States is liable or not liable to pay the second instalment of its contribution, as fixed by the General Conference before the notification of that State's withdrawal, by 22 C/Resolution 16 and 22 C/Resolution 29.1, raises a problem of international law that the Executive Board has the power, under the Constitution, to have elucidated.

140. The Executive Board will doubtless also wish to know what measures were taken by the International Labour Organisation (ILO) to deal with the budgetary problems resulting from the withdrawal of the United States of America.

141. To attenuate the financial consequences of that withdrawal, the Director-General of ILO took the step of appealing for voluntary contributions. A circular letter to that end was addressed to Member States on 2 December 1977, i.e. less than a month after the date on which the United States left that Organization.

142. The complete list of voluntary contributions received, amounting to a total of \$6,475,038 is as follows:

<u>Governments</u> (French alphabetical order)	US \$
Germany, Federal Republic of	700,000
Saudi Arabia	208,889
Australia	125,623
Austria	54,833
Bahrain	29,469
Bangladesh	6,963
Belgium	193,993
Benin	5,000
Brazil	25,000
Burma	2,593
United Republic of Cameroon	5,114
Canada	200,000
Cyprus	1,741
Denmark	100,000
Denmark (DANIDA)	100,000
Spain	80,000
Fiji	7,977
Finland	62,565
France	200,000
Ghana	18,939
Greece	33,945
Guyana	2,000
India	125,000
Indonesia	30,463

<u>Governments</u> (French alphabetical order)	<u>US \$</u>
Iran	50,000
Iraq	1,000,000
Ireland	12,000
Japan	1,000,000
Jordan	8,704
Kenya	2,000
Kuwait	174,000
Libyan Arab Jamahiriya	200,000
Luxembourg	7,547
Madagascar	1,949
Nigeria	67,285
Norway	374,777
New Zealand	20,000
Pakistan	5,230
Papua New Guinea	5,572
Netherlands	400,000
Philippines	21,759
Qatar	17,407
United Kingdom	248,230
Somalia	16,877
Sri Lanka	1,741
Sweden	109,000
Sweden (SIDA)	217,794
Switzerland	100,000
Suriname	1,710
Thailand	20,000
Trinidad and Tobago	11,400
Tunisia	10,000
Venezuela	49,949
	<hr/>
Total	6,475,038

(Document of the 212th session of the ILO, February-March 1980:  
GB/212/PFA/1/24)

143. Switzerland also agreed to the postponement of payment of the annuities due for 1978-1979 in respect of the new ILO building. Payment of the ILO's debt to the Fondation gouvernementale suisse was thus 'rescheduled', so that the final date for paying off the loan was postponed by several years. This measure reduced the ILO budget for 1978-1979 by the sum of almost \$5 million (the budget provision was \$4,786,261).

144. To meet immediate financial commitments, the Director-General had recourse to various internal funds (including the Working Capital Fund). In addition, facilities were made available to ILO by a certain number of banks. In particular, the Union de Banques Suisses offered the Organization credit facilities to the sum of \$15 million.

145. These facilities permitted ILO to meet the additional costs of monetary fluctuations and inflation on the basis of the budget for 1978-1979, as adjusted as a consequence of the withdrawal of the United States of America (see below).

146. The money involved was repaid, in large measure, out of the American contribution when the United States rejoined ILO.



147. It should be mentioned, finally, that the staff of ILO itself voluntarily agreed to a salary reduction of approximately 2.2 per cent for a period of some six months. The money thereby saved was paid into a fund which made it possible to remunerate, on a temporary basis, staff members whose posts had been abolished and who could not yet be redeployed to new posts. These voluntary contributions were subsequently repaid to the staff members who had made them.

Measures to be taken to deal with the budgetary deficit resulting from the withdrawal of a Member State

148. The financial consequences which would arise from the withdrawal of a Member State could be dealt with in two different ways: either by finding additional resources to offset the possible financial losses, or by reducing all or part of the Organization's expenditures.

149. If the solution of reducing all or part of the expenditures were chosen, three possible courses of action might be envisaged, from the theoretical point of view, with regard to the programme.

