Men's Drill Team—1st prize—Baker Victory.

Women's Drill Team—1st prize—Baker Victory; 2nd prize—Royal Rhythm Steppers.

Unique Units—1st prize—Erie County Parks and Recreation Sr., Citizens Unit—Kazoo Band; 2nd prize—Sacred Heart Academy—Kazoo Band.

CASE FOR IMPEACHMENT STILL STRONG AS EVER

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 25, 1973

Mr. BROWN of California. Mr. Speaker, now that the President suddenly has reversed his public position and agreed to comply with the law—at least in part—by turning over his tapes to the court, many administration apologists are saying that the case for impeachment existed until Mr. Nixon agreed to turn over the tapes, but that his decision of Tuesday returned him to his previous status of law-abiding, unimpeachable President.

As I pointed out Tuesday, however, Richard Nixon's most recent actions—the firing of Special Prosecutor Cox and all that went with it—merely constitute a continuation of policies and attitudes that have characterized his handling of the entire Watergate affair, and, in fact, his entire administration; indeed, his entire political career. This was no isolated incident, to be forgiven and forgotten. From his first year in office, when he secretly ordered the illegal bombing of the sovereign nation of Cambodia—a country with which the United States was at peace—President Nixon has consistently violated the laws and the Constitution that he is sworn to protect.

When one thinks of the Oval Office today, one thinks of ITT entanglements, dairy industry payoffs, public financing of personal real estate improvements, illegal campaign donations, possible extortion, illegal fund impoundments, secret invasions, personal income tax difficulties, Cabinet members and high-ranking executive office staff members who have been indicted or convicted or who have resigned under fire—I could go on, but the list seems endless.

Let us keep in mind Edmund Burke's often-quoted remark that—

The only thing necessary for the triumph of evil is for good men to do nothing.

Too many of us did nothing in 1946, when Richard Nixon smeared the Honorable Jerry Voorhis and entered this body. Too many of us did nothing when Richard Nixon 4 years later was elected to the Senate by the same tactics. Too many of us did nothing in 1952 when the Checkers scandal gave us our first evidence of Nixon's willingness to bend the law for his personal political advantage.

And too many of us did nothing 10 years later when gubernatorial candidate Nixon was found by the courts to have personally reviewed, amended, and finally approved an illegal phony mailing sent out during the campaign to California's Democratic voters—a smear piece against the incumbent Democratic Governor, soliciting financial support which supposedly would go to a "Committee for the Preservation of the Democratic Party," but which in fact was designed by members of his own Republican campaign staff, which included such men as Dwight L. Chapin, Herbert Kalmbach, Ronald Ziegler, Maurice Stans, John Ehrlichman, Murray Chotiner, and, as campaign manager, H. R. Haldemann. The money these Democrats donated to what they believed was a Democratic Party organization was actually used by the Nixon campaign, of course.

Too many times, too many good men and women have done nothing. Mr. Speaker, we must not stand aside and let evil triumph once again. The fate of our beloved Nation rests in the hands of the Congress in this dark hour. We have the power to determine whether this "noble experiment" shall continue, or shall end in a Fascist dictatorship through the inaction of the people's elected representatives.

I implore every Member of this House to respond to the massive outpouring of sentiment which has erupted throughout the Nation, to respond to our own consciences, and to move forward with all necessary steps to impeach Richard Nixon before it is too late.

SENATE—*Friday, October 26, 1973*

The Senate met at 12 o'clock noon and was called to order by the Acting President pro tempore (Mr. METCALF).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O God, our help in ages past, our hope for years to come, we come to Thee this day with thankful hearts for diminished violence, for the reprieve from larger wars, and for the promise of peace. Keep the warlike spirit from infecting our personal lives, the Congress, our Nation, or its leaders. Make us kindly but firm, compassionate but resolute, possessed of quiet hearts, clear minds, and sound judgment. Keep us ever sensitive to our local, our global, and our humane responsibilities. Grant to the President, his counselors, to all our leaders, and to the leaders of other nations that higher wisdom which Thou dost give to those who trust Thee and whose allegiance to Thee transcends all lesser loyalties. Once more from the depths of our being, we pray, "Thy kingdom come, Thy will be done on Earth as it is in Heaven."

We pray in the name of the Prince of Peace. Amen.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, October 23, 1973, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 607) to amend the Lead Based Paint Poisoning Prevention Act, and for other purposes.

The message also announced that the House insists upon its amendments to the bill (S. 386) to amend the Urban Mass Transportation Act of 1964 to authorize certain grants to assure adequate commuter service in urban areas and for other purposes, disagreed to by the Senate; had agreed to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. PATMAN, Mr. MINISH, Mr. GETTYS, Mr. HANLEY, Mr. BRASCO, Mr. KOCH, Mr. COTTER, Mr. YOUNG of Georgia, Mr. MOAKLEY, Mr. BROWN of Michigan, Mr. WIDNALL, Mr. WILLIAMS, Mr. WYLIE, Mr. CRANE, and Mr. MCKINNEY were appointed managers of the conference on the part of the House.

The message further announced that the House had passed the bill (S. 2410) to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive area emergency medical services systems with an amendment in which it requests the concurrence of the Senate.

The message also announced that the House had agreed to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 5 to the bill (H.R. 9639) to amend the National School Lunch and Child Nutrition Acts for the purpose of providing additional Federal financial assistance to the school lunch and school breakfast programs.

The message further announced that the House had passed the following bills in which it requests the concurrence of the Senate:

H.R. 3927. An act to extend the Environmental Education Act for 3 years; and

H.R. 10586. An act to amend title 10, United States Code, to authorize the use of health maintenance organizations in providing health care.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 5943. An act to amend the law authorizing the President to extend certain privileges to representatives of member states

on the Council of the Organization of American States; and

H.R. 9639. An act to amend the National School Lunch and Child Nutrition Acts for the purpose of providing additional Federal financial assistance to the school lunch and school breakfast programs.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. METCALF).

The enrolled bill (H.R. 689) to amend section 712 of title 18 of the United States Code, to prohibit persons attempting to collect their own debts from misusing names in order to convey the false impression that any agency of the Federal Government is involved in such collection, signed October 23, 1973, by the Speaker, was signed today by the Acting President pro tempore (Mr. METCALF).

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 3927. An act to extend the Environmental Education Act for 3 years; to the Committee on Labor and Public Welfare.

H.R. 10586. An act to amend title 10, United States Code, to authorize the use of health maintenance organizations in providing health care; to the Committee on Armed Services.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that any committees which may wish to meet today may be so authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PRINTING AS A HOUSE DOCUMENT "A HISTORY AND ACCOMPLISHMENTS OF THE PERMANENT SELECT COMMITTEE ON SMALL BUSINESS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES"

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 301.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The assistant legislative clerk read as follows:

House Concurrent Resolution 301, providing for the printing as a House document "A History and Accomplishments of the Permanent Select Committee on Small Business of the House of Representatives of the United States."

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the resolution (H. Con. Res. 301) was considered and agreed to.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, in view of the fact that no legislative business is expected to be acted on today or called up, other than what has already been transacted, and in view of the fact that Senators may wish to make statements in excess of 3 minutes—which is provided for by the order entered into previously—I ask unanimous consent that there be a period for the transaction of routine morning business of not to exceed 2 hours—and I certainly hope it will not take that long—with statements therein limited to 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FULBRIGHT. Mr. President, reserving the right to object—could I have 3 minutes now?

Mr. ROBERT C. BYRD. I am trying to get an order to supplant the 3 minutes with 15 minutes limitation so that the Senate could speak five times as long.

Mr. FULBRIGHT. I do not want to speak that long.

The ACTING PRESIDENT pro tempore. The Chair will recognize the Senator from Arkansas if the Senator from West Virginia is through.

Mr. ROBERT C. BYRD. Did the Chair act on my unanimous-consent request?

The ACTING PRESIDENT pro tempore. Yes. The Chair said that, without objection, it was so ordered.

Mr. ROBERT C. BYRD. I thank the Chair.

The ACTING PRESIDENT pro tempore. Does the acting minority leader desire recognition at this time?

Mr. BUCKLEY. Mr. President, not at this time. I have a statement I should like to make.

Mr. FULBRIGHT. I have a brief statement I should like to make.

Mr. BUCKLEY. I gladly yield to the Senator from Arkansas.

Mr. ROBERT C. BYRD. Would the Chair lay before the Senate a message first?

U.S. INFORMATION AGENCY APPROPRIATIONS AUTHORIZATION ACT OF 1973—VETO MESSAGE

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate a communication from the Secretary of the Senate which the clerk will state.

The assistant legislative clerk read as follows:

OCTOBER 23, 1973.

Senator JAMES O. EASTLAND,
President pro tempore of the U.S. Senate, Washington, D.C.

DEAR MR. PRESIDENT: On Tuesday, October 23, 1973, shortly after the Senate had taken a recess until Friday, a message was received by me from the President of the United States, addressed to the Senate, which purports to contain a veto message on S. 1317, an act to authorize appropriations for the United States Information Agency.

I am herewith delivering to you the said message for presentation to the Senate.

Sincerely,

FRANCIS R. VALEO,
Secretary of the Senate.

The ACTING PRESIDENT pro tempore. The Chair now lays the President's message before the Senate which will be spread upon the Journal and printed in the RECORD, without being read at this time, if there is no objection.

The Chair hears no objection, and it is so ordered.

The text of the message is as follows:

To the Senate of the United States:

I am returning today without my approval S. 1317, the United States Information Agency Appropriations Authorization Act of 1973.

The major purpose of this bill is to authorize appropriations for operation of the USIA during fiscal year 1974. Unfortunately, however, the Congress has injected a separate issue which, in good conscience, I must oppose.

