

INTERNATIONAL LAW ASSOCIATION

LONDON CONFERENCE (2000)

ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS

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SECOND REPORT

Introduction

1. The Committee's First Report was submitted to the Sixty-eighth ILA-Conference held at Taipei in May 1998. That first report consisted of two Chapters. The first Chapter dealt with some main operational issues. The kind and scope of measures the Committee may consider appropriate for adoption had been intentionally described in a broad way, encompassing measures of legal, administrative or other nature, potentially requiring a rather substantial degree of progressive development. Both intergovernmental organisations ("IO-s") in the traditional sense and "treaty-based organs" were considered to come within the scope *ratione personae* of the measures envisaged.

2. Several general points were recognised by the Committee. First, that accountability as a notion is inherent in the nature of IO-s; secondly, that IO-s were generically acquiring increasing responsibilities which required mechanisms of accountability, and thirdly that an increase in regulation was a global phenomenon with regard to IO-s of all kinds.

3. While accepting that there do exist already a range of binding rules gov-

erning the operations of IO-s, it was felt that the formulation of a pragmatic and feasible set of recommended rules and practices was considered to be the most suitable outcome of the Committee's work. Such recommended rules and practices (RRPs) would be preceded by an introductory overview and each of them would be accompanied by a relevant commentary. In order to be able to claim widespread and general applicability, RRP-s would have to be formulated almost irrespective of the singular particularities of individual international organisations or "treaty-based organs", although specific RRP-s for particular categories could be added.

4. The ambit of accountability in its broad sense extends not only to the relationship between IO-s (including their supervisory organs) and their Member States (including their domestic judicial and parliamentary organs), but also to their relationships with other main actors in the field such as international courts and tribunals, NGO-s on both the national and international level, and private parties. The RRP-s have to be based on a careful analysis of existing practice of all actors involved in order to be pragmatic and likely to be implemented. Patterns of consistency should provide the solid ground for this.

5. Accountability of IO-s covers both primary rules governing the conduct of IO-s and secondary rules to enable those potentially affected in their interests by acts, decisions or omissions by IO-s to raise their accountability by resorting to available means of redress and remedies. The Committee's mandate covers both sets of rules. The Committee therefore decided to follow a two-stage approach: in the period up to the London Conference it would devote its attention to the relations between Member States, third parties and IO-s whereas the more procedural and consequential problem of means of redress and remedies against IO-s would be dealt with afterwards.

6. During the Committee's first meeting it was decided to concentrate initially on the first component of accountability i.e. the extent to which IO-s and treaty organs, in the fulfilment of their responsibilities as established in their constituent instruments, are and should be subject to or exercising themselves forms of internal and external scrutiny and monitoring, without prejudice to potential and subsequent liability and/or responsibility (Report of the Sixty-eighth Conference, pp.599-600).

7. In its First Report the Committee raised the question by way of assumption - unsubstantiated at that stage by an analysis of relevant practice - whether accountability of IO-s had already moved substantially into the area covered by its components of liability and responsibility (*Ibidem* at p.601). Further study since the publication of the First Report seems to indicate that this development has indeed taken place. There is no apparent reason to expect a decline in the tendency which has been discerned by authoritative commentators who have been looking extensively into the matter.

8. In the Second major Chapter of the Committee's First Report an extensive framework was laid down to steer the Committee's approach to the topic. Three crucial questions were elaborated upon. The applicable law (comprising the

governing law, the internal law, the law common to a group of IO-s and the external law) consists of a variety of norms depending upon circumstances and matters at issue. The notion of accountability was approached in a descriptive way: the actors involved, the different forms of accountability, the component elements of accountability, the yardsticks to be used and the entitlement to raise the accountability. International legal personality of IO-s was reviewed from both the status and function approach as well as in the light of its internal and external opposability.

9. This framework continues to permeate the drafting of the RRP-s and is, of course, subject to reconsideration during later stages of the Committee's activities. An Annex to the First Report contains a provisional list of aspects and issues coming within the scope of the two major items of the terms of reference and will function as a signpost for the Committee's future activities. The ILA Conference held at Taipei in 1998 adopted Resolution No. 16/98 inviting the Committee to continue its work taking into account comments made at that Conference and calling on the Committee to report to the London Conference to be held in London in 2000.