150. The first approach would consist in eliminating - or putting into abeyance entire parts of the programme (major programme, programme or possibly subprogrammes). The effect of this course of action would be to limit the action taken to certain groups of programmes. In such a case, it would be easy to identify the posts which would need to be abolished, since they would correspond to the programmes eliminated. There would, however, be difficulties of several kinds: in the first place, there would be a danger that international co-operation would no longer extend to fields regarded as essential by certain or by several Member States and, secondly, co-operation between Unesco and sizeable sectors of the intellectual educational, scientific and cultural communities would be interrupted.

151. The second approach would consist in choosing, in each major programme or in each programme, programme elements of varying importance which would be eliminated or implementation of which would be delayed. This approach would make it possible to maintain the Organization's activity in practically all the fields in which it operates - and therefore to safeguard not only the greater part of the programme, but also the links with the intellectual educational, scientific and cultural communities which co-operate with Unesco. It would be less easy to identify those posts which it could be decided to suppress, since the activities eliminated might correspond only to part of the duties linked to any given post.

152. The third approach, which is a variant of the second, would consist in reducing the resources of each major programme by a given, identical percentage. Such a solution would respect the previous decisions of the General Conference concerning the relative distribution of resources between the programmes; it would also, like the previous solution, make it possible to safeguard the links of co-operation with outside bodies and individuals. The problem of identifying the posts to be suppressed would arise in much the same terms as in the second approach. However, the redeployment of staff might more easily be sought within each major programme sector, without excluding the possibility of seeking solutions outside each of the sectors employing what is deemed to be excess staff.

Working Capital Fund

153. With regard to the Working Capital Fund, Article 6.2 of the Financial Regulations states:

'6.2 There shall be established a Working Capital Fund in an amount and for purposes to be determined from time to time by the General Conference. The source of moneys of the Working Capital Fund shall be advances from Member States, and these advances made in accordance with the scale of assessments as determined by the General Conference for the apportionment of the expenses of Unesco shall be carried to the credit of the Member States which have made such advances'.

154. Since the source of moneys in the Working Capital Fund is derived from advances made by Member States, these moneys remain the property of each individual Member State. Consequently, the advance to the Working Capital Fund made by a Member State would be repayable to the Member State in the event of its withdrawal from the Organization. However, in cases where there are unpaid contributions due, it is considered a normal procedure to deduct any amounts due in respect of such arrears from the advances made by the same Member State to the Working Capital Fund. The same procedure would apply equally to any other amounts due to the Organization by the withdrawing Member State.

155. On the other hand, if the amount of the Working Capital Fund is to be maintained at the approved level (i.e. not decreased in total) an additional assessment would have to be made on the remaining Member States to bring the Working Capital Fund up to its approved level.

156. With regard to the measures taken by ILO following the withdrawal of the United States, the following information may be found useful: the International Labour Conference had approved in June 1977 (i.e. some months before the actual withdrawal of the United States) a programme and budget for 1978-1979 based on the assumption of receiving contributions from all Member States, that is to say, not taking account of the possibility of the United States' withdrawal.

157. After having received confirmation of the United States' withdrawal, in November 1977 the Director-General submitted to the 204th session of the Governing Body of ILO, which was being held at the very time when the withdrawal became effective, a document entitled 'Measures to deal with the financial situation resulting from the withdrawal of the United States'.

158. In this document, after having pointed out that 'the United States withdrawal already implies a loss of income in 1977, since no contribution will be received from the United States for the last two months of [that] year', and that this shortfall could be covered thanks to economies which had already been made, particularly through the freezing of some posts, the Director-General of ILO proposed, for the budgetary period 1978-1979, reductions in the programme amounting to some \$32.5 million, or 19.2 per cent of the Approved Programme and Budget for 1978-1979, which amounted to \$169,074,000. In the Director-General's words, these reductions would imply 'the cancellation or postponement of a number of important meetings; a considerable slowing down of ILO's technical work; reducing the Organisation's ability to provide concrete and practical advice and assistance for its Member States; reducing the administrative programmes to a level at which they will, at best, only be able to provide and maintain essential services; and the separation of a number of staff members, including, no doubt, several permanent officials, which means that the ILO will have to lose the services of many competent and devoted officials'.