Traditionally, when it is deemed necessary for a Department or Agency to withhold certain confidential information that has been requested by the Congress, the President issues a directive or statement prohibiting the disclosure of such information and explaining the reasons for his action. The two branches then explore means of compromise by which data can be supplied in a way that is consistent with the constitutional obligations of each branch.

Section 4 of S. 1317 ignores this precedent. Instead, it would penalize the USIA with a possible cut-off of funds if it failed to meet a demand for confidential internal information made by the Senate Committee on Foreign Relations or the House Committee on Foreign Affairs—however unreasonable that demand might be.

The Justice Department has advised me that section 4 is an unconstitutional attempt on the part of the Congress to undermine the President's constitutional responsibility to withhold the disclosure of information when, in his judgment, such disclosure would be contrary to the public interest. From George Washington on, my predecessors have defended this Presidential responsibility, recognizing that the traditional division of powers and comity between the executive and legislative branches must be maintained. I intend to do no less.

A practical effect of section 4 would be to restrict the USIA access to sensitive foreign policy information essential to carrying out its mission. The Agency could also be forced to disclose internal documents and working papers which do not represent approved policy. Failure of the Congress to respect the confidentiality of such papers would prevent a free and frank exchange of views within the USIA and between it and other parts of the executive branch—an exchange that is vital if the USIA is to function as an effective arm of American foreign policy.

This Administration has invoked Executive privilege to withhold information only in the most compelling circumstances and only after thorough, thoughtful evaluation of the facts. As evidence of our good faith, the USIA has complied as fully as possible with every Congressional request for information during the authorization and appropriations hearings this year, and will continue to do so. For example, it provided the Senate Foreign Relations Committee alone with detailed answers to more than one hundred substantive

questions prior to this year's authorization hearings.

If a President failed to take a stand in this instance to protect the division of powers and uphold the doctrine of Executive privilege, the door would be opened to even more serious encroachments on the constitutional system. Already, provisions similar to those in section 4 are contained in two vital bills at very advanced stages in the legislative process—S. 2335, the economic foreign assistance authorization bill, and S. 1443, the security assistance authorization bill.

The issue at stake is simple. It involves far more than the confidential documents of the USIA or our other foreign affairs and national security agencies. Rather, it involves the preservation of the basic ability of the executive branch to continue to function and perform the responsibilities assigned to it by the Constitution. Unless privacy in the preliminary exchange of views between personnel of the Executive agencies can be maintained, the healthy expression of opinion and the frank, forthright interplay of ideas that are essential to sound policy and effective administration cannot survive.

RICHARD NIXON.

THE WHITE HOUSE, *October 23, 1973.*

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the message remain at the desk temporarily.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CLARIFICATION OF VIEWS ON MIDDLE EAST CONFLICT

Mr. FULBRIGHT. Mr. President, I wish to clarify my views regarding the events of yesterday and the article by the Associated Press carried in the Washington Post this morning, which I believe may be misleading in some respects.

First, I strongly support the Secretary of State in his efforts to bring an end to the conflict in the Middle East.

Second, I support the Secretary's policy of détente with the Soviet Union.

These matters are interrelated, and I believe that the policy of détente contributed to the action of the Security Council yesterday, supported by 14 members, including the Soviet Union.

When asked about the statement by the Senator from Washington, characterizing a mesage from the Soviet Union to the President as "brutal," I stated that I thought that was an inappropriate way to describe it; that I considered it to be urgent but not "brutal" or threatening; and that this description of the note tended to increase our difficulties, to undermine any possibility of détente, and to increase further the arms race, military appropriations, and, in general, the tensions resulting from the war, which are already very great.

I regret that it was thought necessary by the National Security Council to order an alert, but I do not criticize that decision. The vote in the Security Council yesterday is, I believe, a justification of my view that the policy of détente is still viable and in our interest, and also that it is inaccurate to characterize the attitude of the Soviet Union as being "brutal."

In summary, I think the Secretary of State has shown determination, restraint, and wisdom in the way he has handled this affair.

Mr. President, I wish, in that connection, to have printed in the RECORD an article published in the Washington Post this morning, which I consider to be incomplete because it, by no means, reflects all that I said.

I also ask unanimous consent to have printed in the RECORD an article entitled "Some Small Hope," written by Stewart Alsop, and published in Newsweek magazine for October 29, 1973. I think it is quite significant that this writer suggests that it is in the interest of Israel to move in the direction which I believe the Secretary of State and the President are now moving. I would hope that this view will be taken seriously. I feel that the Secretary is doing everything possible, under great difficulty, to bring about a cessation of hostilities and also a beginning of negotiations designed to implement that policy which, in a general way, was announced by the administration as long ago as 1969 and has sometimes been referred to as the Rogers plan.

With this statement, I hope that any misunderstanding of my attitude may be clarified.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 26, 1973]

FULBRIGHT DOUBTS ALERT JUSTIFIED

Sen. J. W. Fulbright (D–Ark.) said last night he doubts the administration's alert of U.S. forces was justified by Middle East developments.

Secretary of State Henry A. Kissinger said earlier that President Nixon had no choice but to act as he did. He described the alert as a precaution taken in view of ambiguity about possible Soviet intervention in the Middle East.

Fulbright, chairman of the Senate Foreign Relations Committee, said a Soviet note to President Nixon on the Arab-Israeli conflict apparently was couched in urgent terms, "but from what I know, it was not threatening."

He said he had felt since a White House briefing he attended yesterday morning that the situation was not one of crisis and that this feeling was borne out later in the day when the U.N. Security Council approved a peacekeeping force that excluded the big powers.

He suggested the crisis atmosphere may have been promoted to support the Pentagon military budget.

Fulbright also said the alert is likely to make it more difficult for Congress to override President Nixon's veto of the war powers resolution limiting use of U.S. troops in combat without congressional approval to a 60-day period.

At the White House, spokesman Gerald L. Warren said in response to Fulbright's assertions that "the reality of the situation was described by Secretary Kissinger" at his news conference.

SOME SMALL HOPE

(By Stewart Alsop)

WASHINGTON.—In 1947, that indomitable lady, Golda Meir, dressed as an Arab woman, made her way secretly to Amman, the capital of Jordan, to see old King Abdullah and enlist his support for the future state of Israel.

Her dangerous mission failed—Abdullah was assassinated shortly thereafter. But it may be worth recalling now. That was probably the last time that any of the current generation of Israeli leaders saw any Arab city, except the grubby towns occupied by Israel in 1967. And the difference between then and now tells something about what is happening now.

By chance, this writer was also in Amman in 1947. The other Arab capitals of that era were hardly vacation spots, but Amman was a dreadful place. The town was constructed largely of mud, the smell of excrement was inescapable and Amman's inhabitants were sad, undernourished creatures, shuffling about in dirty nightgowns.

The year 1947 was the tag end of the era of British imperialism. In Jordan, a British general, Glubb Pasha, was the real power behind the throne. In Iraq, a British Arabist, one Stewart Perowne, made no bones about the fact that he was really running the country. British troops still occupied the Kasr el Nil barracks in Cairo, and the British ambassador was accompanied by outriders as a visible symbol of his imperial power. Syria was still a French dependency in all but name.

A RESPECTABLE CITY

Twenty-two years later, I again visited Amman, and I was astonished by the change. I found, instead of the sprawling mud village I remembered from 1947, a respectable little city, built largely of stone, and with a water and sewer system better, I was told, than in many American towns of comparable size. The population seemed well-fed and reasonably cheerful.

When Mrs. Meir thinks of Amman, it would be only natural for her to see in her mind's eye the Amman of 1947, as I did before I went back there. But the Arab countries have changed. They have changed a lot more than the older generation of Israeli leaders may have allowed for. And that change confronts Israel with the most cruel of all the dilemmas that have faced that small beleaguered nation in its short history.

What has changed the Arab countries is money—money, plus time, plus Russian weapons. Most of the money is oil money, of course, but by no means all of it—the change extends to the oil-poor states, like Jordan and Egypt. Time has seen the debasing era of foreign control fade in the Arabs' racial memory—nobody calls the Egyptians "wogs," these days, as the British used to do, to their faces.

Russian weapons, notably the SAM–6 antiaircraft missile, have made it possible for the Arabs to challenge, for a while at least, the vastly outnumbered Israelis. But it would be an illusion to suppose that weapons wholly explain what has happened. Good weapons are no use in the hands of soldiers who panic and run, as the 1967 war proved. This time the Arabs have stood and fought.

In terms of technical proficiency, national cohesion and raw human courage, the Israelis remain the superiors of the Arabs. But as this war demonstrates, the gap is certain. It is certain to close further.

CLOSING THE GAP

Nahum Goldmann, former president of the World Zionist Organization, foresaw the closing of the gap in 1970, when it was the conventional wisdom that the Israelis were unchallengeably and permanently superior to the Arabs militarily. He wrote in Foreign Affairs:

"History proves that an imposed peace does not last for long, even if a defeated people is forced for a certain time to accept a truce extracted by arms. In the case of Israel and the Arabs, this probability is much smaller in view of the tremendous numerical superiority of the Arab peoples . . . at the moment,

and probably for some time to come, the qualitative superiority of Israel is outstanding; it is unrealistic, however, to rely on it forever; the Arab peoples have created a brilliant civilization in the past and will no doubt one day acquire the technical know-how of the West, both in peaceful endeavors and in warfare."

The "qualitative superiority of Israel" is almost surely enough to make certain another Israeli victory, though a more costly one than ever before. But what happens when Israel wins? The Israeli Chief of Staff says that Israel will "break the bones" of the Arabs, and other Israelis talk about "teaching them a lesson, once and for all." But how? By using the nuclear weapon to destroy the Aswan Dam? By the population bombing of Cairo or Damascus, or their military occupation? By seizing still more Arab land? Or simply by hanging on like bulldogs to the 25,000 square miles of Arab land that Israel won in 1967?