10. The Committee has held five formal meetings so far: July 1997, September 1998, June 1999, November 1999 and March 2000. In the light of the discussion of the Committee's First Report at the Taipei Conference and in a departure from the approach taken in that First Report (*Ibidem*, at p.587) it was decided in September 1998 to limit the focus of the work to the passive accountability of IO-s as the so-called active side falls within the traditional mechanisms of international law i.e. fact-finding and monitoring of Member States' conduct. It goes without saying that IO-s can be held accountable for the way in which they perform these active accountability roles. The fact that these roles may have a political or partly political character cannot mean that they lie outside the scope of accountability as such, although it may affect the yardsticks to be applied.

11. The Committee attaches great importance to a developing and fruitful relationship with IO-s, noting that Resolution No. 16/98 adopted by the ILA Conference at Taipei emphasised the "importance of the availability of information about practice for the progress of the work of the Committee", and will seek to pursue contacts to that end in the light of the deliberations at the London Conference in July 2000.

Preliminary observations

12. Based upon the range of considerations put forward in the Committee's First Report (Report of the Sixtieth-eighth Conference at pp. 601-2); working papers submitted by Committee Members, and research undertaken by themselves, the Co-Rapporteurs have prepared the attached draft set of RRP-s. These are designed to be applicable across every category of IO-s and treaty-organs, although the Co-Rapporteurs believe that specific RRP-s for particular clusters of IO-s could complement the proposed common standards. This draft has not

as yet been approved by the Committee, nor indeed as yet discussed in detail, but the Committee decided to annex the draft to this Report as a more precise indication of how its work is progressing and specifically as a means of inviting comments and reactions from IO-s and others (see paragraph 11 above).

13. The starting point for the draft RRP's is that accountability is linked to the authority and power of an IO or treaty-based organ. Power entails accountability, that is the duty to account for the exercise of power. States may be more willing to transfer power to an IO if some guarantee is given that the transfer is accompanied by appropriate mechanisms to ensure public accountability. The draft RRP's are aimed at making accountability operational as much by fostering the effectiveness and propriety of the use of power as by sanctioning the abuse or misuse of power (the latter to be addressed in the period after the London Conference).

14. The limits of the institutional and operational authority and power of IO-s and treaty-based organs are derived from three sources: institutional and procedural limitations based upon the internal law of the IO; substantive limitations flowing from constitutional provisions (including any non-derogable norms) and subsequent practice of each individual IO, from primary rules of domestic and international law; and the general practice of IO-s. These are reflected in mechanisms for supervision and monitoring (e.g. reporting, financial and administrative control, judicial review).

15. It is crucial that the draft RRP's should maintain a delicate balance between preserving the necessary autonomy in decision-making for the IO-s and treaty-based organs and responding to the need, both in the sphere of international law and international relations, to have these actors accountable for their acts and omissions.

16. The variety of legal layers providing flexibility for IO-s when conducting their multilevel operations has to be matched by a comprehensive set of yardsticks leaving no loopholes at each individual legal level. Both parties involved - the IO-s and treaty-based organs concerned and monitoring entities - although for different reasons, are looking for a certain degree of predictability and consistency in the way the multiple yardsticks are put into operation. Any attempt to impose too rigid a system of accountability would not survive the complexities of international reality.

The General Principles¹

1. Those Derived from the Principle of Good Governance

17. The principle of good governance (or of good administration) as it is commonly understood and which is clearly of an evolving nature, includes the following elements: transparency in both the decision-making process and the

¹ Unless otherwise stated, references to IO-s include references to treaty-based organs

implementation of the ensuing institutional and operational decisions; a large degree of participation in the decision-making process; access to information open to all potentially concerned and/or affected by the decisions at stake; the well-functioning of the international civil service; sound financial management; and appropriate reporting and evaluation mechanisms.

Although these elements will be reviewed separately below, it is clear that their close interconnection, also in practical terms, is vital to the achievement of good governance by IO-s.

i) Transparency in both the decision-making process and the implementation of institutional and operational decisions.

18. The basic standard should be that of the maximum possible transparency of the quasi-legislative procedure engaged in by decision-making organs of an IO. Transparency may in practice differ in format and modalities depending on the stage of the decision-making process. Non-plenary organs acting on behalf of the whole membership under the governing provisions of an IO should act as transparently as possible, without the measures to achieve this interfering with such an organ's primary responsibility in a field of the organisation's main purposes. This obligation of transparency implies general, collective and individual elements, with regard to member states generally, or state or states specifically affected by the relevant decision being taken.

ii) Participatory decision-making process.