159. These reductions were apportioned among almost all the programmes of the Organisation, some of them undergoing particularly large cuts.

160. The Governing Body, after having examined these proposals, decided on even greater programme reductions, amounting to \$36.6 million, i.e. 21.7 per cent of the

Approved Programme and Budget for 1978-1979. It noted that the Director-General would seek to cover the difference between these reductions and the shortfall in income due to the departure of the United States (a difference representing \$5.7 million for the biennium), by means of voluntary contributions and further measures of rationalization.

161. At its 205th session, in February-March 1978, the Governing Body of ILO definitively approved the reductions in the programme. These reductions included a cut-back in staff resources corresponding to 263/6 work-years among the Professional staff and 342/6 work-years among the General Service staff, i.e. resources corresponding to 302 officials.

162. The Director-General of ILO informed the Governing Body at its 212th session in February-March 1980 that it had been possible, by means of the budget cuts approved by that body together with voluntary contributions, to balance the budget for the 1978-1979 financial period.

UNESCO Executive Board's Decision concerning the Withdrawal\*

ITEM 2            CONSEQUENCES OF THE WITHDRAWAL OF A MEMBER STATE FROM UNESCO  
(4 X/EX/2 and Corrīgenda)

I

The Executive Board,

1. Having taken note of the communication addressed to the Director-General by the Secretary of State confirming the United States' decision to withdraw from the Organization, effective 31 December 1984 (4 X/EX/2, Annex I), [I.L.M. page 489]
2. Recalling the principle of universality of the United Nations system, of which Unesco is a member,
3. Invites the Government of the United States of America to resume its active participation in the Organization as soon as possible.

II

The Executive Board,

1. Recalling 120 EX/Decision 4.1, Part IV, paragraph 113, which recommends that the Director-General prepare document 23 C/5 on the basis of \$391,168,000 for Parts I to VI, excluding inflation and currency fluctuation factors,
2. Recognizing that document 23 C/5 is to be discussed at the 121st session of the Executive Board (May-June 1985) in conformity with 118 EX/Decision 11.1,
3. Considering that the preparation of the Draft Programme and Budget is already in an advanced stage,
4. Reaffirms the guidelines contained in 120 EX/Decision 4.1,
5. Invites the Director-General to present to the Executive Board at its 121st session a supplementary report which would examine the question of the adjustments which might possibly be made to document 23 C/5, so as to enable the Executive Board to recommend to the General Conference any modifications to the Programme and Budget for 1986-1987 which it might consider necessary in order to allow for the shortfall resulting from the withdrawal of the United States of America;
6. Recommends to the General Conference that any shortfall arising from withdrawals should not result in any increase in the assessed contributions of any of the Member States.

III

The Executive Board,

1. Recalling its decision 120 EX/3.1, section III, paragraph 3,
2. Noting with satisfaction the report presented by the Director-General in document 4 X/EX/2 on 'Consequences of the withdrawal of a Member State from Unesco',
3. Noting that a Member State has withdrawn from the Organization, which has regrettably resulted in particular in a reduction in its finances,

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\*[Reproduced from UNESCO Document 4 X/EX/Decisions of February 22, 1985. The Executive Board's 4th Special Session took place in Paris, February 12-17, 1985.]