The last is the most likely answer. Continued occupation plus "creeping annexation" constituted the basic Israeli policy before the war started. As a result of the Arab attack, many Israelis, including former "doves," believe that the post-1967 borders saved Israel in this war, and must be held at all costs.

A TERRIBLE TIME

It is not at all hard to see why they should think so. But if that is to be Israel's policy, another war is predictable, and another, and another after that, until at last a terrible time could come when the lesson-teaching would be done by the Arabs. Nothing is more clear by now than that there can be no peace while Israel holds great reaches of Arab land and rules as conqueror a million Arabs.

Goldmann quotes the great Chaim Weizmann as saying that the Arab-Jewish conflict is "a clash between two rights, not between right and wrong, and that is what makes it so . . . difficult." Difficult it certainly is. But there may be some small hope where there was none before.

At least Sadat has said what Nasser never said—that he is willing to sign a peace treaty recognizing Israel's right to exist. The United States has a brilliant new Secretary of State who, as himself a Jew, can hardly be accused of anti-Semitism. It was Henry Kissinger, back in 1970, who stated the basic American policy: "The United States is committed to defend Israel's existence, but not Israel's conquests."

For the Israelis to accept demilitarization of her borders or international guarantees as a substitute for the conquests that have provided the post-1967 borders would require a great and bold risk. But it is now more obvious than ever before that to hold onto those conquests will surely in the long run involve far greater risks. That is why there may be some small hope where there was none before.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries, and he announced that on October 18, 1973, the President had approved and signed the following bills:

S. 84. An act for the relief of Mrs. Naoyo Campbell;

S. 89. An act for the relief of Kuay Ten Chang (Kuay Hong Chang);

S. 396. An act for the relief of Harold C. and Vera L. Adler, doing business as the Adler Construction Company; and

S. 1141. An act to provide a new coinage design and date emblematic of the Bicentennial of the American Revolution for dollars, half dollars, and quarter dollars, to authorize the issuance of special silver coins commemorating the Bicentennial of the American Revolution, and for other purposes.

And that on October 19, 1973, the President had approved and signed the following bills:

S. 278. An act for the relief of Manuela Bonito Martin;

S. 795. An act to amend the National Foundation on the Arts and the Humanities Act of 1965, and for other purposes;

S. 1016. An act to provide for the use or distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the Court of Claims, and for other purposes; and

S. 1914. An act to provide for the establishment of the Board for International Broadcasting, to authorize the continuation of assistance to Radio Free Europe and Radio Liberty, and for other purposes.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. METCALF) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

THE CRISIS OF CONFIDENCE

Mr. BUCKLEY. Mr. President, the public's immediate and extraordinary response to the events of the past week is a matter of the most profound political significance. At the heart of the matter is whether the President will be able to maintain that minimum degree of public confidence that will enable him to resume a role of effective leadership; and on the manner in which he meets this crisis of confidence may well depend the public's ultimate confidence in the Presidency itself.

Analytically, neither his compromise proposal on the Watergate tapes—one which met with the approval of the Senators most directly concerned—nor the firing and resignation of administration officials warranted the unprecedented calls for the President's resignation or impeachment that they have produced. It would seem, therefore, that the telegrams and letters and phone calls flooding Washington can be taken as conclusive evidence of a far deeper—and a deeply troubling—public concern. It is clear that a sizable portion of the public requires reassurance that our governmental system is strong enough to survive the impact of the repeated shocks that have recently shaken Washington and the Nation; and it is the first obligation of all who hold public responsibility to recognize and address this political imperative.

On July 24, 1973, on the first occasion I had to comment on the President's refusal to give up the tapes, I said:

I think he (President Nixon) has painted himself into a very tight corner, unnecessarily, and foolishly. . . . (O)ne ought not to precipitate Constitutional confrontations. I think the virute of our Constitution has been the fact that it contains a number of gray areas, . . . at one point or another (in the past) the Congress or the President has backed away. This has avoided brittle court determinations of where the lines are to be drawn . . . I think clearly in the instant case the consensus of the American people will be that the President, while he has the right to exercise the privilege, ought not to be exercising it in this manner.

Last month I wrote:

The head-on confrontation precipitated by Judge Sirica's order could and should have been averted. For this, the President must assume the blame. I say this even though I believe his position may be technically correct. Given the political facts of the Watergate situation, given his patent lack of public support, he ought to have backed away from a constitutional showdown. He could have done so without compromising the principle of executive privilege, for a privilege can be waived.

Unfortunately, "hysterical" is the best word to describe much of the media and public's response to the President's compromise with Senators ERVIN and BAKER and the subsequent series of events that evolved from that compromise. Contrary to public myth, the President broke no law in effecting that compromise. He, in fact, offered an accommodation that was acceptable to the chairman and vice chairman of the Watergate Committee, one that many felt should also prove acceptable to the court. He broke no law in firing Mr. Cox. He was not in contempt of court because of his actions for the simple reason that Judge Sirica never ruled on those actions. The President deserved a more rational and more informed criticism of his actions last week than the calls for impeachment that issued from persons who ought to have known better, calls which in themselves contributed to an overwrought public reaction to last week's events.

Yet, the fact of a hyperemotional criticism of the President for the wrong reasons does not relieve us of the obligation to acknowledge the seriousness of the current mood, nor the fact that it is in large part the product of the President's own errors of judgment. He misread the public's overriding desire to hear those portions of the tapes relevant to the Watergate inquiries. Thus his own persistent attempts to protect the principle of executive privilege have been met with increasing suspicion especially after he placed himself athwart the explicit directives of two Federal courts. As events have proven, the fact that his position may be constitutionally correct has not protected him or the Nation from the political consequences of his actions.

It is one of history's great ironies that, having vowed never to give up the tapes in order to avoid setting new precedents his successors would have to live with, he should finally have been forced by mounting pressures to capitulate on precisely that constitutional question of executive privilege he had so doggedly fought to protect. Thus, the President finds that he has both lost the battle for the tapes and endangered the principle he sought to defend. He could have, as I suggested, waived executive privilege and given up the tapes voluntarily under appropriate safeguards. But he did not and we find ourselves in a dilemma unprecedented in our history.

What can be done to restore confidence in the office of the President and

in Government itself? I believe that three essential steps must immediately be undertaken, one by the President, one by Congress, and the third by the courts and the White House together.

First, I call upon the President to appoint a special prosecutor to carry on the work begun by Mr. Cox. This prosecutor should be appointed by the President and be confirmed by the Senate.

I want to make it clear that my call for a new special prosecutor is in no way based on my acceptance of the idea that the appointment of a special prosecutor is, in the normal course of events, either desirable or necessary under our system. Nor do I want to suggest any lack of confidence in Acting Attorney General Bork or in Assistant Attorney General Petersen. I am fully confident that they intend and would in fact carry forward a vigorous, effective investigation of all aspects of the Watergate affair and would not tolerate any attempt at interference with their discharge of their responsibilities. I am convinced that they would do an exceptionally thorough and competent job, and that the ends of justice would be fully served should they continue to be in charge of the investigation.

But this has become beside the point. These are extraordinary times and we must accept extraordinary measures if we are to achieve the primary goal of restoring public confidence. Given the current climate, any prosecution conducted within ordinary Justice Department channels will be held suspect by too many Americans, and will be subject to criticisms and innuendo, however unjust or however irresponsible, from the President's critics. Only an independent prosecutor can achieve the full confidence and credibility that the times so urgently require.

Second, Congress must move expeditiously in considering the nomination of GERALD FORD to be Vice President of the United States. Congress has a clear duty to the people and to the Constitution to proceed without delay on the matter. It is unthinkable that Mr. FORD should be held hostage to partisan considerations. To play politics with the matter of succession, to violate the clear spirit and intent of the 25th amendment, would further undermine public confidence in and respect for Government.

Congress, too, has a clear obligation to recognize the extraordinary nature of the current discontent. Anything less than a truly statesmanlike approach to the matter of succession would be a historic disservice the Nation and to Congress itself. Narrow concern for political advantage cannot be allowed to stand in the way of restoring a sense of stability and continuity. I speak of the public's right to what might be called a constitutional anchor, the knowledge that we once again have a Vice President of the United States.

Third, Judge John Sirica and the White House should immediately resolve any difficulties concerning the manner in which the tapes will be given to the judge and any questions of national security concerning the tapes. No interest could conceivably be served by a public haggling over the mechanics by which matters irrelevent to the grand jury's deliberations are excised.