19. From an accountability point of view, it is clear that rules on decision-making partly determine to what extent Member States and States Parties to a treaty can control the process by which IO-s employ the powers which have been conferred upon them to realise the functions for which they have been established. When reviewing the element of participation present in any decision-making process within an IO, the emphasis is inevitably upon the actual point of decision-making. Nevertheless, one should also be aware of the practice of deliberations and even decision-making processes that may take place in non-plenary organs or even informally. These informal processes are undoubtedly useful in lubricating the decision-making process, especially in IO-s of a universal or quasi-universal character. However the intervention of closed or informal processes, on an institutionalised basis, necessarily reduces opportunities for external scrutiny. There is a close connection between transparency of the decision-making process and its participatory character.

iii) Access to information.

20. Every IO has developed an information strategy not only to project a clear idea of what it is doing and why, but also to respond to criticism. When addressing the issue of access to information held by an IO one should be aware that internal flows of information are as important as that directed to audiences outside. The principle of good governance seems to imply that ensuring full

access to information is a fundamental element in the accountable functioning of any organ of an IO.

iv) *A well-functioning international civil service.*

21. The principle of good governance requires IO-s to ensure a well-functioning and independent international civil service which has an indispensable role to play in the performance of their responsibilities. IO-s have formulated principles, recommended practices and issued guidelines and regulations, which have been confirmed and guaranteed through the case-law of the various administrative tribunals. Delicate issues are bound to arise when the daily operation of this framework is being confronted with the overriding concern of accountability of the IO. Particular attention has to be paid to the considerable power of the Secretariat of an IO which is largely based upon it being well informed concerning all documentation and practices of the IO.

v) *Sound financial management.*

22. Since financing is at the heart of the functioning of any IO the requirement of sound financial management constitutes an important aspect of the principle of good governance and thus of the overall accountability of IO-s.

vi) *Reporting and evaluation.*

23. The processes of reporting and evaluation are situated at a crucial juncture of the principle of good governance and the *mise-en-oeuvre* of accountability of IO-s. They constitute the vital preconditions for, and at the same time form an integral part of, the whole process of its *mise-en-oeuvre*. The problem of accountability of plenary organs situates itself at the cross-roads of internal and external accountability: the former is based upon internal mechanisms established with regard to the IO or treaty-organ in question, the latter is constituted by the broad legal environment in which the IO is created and operates. Reporting should take place in accordance with a number of procedural and substantive requirements in order to enable efficient supervision and control.

2. Those Derived from the Objectives, Principles and Concepts Common to IO-s

1. The principle of good faith.

24. The fundamental principle of good faith conditions all acts, activities and conduct of IO-s, irrespective of their individual or particular category features, and this to the same extent as it operates vis-a-vis states and other actors on the international scene. The principle's fundamental nature has given rise to other important principles with regard, for example, to the need for standards of honesty, fairness and reasonableness. The principle of consistency of treatment in like cases, for example, may in certain situations give rise to legitimate expectations.

2. The principle of constitutionality.

25. Since IO-s are based on the rule of law, neither their Member States nor their organs can avoid a review as to whether the decisions and measures adopted are in conformity with its basic constituent instrument. Since IO-s can only act legally in accordance with an express or implied power founded upon an express functional provision, they may only function in circumstances laid down directly or indirectly by their constituent instrument. This accountability is in principle owed to the Member States collectively and to individual Member States.

3. The principle of institutional balance.

26. The principle of institutional balance entails that organs of an International Organisation cannot overstep the institutional restraints laid down in the constituent instrument determining how they exercise their powers and functions.

4. The principle of supervision and control.

27. The principle of supervision and control through periodic evaluation of the activities of an IO and of its constituent organs, and of treaty-organs, may be considered to be in the process of developing into a general principle of contemporary international institutional law. The principle of good governance provides the necessary guidance as to the institutional and operational activities of an IO. Principal organs of an IO have an inherent power to establish subsidiary organs to assist them in the exercise of their own express and implied powers under the constituent instrument. The relationship between a parent principal organ and its subsidiary organs, operating within the framework of validity of the former, but possibly extending beyond its range of functions, is pivotal in terms of accountability and closely linked to the subsequent rules on supervision and control. In case of delegation of power to subsidiary organs the scope and frequency of the reporting obligation towards the parent organ should be commensurate with the degree of delegation.

5. The principle of stating the reasons for decisions or a particular course of action.

28. The principle that a proper reasoned basis should be provided for its decisions and course of action (or inaction as the case may be) serves multiple purposes with regard to any organ of an IO as it is clearly connected to several of the other principles listed here. Compliance with this principle will contribute to greater transparency, it will have an impact on the kind of procedure for the decision-making process, and it will undoubtedly enhance the chances of

accountability to operate properly, *inter alia* through the exercise of supervision and control.