4. Considering the necessity to work as far as possible for the continued effective implementation of the 1984-1985 programme, as well as other resolutions approved by the 1983 General Conference at its twenty-second session in 1983, bearing in mind also the criteria and considerations indicated in section VI of the present decision in so far as they may be applicable, practical or necessary,
5. Considers that the present financial situation of the Organization may in part be met by the efforts of Member States by:
  - (a) paying as a matter of urgency their arrears of assessed contribution;
  - (b) foregoing voluntarily, within their economic possibilities, the surpluses accruing to them as a result of the appreciation of the United States dollar in Part VIII of the budget for 1981-1983;
  - (c) making other voluntary contributions;
6. Congratulates the Director-General for the economies he has already effected for the 1984-1985 biennium;
7. Invites the Director-General to:
  - (a) proceed to any appropriate adjustments, financial and structural, so as to bring down the Organization's expenditure in so far as possible, in particular by bringing down expenditure on staff, taking, however, into account the necessity of safeguarding the principle of equitable geographical distribution and the quotas attributed to Member States, and subject to the need to secure the highest standards of integrity, efficiency and technical competence;
  - (b) reduce other administrative expenses to the fullest extent possible;
  - (c) explore other possibilities for fund raising and in particular open a public subscription with institutions, organizations and individuals;
  - (d) create a special account into which may be paid voluntary contributions from countries and other resources designed to meet the present situation;
8. Further invites the Director-General to report at the 121st session of the Executive Board on the financial situation for 1985 resulting from the measures taken.

## IV

The Executive Board,

1. Having examined the report by the Director-General on the consequences of the withdrawal of a Member State (document 4 X/EX/2 and Corrigena),
2. Referring to Article VI of the Constitution of Unesco and also to the Organization's current Staff Regulations and Staff Rules, in particular to Rule 104.2 and Regulations 9.1 and 9.5,
3. Bearing in mind the quota system established by the General Conference and the need to effect reductions in the staff of the Secretariat with a view to achieving savings in resources, which are essential in the event of withdrawal from the Organization of a Member State,
4. Is of the opinion that a State that withdraws from the Organization loses all the rights and privileges of membership in Unesco, in particular the quota established for it in implementation of resolutions of the General Conference and taking into account the principle of the equitable geographical distribution of posts within the Secretariat.

## V

The Executive Board,

1. Noting the communications between the Government of the United States of America and the Secretariat of the Organization contained in Annexes I, II and III of document 4 X/EX/2, [I.L.M. pages 489-492]



2. Considering that the establishment of a United States observer mission at Unesco would be a valuable means of ensuring contact between the United States of America and the Organization,
3. Recalling its decision 26 EX/8.3.2 by which it authorized the Director-General to grant facilities to observers of non-Member States,
4. Authorizes the Director-General to provide facilities, as far as possible, to the observer mission of the United States of America as soon as the official procedure is complied with.

## VI

## The Executive Board,

1. Referring to 120 EX/Decision 3.1 and in particular the paragraphs 5-8 and 12 in Recommendation E 1 as well as other relevant recommendations of the Temporary Committee,
2. Considering decision 4.1 adopted by the Executive Board at its 120th session, and in particular paragraphs 7 to 9 which emphasize the need to continue the efforts to increase programme concentration,
3. Decides that in making programme recommendations to the General Conference the Executive Board should take into consideration the following three additional criteria:
  - (a) that Unesco's contribution is essential for solving problems of importance to Member States, in particular developing countries;
  - (b) that the problems for which solution is sought require co-operation at an international and intergovernmental level;
  - (c) that, in the case of continuing activities, preceding experience and evaluation show that action under the relevant subprogramme has proved effective;
4. Also decides to apply, in its examination of the Draft Programme and Budget, the criteria mentioned in the preceding paragraphs, as well as the following considerations:
  - (a) the direct relationship of the proposed action with the C/4 document;
  - (b) the extent to which the action effectively contributes to obtaining the expected results formulated for the subprogramme;
  - (c) the relevance of the proposed action to the expected impact in Member States in relation to the complexity and scope of the problem, taking account of the fact that the funds at the disposal of the Organization are limited and that they should be used for the most effective activities, and to ensure that the action will have a significant impact;
  - (d) whether the proposed action adequately reflects the specificity of Unesco's fields of competence;
5. Welcomes the Director-General's suggestion to present an annex to the 23 C/5 document in which the problem of adjustments and priorities will be examined in view *inter alia* of the above, so as to enable the Executive Board to recommend to the General Conference appropriate adaptations to the Programme and Budget for 1986-1987.

(4 X/EX/SR.2, 3, 4, 5, 6, 7, 8 and 9)