These are three essential steps toward restoring confidence in the Presidency and in our system of government. It is not an exaggeration to state that at the present moment the very Office of the Presidency needs to be protected from the misjudgments, the passions, and the thoughtless partisanship that have already taken so heavy a toll.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. METCALF) laid before the Senate the following letters, which were referred as indicated:

FOREIGN ASSISTANCE REPORT

A letter from the Assistant Secretary of State transmitting, pursuant to law, a confidential report entitled "Annual Foreign Assistance Report, Part 3" (with an accompanying report). Referred to the Committee on Foreign Relations.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. METCALF):

A joint resolution from the Legislature of the State of California. Referred to the Committee on Appropriations:

"ASSEMBLY JOINT RESOLUTION No. 18

"Relative to the Anadromous Fish Conservation Act

"Whereas, Congress in extending the Anadromous Fish Conseravtion Act (P.L. 91-249) made funds appropriated under such act available until expended; and

"Whereas, The Secretary of the Interior through administrative regulation has required the obligation of funds within the year of appropriation; and

"Whereas, Orderly planning, programming, and budgeting for participation by the various states is not feasible within the period of the fiscal year which remains after allocation; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California memorializes the Secretary of the Interior to extend the period of obligation for funds appropriated under the Anadromous Fish Conservation Act through the fiscal year following the year of appropriation; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of California. Referred to the Committee on Interior and Insular Affairs:

"ASSEMBLY JOINT RESOLUTION No. 19

"Relative to anadromous fish conservation

"Whereas, The Anadromous Fish Conservation Act (Public Law 89-304, as amended by Public Law 91-249) provides that federal costs for projects administered by a single state shall not exceed 50 percent; and

"Whereas, Man's encroachment into the environment continues to negatively affect anadromous fish resources; and

"Whereas, There are insufficient state funds to accomplish all the programs necessary to properly maintain and enhance the anadromous fisheries; and

"Whereas, Several states have difficulty in providing enough matching funds to meet half the cost of some of the many needed projects; and

"Whereas, By paying 75 percent of the costs, the federal government could enable the states to match funds for many additional, severely needed projects; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President to support, and the Congress of the United States to enact, changes in the provisions of the Anadromous Fish Conservation Act to provide that the federal share for anadromous fish conservation projects be increased to 75 percent; and be it further

"*Resolved,* That the Legislature of the State of California further memorializes the President to support, and the Congress of the United States to enact, legislation to increase the annual expenditure authorization under such federal act to $20,000,000 and to increase the appropriation up to the amount authorized in order to more fully meet the needs of the anadromous fish resource, and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of California. Referred to the Committee on Commerce:

"ASSEMBLY JOINT RESOLUTION No. 20

"Relative to the Federal Water Project Recreation Act

"Whereas, The Federal Water Project Recreation Act (P.L. 89-72) prescribes that full consideration be given to enhancement of fish and wildlife as a purpose of federal water projects; and

"Whereas, Anadromous and resident fish populations of the Pacific Coast traverse state lines and are exceptionally valuable resources of national significance for which the demand is greater than the supply; and

"Whereas, Some federal water developments may have the potential for increasing anadromous and resident fish resources with benefits to both commercial and sport fishermen; and

"Whereas, The act requires that nonfederal interests must agree to pay one-half of the separable costs and all operation, maintenance, and replacement costs assigned to fish and wildlife enhancement in connection with federal water projects; and

"Whereas, State or local agencies often do not possess the financial capability of meeting the cost-sharing provisions of the act, and because of budgetary limitations, the fish and wildlife enhancement purposes of the project will be deleted, permanently eliminating project potentials for enhancement; and

"Whereas, The act limits federal funding to $100,000 for fish and wildlife enhancement at projects authorized prior to 1965, and among such projects many opportunities to enhance fish and wildlife resources cannot be fully realized within this limitation; and

"Whereas, Some question exists as to the application of the provisions of the act to areas downstream from a project but within the project impact area, although it is in such downstream areas that enhancement may be achieved for species such as salmon and steelhead trout; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to amend the Federal Water Project Recreation Act (P.L. 89-72) as follows:

"(a) To make all costs of enhancing anadromous and resident fishes at federal water developments nonreimbursable federal costs; and

"(b) To provide for operation and maintenance of such enhancement facilities by either federal or nonfederal bodies as may be appropriate; and

"(c) To remove the $100,000 limitation that presently applies to projects authorized prior to 1965; and

"(d) To specifically include enhancement in areas downstream from any project but within the impact area of such project; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Secretary of Commerce, to the Secretary of Defense, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of Wisconsin. Referred to the Committee on Finance:

"1973 SENATE JOINT RESOLUTION 3

"Memorializing congress to release this state's share of held-back federal highway trust funds

"Whereas, an exceptionally harsh winter has left the surfaces of Wisconsin's highways in need of extensive repairs; and

"Whereas, the construction of new and improved highways is vital to this state's growing transportation needs; and

"Whereas, Wisconsin's climate, because of rapidly changing seasons, provides only a limited number of months suitable for highway construction, making it necessary that highway work commence as soon as the weather allows; and

"Whereas, despite these pressing present needs the United States department of transportation is holding back highway trust funds; and

"Whereas, this state's share of these funds had reached approximately $70,000,000 by June 30, 1972; now, therefore, be it

"Resolved by the senate, the assembly concurring, That immediate congressional action be taken to release this state's share of held-back highway trust funds at the earliest possible date; and, be it further

"Resolved, That duly attested copies of this resolution be transmitted to the secretary of the federal department of transportation, the secretary of the senate of the United States, the chief clerk of the house of representatives and the members of Wisconsin's congressional delegation."

A resolution of the Military Order of the World Wars urging the retention of control of the Panama Canal. Referred to the Committee on Armed Services.

A resolution of the Military Order of the World Wars urging the defense of national interests firmly and on a timely basis. Referred to the Committee on Foreign Relations.

A resolution adopted by the City Commission of the city of Fort Lauderdale, Fla., requesting the State and Federal governments to take measures to insure an adequate supply of chlorine for municipal water and sewage treatment plants. Referred to the Committee on Labor and Public Welfare.

PRESENTATION OF PETITIONS

RESOLUTION OF ALABAMA STATE LEGISLATURE ADVOCATING RECONFIRMATION OF FEDERAL JUDGES

Mr. ALLEN. Mr. President, during the almost 200 years of our national existence, there have been many changes in our way of life, as each generation has attempted to reshape the government to meet changing public needs.

But one of the most sharply felt and most disputed changes has been the gradual accumulation of powers in the Supreme Court to the extent that not only judicial authority, but also legislative and executive powers and functions are today exercised by the nonelective judicial branch of the Federal Government.

These actions have reshaped our Government and Constitution to fit a pattern drawn and cut by the Supreme Court. The Supreme Court's despotic seizure of power and authority over the past three decades has badly damaged the delicate system of checks and balances which were purposely built into our federal system by those wise and dedicated leaders who wrote our Constitution.

At the very beginning of the first session of the 92d Congress I introduced a joint resolution proposing an amendment to the Constitution of the United States relating to terms of office of Justices of the U.S. Supreme Court and Judges of other Federal courts and providing that Federal judges, who are assuming legislative or executive powers, be made responsible to the people or to the elected representatives of the people by limiting their terms of appointment while providing for reappointment subject to reconfirmation by the Senate.

Mr. President, the problems I speak of have not decreased, and Americans everywhere are increasingly concerned with this situation. During its regular 1973 session the Alabama Legislature passed House Joint Resolution 191, memorializing Congress to submit to the States a proposed constitutional amendment requiring periodic reconfirmation by the U.S. Senate of all Federal Judges. This is an important document not only because of the subject, but also because it is an official resolution of a State legislature.

Mr. President, I ask unanimous consent that this resolution, H.R. 191, passed by the Alabama Legislature be printed in the RECORD so it may be brought to the attention of all Members of this body and to the legislatures of the other States.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The resolution was referred to the Committee on the Judiciary. It reads as follows:

HOUSE JOINT RESOLUTION 191

Resolution memorializing Congress to submit to the fifty States a proposed constitutional amendment to require that all Federal judges who are appointed for life must be periodically reconfirmed by the United States Senate

Whereas, the appointment of federal judges for life tenure have often-times resulted in a man being placed in a high federal judgeship who is irresponsible and not suited for the office; and

Whereas, there needs to be some procedure whereby this republic may be safeguarded from such irresponsible persons holding high federal office; now therefore

Be it resolved by the Legislature of Alabama, both Houses thereof concurring; That the United States Congress is hereby memorialized to submit to the fifty states of this republic a proposed Constitutional Amendment to the United States Constitution to require that all federal judges who are appointed for life be periodically reconfirmed by the United States Senate every ten years in order to continue holding their office.

Be it further resolved, That copies of this resolution be sent to all members of the United States House of Representatives and the United States Senate.

RESOLUTION OF ALABAMA STATE LEGISLATURE SUPPORTING FORT McCLELLAN AT ANNISTON, ALA.

Mr. ALLEN. Mr. President, the citizens of Alabama are deeply concerned over a study by the Department of the Army considering the closing of Fort McClellan, Ala., which is headquarters of the Women's Army Corps, the U.S. Women's Army Corps Center and the U.S. Women's Army Corps School. Earlier this year the Secretary of the Army announced his decision to make use of Fort McClellan's excellent facilities and location as the new home for the U.S. Army Military Police School—a decision which has yet to be implemented.

Fort McClellan has a long and honored place in the Army's roster of military bases. The long and pleasant relationship between the Army community at Fort McClellan and the civilian neighbors has been exemplary, a fact which has been of immeasurable value to the Army in meeting its responsibilities.

Mr. President, during its recent 1973 session, the Legislature of the State of Alabama passed House Joint Resolution 219, a resolution opposing the closing of the military base at Fort McClellan.

I ask unanimous consent that this resolution be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The resolution was referred to the Committee on Armed Services. It reads as follows:

HOUSE JOINT RESOLUTION 219

Resolution opposing the closing of the Military Base at Fort McClellan

Whereas, the announced decision that a study is being made to consider the closing of Fort McClellan at Anniston, Alabama has come as a distinct shock to the citizens of this state and particularly to the people of the Anniston area; and

Whereas, strong local support has always been given to the military forces at Fort McClellan since, when with the declaration of war with Germany in 1917, the War Department was rapidly surveying the country for possible camp sites, the citizens of Anniston patriotically underwrote additional funds in the amount of $136,000 necessary to compensate owners of crops planted on the desired site, an obligation which cost the citizens of Anniston much anxiety and hard work and was not paid off until 1934; and

Whereas, the unusually favorable climate of Anniston, the high caliber civilian personnel, including master craftsmen available for employment at the Fort and the economic, civic, social and cultural contributions of the military have resulted in a closely interwoven relationship of mutual respect between Fort McClellan personnel and the citizens of Anniston, a fact which is attested to by the large number of military retirees and five of the six past commanding officers of Fort McClellan who have chosen to make Anniston their permanent home; and

Whereas, the consideration of any plan to close Fort McClellan is a particularly severe blow in view of the fact that Fort McClellan was the home of the WACs and the plans were in the making to double the WAC strength by 1976, and that plans and expenditures have already been made in reliance upon the anticipated move of the Military Police School to Fort McClellan with the expected base strength to be 10,051, includ-

ing some 8,851 military and 1,200 civilians by 1975; now therefore

Be it resolved by the Legislature of Alabama, both Houses thereof concurring, That we respectfully request the Army to study thoroughly and evaluate carefully the many advantages of keeping its installation at Fort McClellan open and activated to its fullest capacity and that all plans to close its facilities at that place be definitely abandoned as soon as possible.