6. The principle of proportionality.

29. Any action of an organ of an IO or of a treaty-organ is undertaken in order to achieve the objectives laid down in the constituent instrument. The principle of proportionality has to be interpreted and applied in relationship with other relevant principles such as good governance, the principle of constitutionality and the concept of functional necessity in order to constitute a relevant framework for the exercise of power.

7. The principle of procedural regularity.

30. The principle of procedural regularity is needed in order to supplement the principles of objectivity and good faith with regard to minorities and individual Member States of an IO, international civil servants and interested or affected third parties.

8. The principle of objectivity and impartiality.

31. The principle of acting objectively and impartially, which can be drawn from the spirit of a constituent instrument of an IO or the basic treaty of a treaty-based organ and from the express provision of a competence to adopt internal rules of procedure, is of a fundamental nature for the proper functioning of an IO both with respect to its institutional and operational activities. Compliance with the various other principles listed here will create the necessary conditions for any assessment as to conformity by IO-s with the principle of objectivity and impartiality.

9. The principle of due diligence.

32. A fundamental principle of due diligence is incumbent upon Member States as members of an organ of an IO, upon the organs of an IO and upon officials, staff members and experts. Some of the ensuing obligations mirror aspects of other principles listed.

10. The principle of promoting justice.

33. The principle of promoting justice which covers both the internal and external functioning of the IO and of a treaty-organ, clearly underpins the need for IO-s and treaty-organs to provide remedies and means of redress to all interested parties who want to raise their accountability for not having complied with any of the applicable standards and principles. The complex question of

the establishment of these mechanisms for redress will be dealt with by the Committee in the period after the London-Conference.

Treaty-based organs

34. Although particular IO-s have as one of their key functions the monitoring of compliance with the law of the IO by its Member States, particular categories of treaties concluded independently from an IO or under its auspices may have entrusted supervisory functions to specially established mechanisms or organs e.g. in the field of the protection of human rights or of the environment or in the area of disarmament. They constitute an intermediate step between entrusting the IO itself with the implementation of the treaty and the creation of a new IO. Treaty-organs are in fact incomplete IO-s lacking some of the structural features to be a complete IO on the one hand, and not having full and formal institutional links with an existing IO on the other hand. Their accountability for the performance of their tasks may be both towards the States Parties to the treaty that established them and towards the IO under whose auspices they operate. The position of these treaty-organs who report both to a plenary organ of an IO comprising non-state parties as well as state parties and to meetings of state parties needs clarification. This is especially so since the parent IO is not in a position to change composition, mandate, power or procedures of the treaty-organ it is servicing.

The relationship between IO-s and NGO-s

35. The range of the relationships between NGO-s and IO-s is as broad as the functional areas covered by IO-s themselves ranging from arrangements having a constitutional basis for the role of NGO-s (such as trade unions in the ILO) to relatively less-developed links with IO-s of a military nature. NGO-s frequently play a stimulating role in the effective functioning of IO-s and in the process of holding them accountable for their actions or omissions. There are various formalised mechanisms in both these regards: consultative status with a principal organ of an IO, associate status with the Department of Public Information of an IO, accreditation to an international conference organised by or under the auspices of an IO. Many treaty-organs are to varying degrees dependent on input by NGO-s for their functioning e.g. by providing essential information and expertise, service and support to governmental delegations.

36. Issues of shared or joint accountability arise when NGO-s are acting as implementing partners for agencies of IO-s in areas of development or humanitarian assistance and this topic will be addressed in the period after the London Conference when the *mise-en oeuvre* of accountability of IO-s will be considered. There will be a process of consultation with major NGO-s at this stage.

Mechanisms of oversight in IO-s

37. While reporting is the main method of seeking accountability and will continue to be so, it needs to be supplemented by further processes such as inspection and oversight mechanisms. Oversight is important for the continuing process of change and reform within IO-s and treaty-organs and is a shared responsibility among Member States, who play the essential leading role; Secretariats; and external oversight mechanisms (see eg. “More Coherence for Enhanced Oversight in the United Nations System”, Joint Inspection Unit, Geneva, 1998, Conclusions A and B). Consistent with commonly accepted principles of accountability, the first line of oversight must always be the management (ibid., E (2)). Internal oversight is accountable first and foremost to the Executive Head of the IO for providing advice on internal control and management practices based on a systematic and independent review of an Organisation’s entire operation (ibid., E (1)). External oversight is accountable to the Member States for directly providing them with objective information and advice regarding the management of the IO (ibid.). The distinctive, respective classical roles of internal and external oversight should not be blurred; it is important to maintain the distinction between them (ibid., D (3) and E).