Be it further resolved, That copies of this resolution be sent to the following:

The Honorable Howard H. Callaway, Secretary of the Army, Department of the Army, Washington, D.C. 20310.

General Creighton Abrams, Chief of Staff, Department of the Army, Washington, D.C. 20310.

Resolved further, That copies of this resolution also be sent to Senators John Sparkman and James Allen and to each member of the Alabama delegation in the House of Representatives of the United States Congress, with the urgent request that each officer do everything in his power which is necessary and appropriate to maintain the military facilities at Fort McClellan and to prevent the closing of its base of operations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HASKELL, from the Committee on Interior and Insular Affairs, with amendments:

S. 702. A bill to designate the Flat Tops Wilderness, Routt and White River National Forests, in the State of Colorado (Rept. No. 94-480).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. WILLIAMS, from the Committee on Labor and Public Welfare:

Harry J. Hogan, of Maryland, to be an Assistant Director of the ACTION Agency.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

By Mr. ROBERT C. BYRD, from the Committee on the Judiciary:

Thomas Arny Rhoden, of Mississippi, to be U.S. marshal for the southern district of Mississippi;

J. Raymond Bell, of New York, to be a member of the Foreign Claims Settlement Commission of the United States; and

Charles R. Work, of the District of Columbia, to be Deputy Administrator for Administration of the Law Enforcement Assistance Administration.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. BAYH (at the request of Mr. HART, Mr. ERVIN, Mr. KENNEDY, Mr. BURDICK, Mr. ROBERT C. BYRD, Mr. TUNNEY, Mr. MATHIAS, Mr. ABOUREZK, Mr. BIBLE, Mr. BIDEN, Mr. CASE, Mr. CHILES, Mr. CHURCH, Mr. CLARK, Mr. FULBRIGHT, Mr. GRAVEL, Mr. HASKELL, Mr. HATHAWAY, Mr. HATFIELD, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. PASTORE, Mr. PELL, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. STEVENSON, Mr. TALMADGE, Mr. WEICKER, Mr. WILLIAMS, Mr. MONTOYA, Mr. PROXMIRE, Mr. SYMINGTON, Mr. CANNON, Mr. MAGNUSON, Mr. METCALF, Mr. RANDOLPH, Mr. EAGLETON, Mr. CRANSTON, Mr. NELSON, Mr. HUGHES, and Mr. JOHNSTON):

S. 2611. A bill to insure the enforcement of the criminal laws and the due administration of justice; establish an independent special prosecutor. Referred to the Committee on the Judiciary.

By Mr. STEVENSON:

S. 2612. A bill to amend title 28, United States Code, to make the United States liable for damages caused as the result of ultrahazardous activities in which the United States is engaged. Referred to the Committee on the Judiciary.

By Mr. MCGOVERN:

S. 2613. A bill to amend section 2 of the National Housing Act to increase the maximum principal amount of home improvement loans which may be insured thereunder and to increase the maximum maturity of such loans. Referred to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HUGHES (for Mr. EAGLETON):

S. 2614. A bill to amend the Economic Stabilization Act of 1970 to provide for the application of price controls to certain export sales. Referred to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HARTKE:

S. 2615. A bill to establish an Office of Counsel General in the legislative branch of Government, and for other purposes. Referred to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAYH (at the request of Mr. HART, Mr. ERVIN, Mr. KENNEDY, Mr. BURDICK, Mr. ROBERT C. BYRD, Mr. TUNNEY, Mr. MATHIAS, Mr. ABOUREZK, Mr. BIBLE, Mr. BIDEN, Mr. CASE, Mr. CHILES, Mr. CHURCH, Mr. CLARK, Mr. FULBRIGHT, Mr. GRAVEL, Mr. HASKELL, Mr. HATHAWAY, Mr. HATFIELD, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. PASTORE, Mr. PELL, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. STEVENSON, Mr. TALMADGE, Mr. WEICKER, Mr. WILLIAMS, Mr. MONTOYA, Mr. PROXMIRE, Mr. SYMINGTON, Mr. CANNON, Mr. MAGNUSON, Mr. METCALF, Mr. RANDOLPH, Mr. EAGLETON, Mr. CRANSTON, Mr. NELSON, Mr. HUGHES, Mr. JOHNSTON, Mr. PACKWOOD, Mr. HUDDLESTON, and Mr. HARTKE):

S. 2611. A bill to ensure the enforcement of the criminal laws and the due administration of justice; establish an independent Special Prosecutor. Referred to the Committee on the Judiciary.

INDEPENDENT SPECIAL PROSECUTOR ACT OF 1973

Mr. BAYH. Mr. President, the very essence of Democracy is that the people consent to be governed under a system in which they vest their faith and confidence. That system, and thus the strength of the Government, are dependent on maintaining the public's faith and confidence.

Today, as never before in our history, that faith and confidence are shaken, to such an extent, that our system of government is facing a crisis of unprecedented proportions.

If we are to govern effectively and responsively, the Congress must set out as its first order of business the difficult, but absolutely essential, goal of reestablishing the public faith and confidence from which all else proceeds in a democracy. And no amount of high-sounding lipservice will do the necessary job; the need is for immediate, constructive action to restore the faith of the American people in their governmental institutions.

In determining the appropriate course of action, Mr. President, we need only to look at the source of the problem. The American people, with good cause, regard the President's dismissal of Special Prosecutor Archibald Cox, and the forced resignations of the two top officials at the Department of Justice, as sufficient evidence that equality under the law is not being maintained and that justice is not being served.

Thus, the one thing we can do here in Congress to reverse this tidal erosion of confidence is to enact, speedily, legislation to create a new special prosecutor whose independence will be above reproach. That prosecutor must not answer to Congress, nor to the President. That prosecutor can answer only to the American people. Indeed, by the public outcry which has ensued since Mr. Cox was dismissed, it may be said that the public has demanded of us that we act in this regard.

To this end, I am introducing this measure today for Senator HART, myself, and Senators ERVIN, KENNEDY, BURDICK, ROBERT C. BYRD, TUNNEY, MATHIAS, ABOUREZK, BIBLE, BIDEN, CASE, CHILES, CHURCH, CLARK, FULBRIGHT, GRAVEL, HASKELL, HATFIELD, HATHAWAY, HUMPHREY, INOUYE, JACKSON, JAVITS, MCGEE, MCGOVERN, MCINTYRE, MONDALE, MOSS, MUSKIE, PASTORE, PELL, RIBICOFF, SCHWEIKER, STEVENSON, TALMADGE, WEICKER, WILLIAMS, MONTOYA, PROXMIRE, SYMINGTON, CANNON, MAGNUSON, METCALF, RANDOLPH, EAGLETON, CRANSTON, NELSON, HUGHES, JOHNSTON, PACKWOOD, HUDDLESTON, and HARTKE.

I send the bill to the desk and ask that it be appropriately referred, and I ask unanimous consent to have the bill printed in the RECORD following my remarks.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

(See exhibit 1.)

Mr. BAYH. I should say that this measure, which is of great import, is the product of joint labors. I believe that special note should be directed at the leadership and the focal point of the joint effort—namely, the distinguished Senator from Michigan (Mr. HART), who is unable to be here and to introduce the

bill himself. He and his chief staff assistant, Mr. Wides, have exercised the kind of prudence and legislative responsibility to which the Senate is accustomed.

Also, the distinguished services of Senator KENNEDY, who is absent because of official business, have been extremely important. He and his staff, particularly Mr. Thomas Susman, have made a significant contribution, and the Senator has spoken eloquently on the need for the proposed legislation.

Senator TUNNEY and I, as members of the NATO Parliamentary delegation, were on our way to Ankara. In the middle of the night, in London, we were awakened. We immediately returned. Senator TUNNEY's staff, along with mine, had a significant input into this measure, and I know that the Senator from California is extremely concerned about the matter.

Senator BURDICK, another member of the Committee on the Judiciary, made significant contributions to this measure in the form of amendments.

Senator BYRD, our distinguished assistant majority leader, as a member of the Committee on the Judiciary, also has expressed his concern and has added significant prestige to this measure by cosponsoring it.

The Senator from Maryland (Mr. MATHIAS), a dedicated and determined member of the Committee on the Judiciary, has continuously brought leadership and guidance in this area. The Senator from Illinois (Mr. STEVENSON) and the Senator from Florida (Mr. CHILES) are among those Senators who earlier made independent proposals, not specifically like the one introduced today, but they have joined as cosponsors of this measure. The thrust of their initial action was very similar to the action sought here.

Mr. President, I ask unanimous consent that the name of the distinguished Senator from Montana (Mr. METCALF) be added as a cosponsor because he also has shown a great deal of interest in this matter.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAYH. Mr. President, our legislation would require the Chief Judge of the U.S. District Court for the District of Columbia to appoint a special prosecutor and a deputy special prosecutor to take over the investigation and prosecution of the Watergate case and other matters which had been in Mr. Cox' jurisdiction.

These prosecutors would have full authority to proceed through the legal system so that justice can be served. They will have the necessary prosecutorial powers, staff, budget, and essential freedom to determine when their assignment is completed. Consistent with guidelines under which Mr. Cox had been operating, they could be removed from office only by the chief judge of the district court and only in the instance of "extraordinary improprieties."

I realize there are those who have called upon the President to appoint a new special prosecutor, and he may yet do so. But if that course is pursued we will again be in a situation in which a person, or persons, charged with the investigation of the executive branch would be beholden to the executive branch and subject to dismissal by the President. One thing our system of government cannot withstand is another trauma such as that of the past week and I caution my colleagues not to fall prey to an approach fraught with such danger.

There are those who say confidently that it would be incredible to think that the President would follow the same path again. However, I cannot help but recall that Mr. Richardson and Mr. Cox, in testimony to the Senate Judiciary Committee last spring, both said it was unthinkable that the President would dismiss a special prosecutor appointed by the Attorney General. Since that unthinkable exercise has come to pass, let us not jump to the unsubstantiated conclusion that it could not happen again.

Moreover, since our overriding objective here is to find a means to the restoration of public confidence in government, elected officials, and the impartial execution of justice, we must insist on the unquestioned and irrevocable independence of the prosecutors responsible for the Watergate and related cases. Were the President to appoint the prosecutor there would be no way to guarantee the independence which is the very key to the success of this effort.

We can perceive clearly the need for this independence if we are to adhere to the promise the President made to the American people on April 30. He said, at that time—

> Justice will be pursued fairly, fully, and impartially, no matter who is involved.

The inviolate independence of the prosecutors is the only way possible that the American people will be satisfied that fairness, thoroughness and impartiality are being observed. The public must know without an iota qualification, that the persons charged with the administration of justice are totally free from the inevitable constraint and possible dismissal which would result if they were appointed by the President.

The fact is that we must insist on both the reality and the appearance of independence for the persons charged with pursuing justice in Watergate. There has not been a time in my memory when cynicism and skepticism were so widespread among the public. And, sadly, given the events of recent months it is becoming increasingly difficult to dissuade those skeptics and cynics. Can anyone doubt that reasonable men would conclude that cynics and skeptics have the evidence on their side?

Thus, even if the President were to appoint a respected, nonpartisan independent prosecutor and give that person guarantees that the White House would not interfere in the investigation, we would still be without the appearance and ultimate reality of independence.

Such a route will simply not reawake public faith in the pursuit of justice; nor provide the urgent impetus toward the restoration of confidence of which I spoke a moment ago. No one was better able to engender public confidence than Mr. Cox, and recreating his situation is simply not responsive to the new situation we are facing.

There have been suggestions that the President could appoint a special prosecutor to be confirmed by the Senate and perhaps, under some elaborate device, subject to dismissal only with the concurrence of the Senate. This approach would have the unfortunate effect of injecting politics into an area which must be totally void of partisan consideration. I do not want Congress, any more than I want the President, to be in the inappropriate position of being able to dismiss a prosecutor.

How can we expect the American people to accept the validity of our claim to independence, impartiality and thoroughness if either the executive or legislative branches are in a position to infringe on the administration of justice.

I am gratified by the growing momentum which has developed in the Congress, the media, the legal community, and among the public since Monday when I first announced my intention to introduce the legislation now being presented to the Senate. Indeed, the number of cosponsors of this bipartisan legislation, including half the members of the Judiciary Committee, as well as the geographical balance of the sponsoring Senators, provides clear evidence of a wide national interest in this approach.

Permit me to review briefly the specifics of this legislation—the Independent Special Prosecutor Act of 1973.

In its findings and declarations the bill states that—

> Public confidence in the integrity of the Nation's criminal justice system cannot be maintained if the investigation of allegations and prosecution of illegal acts of high officials of the executive branch of Government are carried out under the authority of the executive branch itself.

The special prosecutor and deputy special prosecutor, to be appointed by the chief judge of the U.S. District Court for the District of Columbia, would be empowered to investigate:

First. The Watergate break-in and attendant offenses;

Second. Other offenses during the 1972 Presidential campaign;

Third. Offenses alleged to have been committed by the President, Presidential appointees, or members of the White House staff; and

Fourth. All other matters which had been under investigation by former special prosecutor Archibald Cox.

The special prosecutor would have all necessary powers to pursue every legal path toward the fulfillment of his assignments and the full administration of justice.

In addition, all the material, evidence, and information generated by the special Watergate prosecution force under Mr. Cox would be available to the new independent special prosecutor and the new prosecutor would be empowered to continue all legal steps begun by Mr. Cox.

As a further step to help protect the independence of the new special prosecutor, the bill specifically states that funding for the special prosecutor's office not

go through the White House Office of Management and Budget. Clearly such an arrangement is necessary, for otherwise the White House would be in a position where it could possibly use budget authority to limit the staffing and thoroughness of the investigation.

The special prosecutor and deputy special prosecutor could only be removed from office by the chief judge and then only in the instance of extraordinary improprieties. The special prosecutor is left the final determination as to how long he must remain in office so that the administration of justice will not only be fair and impartial, but thorough as well.

I would like to now turn to a discussion of the constitutionality of the mechanism we propose today. There have been some questions raised in this regard that I would like to put to rest. I might note, at this point, that some 23 of the deans of the Nation's most distinguished law schools have endorsed our proposal and are of the opinion that it is constitutionally sound.

I ask unanimous consent, Mr. President, that the formal statement signed by these legal scholars be printed at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. HATHAWAY). Without objection, it is so ordered.

(See exhibit 2.)

Mr. BAYH. Article II, section 2 of the Constitution provides that the President—

> Shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law;

But this clause then goes on to say—

> The Congress may by law vest the appointment of such inferior officers, as they think proper in the President alone, in the courts of law, or in the heads of departments.

It is this last clause of article II from which Congress derives its authority to name a special prosecutor who is appointed by the "courts of law." These clear words give Congress the discretion to authorize the judicial appointment of officers of the United States.

The Supreme Court's interpretation of this clause of the Constitution dates back to 1839 where the Court held in *Ex parte Heinen*, 38 U.S. (13 Peters) 225, 257–58, that this appointment power could be granted only to departments of the Government "to which the officer to be appointed most appropriately belonged."

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. TUNNEY. Mr. President, I yield 5 minutes to the Senator from Indiana.

Mr. BAYH. I appreciate the courtesy of my friend from California. I see him now, but I must say that when I first heard of this I was asleep when he called me in our hotel rooms in London. It was the urgency of the situation that brought us here instead of our continuing to Ankara. I think the Senator from California was here when I pointed out that it was the Senator from California who was "early on" part of the joint effort to move into this problem. This is not an individual effort; this is a joint effort.

Mr. TUNNEY. I think the Senator is making a very clear statement of the purport of the legislation, and I think he ought to continue, so the Congress and the country understand exactly what we are attempting to do. When the Senator is through outlining the nature of the bill, I will make remarks concerning the bill itself.

Mr. BAYH. I appreciate the Senator's statement. I apologize to my colleagues for the length of this statement, but if we are talking about constitutional arguments to sustain the position of those who are urging this proposal, it requires some particularity.

Forty years later, the court in ex parte Seibold, 100 U.S. (10 Otto) 371, 397–98 (1879), somewhat qualified this language in upholding a statute which authorized judges to appoint election supervisors. The Seibold court criticized the impracticality of a formalistic inquiry as to the department to which an officer "most appropriately" belonged, and indicated instead that congressional grants of authority to the judicial branch would be upheld unless such authority, and this is a key point, was incongruous with the judicial function.

Thus, for example, though Congress could not authorize the courts to appoint the Ambassador to the Hague, we could authorize the appointment by the courts of officers exercising judicial functions. The basic test is one of "congruity versus incongruity." The appointment of a sperial prosecutor would not produce incongruity with the normal judicial function because the court would not be involved in any continuing administration of prosecutions.

The possibility that the court or a particular judge of that court might also sit in trial upon cases brought by the special prosecutor it appointed would not affect the validity of the appointment since judges appoint defense counsel who routinely appear before them in trial, and, more importantly, our present Federal statutes provide that Federal district judges may appoint officers to fill vacancies in the U.S. attorney's office, lawyers who act as prosecutors for the Government (28 U.S.C. 546). See also, *Hobson* v. *Hausen*, 265 F. Supp. at 916–917.

It is true that there is broad language in some cases which deal with the relation between judges and prosecutors to the effect the proper prosecutorial discretion is an inherent executive function, and that prosecutorial discretion must remain unfettered by the courts. The most important of these cases is the opinion of the fifth circuit in *U.S.* v. *Cox*, 342 F.2d 167 (5th Cir., 1965). There the Attorney General refused to authorize the signing of grand jury indictments when ordered to do so by the district judge.

The Court of Appeals noted that "the functions of prosecutor and judge are incompatible." (*Cox* at 192) The crucial distinction, however, is that this line of cases deals with attempts by grand juries, courts, or plaintiffs to compel an unwilling prosecutor to initiate or stop a specific prosecution. As one of our most distinguished jurists, Judge Minor Wisdom pointed out in the Cox case:

> In the interest of justice and efficiency there should be some person able to prevent an unjust prosecution (*Cox* at 193).

As the branch of Government charged with carrying out our national policy on law enforcement, the executive is the proper organ to make such a judgment.

Executive discretion in this area is thus based on considerations of justice and efficiency, as well as upon the doctrine of separation of powers. In other words where the issue is one of prosecutorial discretion it is best exercised in its legitimate way by the executive. Legitimate meaning the traditional Anglo-American concept of measuring the punishment in individual cases to fit the crime. In present circumstances, however, legitimate prosecutorial discretion is not at issue since now we are faced with the issue of how the prosecutor of the executive branch can most fairly and objectively prosecute itself.

The appointment of a special prosecutor by the chief judge of the district court does not impinge on the critical area of prosecutorial discretion. No specific prosecutions are required in the statute, and the broad discretion contained in the charter for the special prosecutor insure that the very limited powers of removal will not be used to control him in the exercise of his discretion. Thus he will be fully able to prevent unjust prosecutions as well as to initiate those which are just.