ANNEX: THE CO-RAPPORTEURS DRAFT RECOMMENDED RULES AND PRACTICES (RRPs)²

I. Draft RRP based upon and derived from the principle of good governance

1. Transparency in both the decision-making process and the implementation of institutional and operational decisions.

1) *Normative decisions of an IO should as a general rule be adopted by public vote.*

2) *IO-s should as a general rule formulate medium-term plans setting out the general orientation of their programmes and establishing the objectives to be achieved and the strategies to be followed. Projects envisaged by IO-s should be timely notified to interested parties and in appropriate circumstances to the public at large.*

3) *Non-plenary organs of an IO should provide information about their activities to all Member States and reduce as far as possible the number of non-public meetings.*

4) *Non-plenary organs of an IO should as a general rule grant through their Rules of Procedure an appropriate status to individual Member States who consider themselves to be particularly affected by decisions to be taken.*

5) *Non-plenary organs should provide in their Rules of Procedure for full*

² Unless otherwise stated, references to IO-s include references to treaty-based organs.

information to be afforded to, and genuine consultations to be held with countries contributing by way of providing personnel or otherwise to operational activities of an IO, before relevant decisions (concerning issues such as policy, mandate and operational aspects) are taken.

6) *At the time when informal consultations are being held, non-plenary organs should make available to non-members of the organ the texts of draft decisions under consideration.*

7) *Non-plenary organs should reflect in their annual report information of a non-confidential nature conveyed orally by officials of the Organisation's Secretariat or by the Organisation's Executive Officer or his Special Representatives or Special Envoys .*

8) *The Chairman of a subsidiary organs entrusted with the supervision of the implementation of binding decisions taken by an executive non-plenary organ should give oral briefings to interested Members of the IO.*

9) *Such a subsidiary organ should prepare an annual report to the parent non-plenary executive organ. Moreover, it should issue press releases after each meeting and make available the decisions taken to any delegation so requesting.*

2. Participatory decision-making process

1) *In exercising their powers plenary organs of an IO should ensure full participation by all its members in the decision-making process.*

2) *All organs of an IO should provide in their Rules of Procedure for the provision of information or assistance by members of the Organisation's Secretariat, or other persons or entities considered competent for the purpose, in the examination of matters within their competence.*

3) *Plenary organs of an IO should periodically review the question of the permanent membership of non-plenary organs possessing executive powers in order to improve accountability towards the general membership of an IO.*

4) *Non-plenary organs possessing executive powers should arrange for the more preparatory stages of their decision-making process i.e. information, consultation and exchange of views to take place in public meetings open to non-members or alternatively, invite non-members to participate in confidential but formal consultations during private meetings.*

5) *When direct participation in confidential but formal consultations during private meetings is not possible because of the nature of the matter under consideration, the President of the non-plenary organ should organise a briefing of non-members.*

6) *When resorting to informal consultations in the process of regularly reviewing its prior decisions on coercive measures, non-plenary organs possessing executive powers should enable Member States who are the addressees of the measures concerned or other Member States whose interests are specially to express their views.*

7) *Non-plenary organs of an IO should provide in their policies and procedures for appropriate steps to enable non-members, differently affected people and entities to be informed and consulted.*

3. Access to information.

1) *As a basic rule IO-s should have no confidential documents. If however an IO has decided to consider some (category of) its own documents as confidential, the organ concerned should, at regular intervals but preferably annually, decide which of these should be made public unless there are compelling reasons not to do so.*

2) *International Organisations and treaty-organs should only deny application for access to information on any of the following grounds: public interest, privacy, commercial and industrial secrecy, protection of the Organisation's financial interests ,and protection of confidentiality as requested by private parties for security reasons.*

3) *The grounds for refusing a request for access to documents should be construed in a manner which will not render it impossible to attain the objective of transparency .*

4) *IO-s should not be entitled to invoke the public interest exception and to refuse access to documents containing opinions of their legal services merely in order to protect legal certainty and the stability of the prevailing legal order.*

5) *IO-s should maintain a stringent regime, to be periodically reviewed by their principal organs, to ensure effective protection against the disclosure without consent, of external commercial, technological and other confidential information which has come to their knowledge.*

6) *IO-s should ensure that their information gathering is being done in an effective and timely manner, whereas the material collected should be comprehensive, reliable and disinterested in order to enable them to conduct an accurate analysis of that information.*

7) *IO-s should take appropriate steps to preserve the right of unimpeded access to their archives, unless the exercise of that right could endanger the life of present or former Staff members or other persons associated with the IO.*

8) *IO-s should annually report on the measures they have been taking to implement the above rules on public access to documents and information. The report should include inter alia statistical data as to the origin, subject and follow-up of applications made by interested parties to obtain such access.*

4. Well-functioning international civil service.

1. *International Organisations should ensure that the international civil service is well-functioning by its compliance with four fundamental principles: the principle of impartiality, the principle of loyalty to the aims and purposes of the IO, the principle of functional independence and the principle of discretion.*

2) *In cases when issues concerning the accountability of the IO and/or of the international civil servant are being raised, the principle of loyalty and discretion should not be upheld absolutely in all circumstances.*

3) *IO-s and treaty-based organs should provide for effective mechanisms of supervision and control over the Chief Executive Officer and over the Secretariat, preferably by another, plenary principal organ.*

5. Sound financial management.

1) *The Secretariat of an IO should prepare a budget outline as a mechanism to allow greater participation by Member States from the early stages of the budget process in order to guide the Chief Executive Officer in the preparation of the programme budget.*

2) *IO-s should utilise a standardised budgetary presentation as a means to contribute substantially to the mise-en oeuvre of their accountability; accordingly they should refrain from altering the structure of their budget too frequently.*

3) *IO-s should maintain the classification of budget items according to both the instrument and the field of activity pending the putting into operation of the proposed result-based budget.*

4) *In the presentation of the budget the role of extra-budgetary resources, including the resources utilised by agencies and quasi-autonomous bodies, should be made clear in the overall structure of the IO in order to facilitate the review of the regular budget component.*

5) *For both categories of regular budgetary and extra-budgetary resources the same presentation and budget methodology should be utilised in order to improve transparency and accountability as activities supported by the latter category of resources could lead to changes in the balance of programme priorities established by the membership as a whole for the work of the IO.*

6) *The organ vested with the powers of approval of the budget of an IO should consider in good faith, bearing in mind particularly the need to fulfil the functions and purposes of the IO, the requests for finances of other organs; it has no right however to refuse to allocate finances for initiatives initiated by another principal organ which is exclusively competent to decide upon such initiatives.*

7) *The organ vested with the powers of approval of the budget of an IO has an obligation not to approve appropriations which, in its judgement, exercised in good faith, and after taking into account the need to fulfil the functions and purposes of the IO, it considers unnecessary or excessive.*

8) *During the course of the budget period interim financial performance reports should be presented, whereas after the conclusion of the budget period, the programme performance report should indicate the degree of programme implementation.*

9) *There should be a mechanism of internal auditing to review the regular-*

ity of all transactions, the conformity of obligations and expenditures with the appropriations and the economic use of the resources of the IO.

10) There should be a mechanism of external auditing to review whether the funds appropriated in the budget have been spent in accordance with the provisions of the budget and of the financial regulations of the IO.

11) International Organisations should arrange for separate budgeting for operational expenditures.

12) In case of voluntary contributions, the IO should assume accountability towards its Member States, and the applicable law for having accepted these contributions and towards the Member States for the way the IO has been spending these extra-budgetary financial resources.

6. Reporting and evaluation.

1) The primary plenary organs of an IO or of a treaty system should annually publish a general report on the institutional and operational activities undertaken and which should be addressed to Member States in their capacity as States Parties to the constituent instrument and to the treaty, and to civil society at large.

2) Plenary organs of an IO or of a treaty system should fully exercise their inherent power to require other organs to submit regular and special reports on their institutional and operational activities.

3) Plenary organs should properly exercise their powers of supervision and control by organising a thorough and substantive debate over the reports which have been submitted to them.

4) The format and content of a report should be such as to enable any supervisory organ to assess the relevant decisions and activities and to take appropriate action of approval and/or formulation of directives for the future. Accordingly the report should not only contain a genuine account of the action or inaction but also explanations for the course of conduct during the relevant period.

5) When engaging in operational activities IO-s should clearly articulate beforehand their objectives towards all parties concerned, in an effective dialogue with the beneficiary host society, so as to provide reliable yardsticks for evaluation afterwards.

6) When engaging in operational activities IO-s should ensure maximum congruence between the programmatic and organisational structure of the Secretariat in order to enhance accountability by clearly identifying the units who are responsible for the mission.

7) IO-s should incorporate the “best practice” accountability to the beneficiary host society in their reporting on operational activities in the field of development, human rights and peace-keeping operations.

8) IO-s should establish Functional Operational Lessons Units inter alia to conduct a systematic process of debriefing for personnel having served with

various operational activities and to utilise vital information from those who have hosted the mission.

9) IO-s should not use automatically past operations as a model for future field activities.