While these policies are usually best weighed by the executive, there is a clear danger that where the executive is investigating itself, such executive discretion could defeat the purposes of the investigation. These special circumstances transform the arguments based on discretion into arguments in favor of a prosecutor free from the control of the executive branch. This is all the more pertinent considering the confidence problem which exists in the country today.

The PRESIDING OFFICER. The additional 5 minutes of the Senator have expired.

Mr. TUNNEY. Mr. President, how much time does the Senator want?

Mr. ALLEN. Mr. President, I ask for recognition in order that I might yield time to the Senator.

The PRESIDING OFFICER. The Senator from California has the floor.

Mr. TUNNEY. Does the Senator require any more time?

Mr. BAYH. I hate to impose further on the Senate, but perhaps another 4 or 5 minutes, because of the complexity of the subject.

Mr. TUNNEY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Ten minutes.

Mr. TUNNEY. I will yield another 5 minutes to the Senator.

Mr. BAYH. Is it possible that the Senator from Indiana might be given additional time?

Mr. ROBERT C. BYRD. No, no; Mr. President, I would have to object.

Mr. ALLEN. Mr. President, if the Senator would yield to me in order that I might obtain recognition, I will yield 10 minutes.

Mr. TUNNEY. Mr. President, I have been recognized. I have 10 minutes. I have yielded another 5 minutes to the Senator. If I run out of time, perhaps the Senator will yield me time.

Mr. ALLEN. Fine.

Mr. BAYH. I thank my colleagues.

Let us turn to the separation of powers arguments. The formal argument against a congressionally authorized, judicially appointed special prosecutor boils down to a simple assertion that such a procedure infringes upon the separation of powers. But the separation of powers is not a formal, rigid doctrine dividing our Government into watertight compartments.

As the Supreme Court said in the famous and important case, *Humphrey's Exector* v. *United States*, 295 U.S. 602, 631 (1935), where the court upheld the power of Congress to prevent the President from dismissing a member of the Federal Trade Commission—

> Whether the power of the President to remove an officer shall prevail over the authority of Congress to condition the power by fixing a definite term and precluding a removal except for cause will depend upon the character of the office.

The congressional power to authorize district judges to appoint prosecutors in certain circumstances has long been recognized in the Federal statutes as I have indicated. Although the district court opinion which upheld the validity of this statute emphasized the temporary and provisional nature of such an appointment it contained no suggestion that there is any inherent impropriety in such a procedure based on an improper mixing of functions.

Many States whose constitutions adhere to the separation of powers doctrine grant similar and even broader powers of prosecutorial appointments to State judges.

The doctrine of separation of powers is a functional one stemming from the basic concept that each of the separation powers is designed to serve as a check and balance on the others and that all power should never be in a single set of hands; that each holder of power should be subject to the scrutiny and restraint exercised by the other holders of power if arbitrary government is to be avoided.

It would be anomalous if this notion of separation of powers could be used to allow the executive to exercise power in its own case unchecked and unscrutinized and produce the ironic result of the executive branch investigating itself.

I turn now to the "necessary and proper" clause of article I, section 8. This clause clearly is an enlargement of the powers expressly granted to Congress. It was designed in such broad terms so as to enable the Legislature to select any means reasonably adapted to effectuate its constitutionally sanctioned powers.

As Justice Marshall wrote in the classic necessary and proper case, *McCulloch* v. *Maryland* (4 Wheat. 316 (1819):

> Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

In addition, the necessary and proper clause gives Congress a share in the responsibilities lodged in the other departments of government by virtue of its power to enact legislation necessary to carry into execution all powers vested in the National Government.

The direct applicability of the necessary and proper clause to the immediate question is readily apparent when one considers that, first, Congress has a direct grant of constitutional authority to establish a procedure for the appointment of inferior officers by the courts of law. That having been expressly authorized by article II, section II, it then follows that with the legitimate end "all means which are appropriate, which are plainly adapted to that end, which are not prohibited—are constitutional." The vesting of power to appoint an independent special prosecutor in the chief judge of the district court is clearly an appropriate means, plainly adapted to a legitimate end.

A second rationale is evident when one views Congress power to enact legislation necessary for the execution of all powers vested in the National Government. The power to investigate and prosecute alleged criminal activity in the executive branch is a power vested in the National Government. The necessary and proper clause has been interpreted to mean Congress can share in the responsibilities lodged in other departments of the government and the vesting of the power of appointment by the Congress in the chief judge of the district court for the creation of an independent special prosecutor clearly falls within this meaning of necessary and proper.

Mr. President, White House aides have publicly acknowledged the serious miscalculation made by the President in his actions of last weekend. The Secretary of State yesterday made direct reference to the "crisis of authority" facing this Nation.

Earlier this week we teetered on the brink of an even more serious problem, when there was the possibility that the President might defy a court order. Fortunately, he chose not to take that extreme step and in doing so showed the capacity to reverse himself when the national interest and public pressure demanded it.

I salute him for recognizing this interest.

While the President's compliance with the court order is a constructive step, it does not resolve the continuing crisis of confidence confronting us, nor has it stopped the public outcry for the thorough, unbiased administration of justice. We have a long road to travel before our Government can again claim the respect of the American people, and we can take a crucial and giant step down that road by passing the legislation being introduced today.

I fervently hope that the Congress will act speedily and affirmatively in passing this bill, and suggest to the President that he join us in the effort as part of an overall effort to correct past abuses and to begin the necessary reconstruction of the foundation of our democracy.

Mr. President, I would like to make one final point.

While we have the compelling responsibility to fulfill the constitutional and legal requirement that justice be administered fairy, fully, and impartially, no matter where the investigation may go and no matter who is involved, we have a second responsibility. That responsibility is to the prompt administration of justice. The American people rightly want to speed the day when all of the guilty are convicted and all of the innocent exonerated.

The importance of speed can best be demonstrated in the fact that until every allegation of misconduct is thoroughly investigated and until all offenses are fully prosecuted it will be exceedingly difficult to focus the full attention and energies of our Government and citizens on other vital national issues.

Of the other proposals that have been advanced for the prosecution of these cases, none offers the same speedy resumption of the special prosecutor's efforts as the bill we are introducing today. To develop some intricate procedure for the appointment of a special prosecutor will delay the time when this unfortunate episode in American history will be behind us.

Let us act now, let us have the chief judge make the necessary appointments as soon as possible, let us provide for the speedy, fair administration of justice in the pending cases, and let us move on to the other important business of this country.

EXHIBIT 1

S. 2611

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Independent Special Prosecutor Act of 1973".

SEC. 2. The Congress finds and declares that—

(a) Serious allegations of illegal acts of high officials of the Executive branch of government cannot under present extraordinary circumstances be fully and properly investigated and prosecuted by the Executive branch itself.

(b) Public confidence in the integrity of the nation's criminal justice system cannot be maintained if the investigation of such allegations and prosecution of illegal acts by high officials of the Executive branch of government are carried out under the authority of the Executive branch itself.

(c) The establishment of a Special Prosecutor independent of the Executive branch of government is "necessary and proper" under Article I, Section 8 of the Constitution of the United States to ensure the enforcement of the criminal laws and the due administration of justice through a complete investigation of such allegations and a vigorous and uncompromised prosecution of accused offenders.

(d) A Special Prosecutor independent of the Executive branch of government should properly be appointed by the Judicial branch of government, and Article II, Section 2 of the Constitution of the United States provides authority for Congress to vest such appointment "in the courts of law".

(e) The establishment of an independent

Special Prosector is an appropriate exercise of the power under Article I, Section 8 of the Constitution of the United States to "exercise exclusive legislation in all cases whatsoever" over the District of Columbia, in that many such activities are alleged to have occurred in the District.

SEC. 3. (a) The Chief Judge of the United States District Court for the District of Columbia (hereinafter referred to as the "Chief Judge") is authorized and directed to appoint a Special Prosecutor who shall have the duties and powers prescribed in this Act. The Chief Judge is further authorized and directed to appoint a Deputy Special Prosecutor, who shall assist the Special Prosecutor in the performance of his duties and who, in the event of the disability of the Special Prosecutor or vacancy in the office of Special Prosecutor, shall temporarily become Special Prosecutor until the Chief Judge appoints a Special Prosecutor in accordance with Section 8 hereof.

(b) The Special Prosecutor is authorized and directed and shall have exclusive jurisdiction, to investigate, as he deems appropriate, and prosecute against and in the name of the United States—

(1) offenses arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate;

(2) other offenses arising out of the 1972 Presidential election;

(3) offenses alleged to have been committed by the President, Presidential appointees, or members of the White House staff;

(4) all other matters heretofore referred to the former Special Prosecutor pursuant to regulations of the Attorney General (28 C.F.R. § 0.37, rescinded October 24, 1973); and

(5) offenses relating to or arising out of any such matters.

SEC. 4. The Special Prosecutor shall have full power and authority with respect to the matters set forth in Section 3 of the Act:

(1) to conduct proceedings before grand juries and other investigations he deems necessary;

(2) to review all documentary evidence available from any source;

(3) to determine whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

(4) to receive appropriate national security clearance and review all evidence sought to be withheld on grounds of national security and if necessary contest in court, including where appropriate through participation in in camera proceedings, any claim of privilege or attempt to withhold evidence on grounds of national security;

(5) to make application to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpenas, or other court orders;

(6) to initiate and conduct prosecutions in any court of competent jurisdiction, frame and sign indictments, file informations, and handle all aspects of any cases over which he has jurisdiction under this Act, in the name of the United States, and

(7) notwithstanding any other provision of law, to exercise all other powers as to the conduct or criminal investigations and prosecutions within his jurisdiction which would otherwise be vested in the Attorney General and the United States attorney under the provisions of chapters 31 and 35 of title 28, United States Code, and the provisions of 26 C.F.R. 301.6103 (a)-1(q), and act as the attorney for the Government in such investigations and prosecutions under the Federal Rules of Criminal Procedure.