10) The conduct of an IO , particularly when operational activities are reviewed, should be evaluated and assessed in the light of information which was available to the IO at the relevant time. Evaluation reports will have accurately to address the extent to which in reality results have been achieved by the IO or treaty-organ and to provide explanation for changes occurred during implementation , thus helping Member States to decide on the relevance and continuing value of programmes.

II. Draft Recommended Rules and Practices based upon and derived from objectives, principles and concepts common to all IO-s and treaty-organs.

It should be noted that the following draft model rules and recommended practices contain those of a *lege lata* character and those of a *lege ferenda*.

1. The principle of good faith.

All IO-s and their organs are under a general legal obligation to act in all their dealings in accordance with the principle of good faith.

2. The principle of constitutionality.

1. IO-s are under a legal obligation to carry out their functions effectively and in accordance with the constituent instrument containing the definition of their powers, obligations and functions.

2. In the exercise of their inherent competence to engage in operational activities, IO-s should stay within the governing constitutional limits.

3. The principle of institutional balance.

1. IO-s may be bound by binding decisions taken by a competent organ of the IO and addressed to the Member States.

2. Secondary organs, because of their hierarchical subordination, should apply rules contained in recommendations issued by principal organs of the IO and which are addressed to Member States.

4. The principle of supervision and control.

1. When establishing a subsidiary organ and determining its terms of reference, principal organs of an IO should clearly indicate if the degree of independence necessary for the subsidiary organ to exercise its delegated powers and functions also includes operational control over its activities and determine its expected period of functioning.

2. Parent organs of a subsidiary organ have a constitutional duty to exercise a degree of control and supervision over the subsidiary organ which corre-

sponds to the legal, administrative or political independence granted to the subsidiary organ. Parent organs should act to prevent a situation from arising where an insufficient degree of actual supervision and control may result in a state of *de facto* independence for the subsidiary organ.

3. Primary organs of an IO should use their supervisory and controlling power to overrule any decision by a secondary organ if that decision is, even on a *prima facie* basis, contrary to the Organisation's general interest or to any of the applicable legal layers.

4. The proper consideration of a report submitted by one principal organ to another principal organ in conformity with appropriate requirements as to its format and content, implies the right of the principal organ to question the way the reporting organ has exercised its competence, and to voice its opinion on that, without however undermining respect for the principle of institutional balance or without interfering with the performance of the judicial function proper in case of judicial organs.

5. IO-s should put in place internal procedures under which principal organs of an IO should regularly check that action envisaged complies with the principle of subsidiarity as regards both the choice of legal instruments and the content of a proposal. This provision would not apply to organs of a judicial nature,

6. An organ of an IO delegating some of its powers to a subsidiary organ remains fully accountable for the actions and omissions of that subsidiary organ and as a parent organ has a permanent obligation of supervision and control, and this includes the duty to bring matters to the attention of subsidiary organs or alternatively to revoke the issue for its own consideration.

7. IO-s remain fully accountable for the actions and omissions of subsidiary organs which have been established in accordance with the Organisation's constituent instrument.

8. IO-s should elaborate a coherent instrument, codifying both the initial enabling resolution and all subsequent formal or *de facto* amendments in case of complex subsidiary organs, consisting of at least one political organ and an executive head who directs a special secretariat for the organ who is enjoying a considerable degree of autonomy.

9. The coherent instrument referred to in the previous provision should also clearly indicate the lines of hierarchical relationship between the Chief Executive Officer of an IO, the Executive Head of an agency or quasi-autonomous body within the IO and its political organ.

10. The political organs of an agency or of a quasi-autonomous body within an IO should establish appropriate mechanisms to enable them to exercise supervisory functions over the Executive Head.

11. The authority appointing an Executive Head of an agency or quasi-autonomous body within an IO should be entitled to exercise (exclusive or concurrent) supervision and control over the Executive Head.

12. Political organs of an agency or of a quasi-autonomous body within an

IO should submit annual reports conforming with the model rules on reporting, to the plenary principal organ of the parent IO in order to enable it to exercise overall supervision and control.

5. The principle of stating the reasons for decisions or a particular course of action, whether or not a mechanism of judicial review exists

1) *With regard to decisions of a general nature, the obligation upon an organ of an IO to provide reasons will relate to the general character of such a decision only.*

2) *With regard to a decisions of an individualised nature, the obligation of an organ of an IO or of a treaty-based organ to provide reasons includes clearly setting out the principal issues of law and fact upon which the decision is based.*

6. The principle of proportionality.

Organs of an IO should ensure that the measures taken to achieve the objectives pursued should not go beyond (e.g. in relation to the burdens imposed on Member States and other entities coming within its functional jurisdiction) or fall short (e.g. in connection with the mandate and further terms of reference of peace-keeping operations) of what is necessary to that end.

7. The principle of procedural regularity.

1. *IO-s should take necessary steps at all levels to prevent abuse of discretionary powers and to avoid errors of fact or of law resulting in misleading conclusions.*

2. *IO-s should take necessary steps at all levels to ensure respect for a due process, the right to a fair procedure and to fair treatment, especially when organs are exercising discretionary powers.*

3. *Organs of an IO should take necessary steps to guarantee the right to a fair hearing in all proceedings involving Member States, non-member States, non-State entities or individuals and which are liable to culminate in measures having an adverse effect.*

4. *Organs of an IO vested with executive powers should provide in their Rules of Procedure an express requirement, except in cases of urgency, of giving prior notice to a defaulting Member of the IO when coercive measures are being considered. In such circumstances the requirements of due process must be followed.*

5. *When engaging in operational activities of a humanitarian, development or peace-keeping nature, organs of an IO should provide appropriate channels of communication to the beneficiary State or non-state entity, groups and individuals whose interests are particularly affected by such an operation, to make their point of view known in a timely fashion.*

8. The principle of objectivity and impartiality.

1. Each organ of an IO shall conduct its institutional and operational activities in an objective, fair and impartial way, and it shall make sure that it is also perceived to act accordingly by all Member States or States Parties.

2. Presiding Officers of an organ of an IO and Chairman of treaty-based organs have to perform their functions on behalf of the entire membership of the IO or of the States Parties to the treaty in a fair and impartial way by ensuring a balanced debate.

9. The principle of due diligence.

1. Member States as members of an organ of an IO or of a treaty-based organ, organs of an IO, officials, staff members and experts have a fundamental obligation to secure the lawfulness of actions and decisions, to secure their financial and administrative efficiency, and to take all precautionary measures to prevent the occurrence of any harm as a result of these actions and decision.

2. In their capacity as Members of an IO or as Parties to a treaty, States have a duty to exercise adequate supervision of the IO or the treaty-based organ i.e. to ensure that it is operating in a responsible way so as to protect not only their own interest but also that of third parties.

3. In their capacity as Members of an IO or as Parties to a treaty States have a duty to organise the relationship with their representatives in the primary plenary organ in such a way that the Member States and States Parties as a whole can exercise a sufficient measure of supervision and control over the actions and decisions of the IO or treaty-organ.

4. Constituent instruments of an IO or of a treaty-based organ should contain explicit provisions in order to ensure that the Chief Executive Officer of an IO or the Chairman of a treaty-organ shall be ultimately supervised by the primary plenary organ.

III. Draft Recommended Rules and Practices for treaty-based organs.³

1. As a rule treaty-based organs should submit their reports to the meetings of States Parties in order to enable them to exercise political and legal supervision and control; they should also submit their reports at the same time although not necessarily in the same format, to the IO who is servicing their functioning in order to enable its primary plenary organ to exercise financial and administrative supervision and control.

2. In case of dual reporting as recommended in the previous rule, additional information provided by the “ transit organ “ channelling the report should also be made available to the meetings of the States Parties of the treaty.

³ In addition to those Rules and Recommended Practices included in Parts I and II.

3. *Treaty-based organs should continue to include in their reports the texts of both their motivated decisions on the admissibility and views or opinions on the merits of individual communications which have been addressed to them as well as general comments and recommendations envisaged in their respective instruments.*

4. *When a treaty-based organ is empowered to undertake on the spot visits upon receiving reliable information of violations of the governing instrument by a State Party, the rules on access to information (see supra) do apply unreservedly.*

5. *Substantive consideration of the reports of the treaty-organs should take place respectively in the primary plenary organ of the IO who is servicing their functioning and in the meetings of States Parties. Involvement of non-state Parties in the process of supervision and control should be limited to the administrative and financial aspects of the functioning of the treaty-organs, whereas the States Parties to the treaty should carry out a comprehensive review of the activities of the treaty-organs.*

IV. Draft Recommended Rules and Practices on the Relationship between NGO-s and IO-s.

1. *IO-s should as a matter of good practice establish at the least a NGO-Liaison Service operating as an inter-agency unit in order to facilitate NGO involvement in their activities.*

2. *The Department of an IO dealing with a particular category of issues should at regular intervals convene a briefing for members of plenary and non-plenary organs where representatives of particular NGO-s may be given an opportunity to present their views on a particular matter or a range of issues.*

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March 2000