SEC. 5. (a) All materials, tapes, documents, files, work in process, information, and all other property of whatever kind and description relevant to the duties enumerated in Section 3 hereof, tangible or intangible, collected by, developed by, or in the possession of the former Special Prosecutor or his staff established pursuant to regulation by the Attorney General (28 C.F.R. § 0.37, rescinded October 24, 1973), shall be delivered into the possession of the Special Prosecutor appointed under this Act.

(b) All investigations, prosecutions, cases, litigation, and Grand Jury or other proceedings initiated by the former Special Prosecutor pursuant to regulations of the Attorney General (28 C.F.R. § 0.37, rescinded October 24, 1973), shall be continued, as the Special Prosecutor deems appropriate, by him, and he shall become successor counsel for the United States in all such proceedings, notwithstanding any substitution of counsel made after October 20, 1973.

SEC. 6. The Special Prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as he deems necessary, including but not limited to investigators, attorney, and part-time consultants, without regard to the provision of title 5, United States Code governing appointments in the competitive civil service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Special Prosecutor is authorized to request any officer of the Department of Justice, or any other Department or agency of the federal or District of Columbia government, to provide on a reimbursable basis such assistance as he deems necessary, and any such officer shall comply with such request. Assistance by the Department of Justice shall include but not be limited to, affording to the Special Prosecutor full access to any records, files, or other materials relevant to matters within his jurisdiction and use by the Special Prosecutor of the investigative and other services, on a priority basis, of the Federal Bureau of Investigation.

SEC. 7. The Administrator of General Services shall furnish the Special Prosecutor with such offices, equipment, supplies, and services as are authorized to be furnished to any other agency or instrumentality of the United States.

SEC. 8. Notwithstanding any other provisions of law, the Special Prosecutor shall submit to the Congress directly requests for such funds, facilities, and legislation as he shall consider necessary to carry out his responsibilities under this Act, and such requests shall receive priority consideration by the Congress.

SEC. 9. The Special Prosecutor shall carry out his duties under this Act within two years, except as necessary to complete trial or appellate action on indictments then pending.

SEC. 10. The Chief Judge is empowered to dismiss the Special Prosecutor or the Deputy Special Prosecutor, if, in his discretion, he determines that the Special Prosecutor or the Deputy Special Prosecutor has willfully violated the provisions of this Act or committed other extraordinary improprieties, and for no other reason. In the case of the disability of the Special Prosecutor or Deputy Special Prosecutor, as determined by the Chief Judge, or the vacancy of either office, the Chief Judge shall be authorized to appoint a successor.

SEC. 11. The Special Prosecutor solely shall exercise the powers and perform the duties specified herein. Neither the Chief Judge or the President of the United States, nor any other officer of the United States shall have any authority to direct, countermand, or interfere with any action taken by the Special Prosecutor pursuant to this Act. Neither the President of the United States, nor any other officer of the United States, shall have any authority to remove the Special Prosecutor from office.

SEC. 12. The Special Prosecutor is authorized from time to time to make public such statements or reports as he deems appropriate and is authorized and directed upon completion of his duties to submit a final such statement or report to the Congress and the President.

SEC. 13. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EXHIBIT 2

STATEMENT OF LAW SCHOOL DEANS

Whereas, substantial evidence exists that close associates of the President of the United States, and possibly the President himself, have engaged in a deliberate effort to obstruct justice;

Whereas public trust in the administration of justice requires that the evidence of such misconduct be investigated by prosecutors independent of those under investigation;

And whereas the President has prevented such an independent inquiry from being conducted,

Therefore, we the undersigned, deans of American law schools, respectfully petition the Congress of the United States to take the following measures:

We urge that Congress act immediately by statute to establish a special Watergate prosecutor's office, with the special prosecutor to be appointed by a specified law court (as authorized in Article II, Section 2 of the United States Constitution) and with complete independence of the executive branch of Government.

The President's stated refusal to comply with court rulings requiring him to produce relevant evidence raises a serious question as to whether he will cooperate fully with a Congressionally established prosecutor. There being only one course clearly open to the American people to protect against this contingency, we urge further that the House of Representatives create a select committee to consider the necessity of Presidential impeachment or refer the matter to its Judiciary Committee.

Albert Sacks, Harvard; Michael I. Sovern, Columbia; Abraham Goldstein, Yale; Robert B. McKay, New York University; Phil C. Neal, Chicago; Theodore St. Antoine, Michigan; Bernard Wolfman, Pennsylvania; Thomas Ehrlich, Stanford; Clinton Bamberger, Catholic; Adrian S. Fisher, Georgetown; Herbert O. Reid, Howard; Gordon Christiansen, American; Monroe H. Freedman, Hofstra; Kenneth L. Penegar, Tennessee; Otis King, Texas Southern; Willard D. Lorenser, West Virginia; Lindsay Cowen, Case Western Reserve; Edward Halbach, University of California at Berkeley; Richard Schwartz, State University of New York at Buffalo; and Monrad Paulsen, University of Virginia.

The names of additional Deans are expected.

Mr. BAYH. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from Michigan (Mr. HART).

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR HART

Mr. President, let me thank, first of all, Mr. Bayh, the Sentaor from Indiana, for agreeing to introduce a bill for me and 50 others establishing a court-appointed independent special prosecutor.

Under the provisions of our bill, the Chief Judge of the District Court for the District of Columbia would appoint the prosecutor and his deputy.

This legislation is sponsored by eight members of the Senate Judiciary Committee, six Republican Senators, and five members of the Select Watergate Committee.

In making this proposal, we are concerned with restoring public confidence in government which is necessary to make our system work, and, if possible, in the present Administration.

The fact that questions about possible connections between the Administration's troubles at home and the conduct of its foreign policy were raised at Secretary of State Kissinger's press conference yesterday indicates the degree of suspicion which exists in our country.

It is because we face serious crises at home and abroad, which can be met only by a government which has the support of our people, that we must press ahead with an investigation of Watergate and related events. And we must do so in a way that gives the public confidence that it will be done absent any hint of cover-up from the Republican Administration and free of any taint of partisanship through influence from the Democratically-controlled Congress.

Only in that way can the suspicion which now exists be ended. And that is why the Special Prosecutor should be named by the Judicial branch, and why the appointment of a Special Prosecutor by the President will fail to meet the independence rightfully demanded by the public.

Last Spring some considered the possibility of Congress establishing by statute the office of the independent Special Prosecutor. The idea was dropped when Elliot Richardson and Archibald Cox came before the Judiciary Committee and outlined safeguards which we had hoped would provide for the Prosecutor's independence.

Unhappily that "clear and firm" commitment turned out to be less than a guarantee, so today we are again faced with the task of providing for an independent investigation.

This bill would give the court-appointed Special Prosecutor the authority to operate as Professor Cox did. The prosecutor could:

Conduct grand jury proceedings;

Review all documentary evidence from any source;

Determine whether or not to contest claims of executive privilege;

Seek subpoenas, warrants or grants of immunity;

Frame indictments, conduct prosecutions and appeals.

The appointing judge could, under the bill, dismiss the Special Prosecutor only for extraordinary improprieties. Further, the files gathered by Professor Cox and his investigators would be turned over to the court-appointed Prosecutor.

Requests for funding would be conveyed directly to Congress by the Prosecutor. Tenure of the office would be two years, plus the necessary time to complete litigation.

The Constitutional basis for this bill is Article II, Section 2, which says: ". . . the Congress may by law vest the Appointment of such inferior Officer as they think proper, in the President alone, in the Courts of Law or in the Heads of Departments."

The deans of 20 law schools this week endorsed the constitutionality of Congress providing for an Independent Prosecutor.

All questions surrounding the constitutional basis have by no means been completely resolved. The authority from Article II, Section 2, has been used before, but not frequently. However, the unusual circumstances we now find ourselves in warrant an unusual remedy.

Mr. TUNNEY. Mr. President, I think that the Senator from Indiana has given an excellent statement demonstrating the need for this legislation. He has also outlined the specific provisions contained in the legislation.

Mr. President, as this long week has gone by, the mood of shock and outrage at the firing of the Watergate special prosecutor and the forced resignations of the Attorney General and Deputy Attorney General has not dissipated.

At a period in our history when dramatic event has been piled on dramatic event, the President's precipitous purge of the Justice Department frightened and galvanized the mood of millions of Americans.

My office has received, as of 10 a.m. this morning, over 7,000 telegrams and 5,000 letters. Inasmuch as it takes 3 to 4 days for a letter to move from California to Washington, D.C., I daresay that we will be receiving many thousands of additional letters over the next few days. Of these more than 12,000 telegrams and letters, all but 251 urged impeachment of the President. Many of them were written by lifelong Republicans. Many of them were written after the President's sudden reversal and decision to comply with the court order and surrender the tapes and documents. What many of the letters say is that the President's action is too little and too late.

No issue during the 9 years I have served in Congress has triggered such a swift and massive response from constituents.

There is no question that last weekend's action was wrong—and illegal. The President did not purport to order the dismissal of the Watergate special prosecutor on the only ground provided for such dismissal in the charter which the Senate had negotiated with Mr. Cox and then Attorney General Richardson. I might add that this contract, this charter, for the special prosecutor was published by the Attorney General in the Federal Register. Instead of firing Mr. Cox for committing "extraordinary improprieties," the President fired him for failing to carry out a direct command of the President—not to pursue the tapes issue any further.

The President's advisers said the matter came down to who was President: Richard Nixon or Archibald Cox. Acting Attorney General Bork, in explaining why he agreed to fire Mr. Cox on orders of the President, said he knew that someone would have to fire Cox and that the President's decision was "final and irrevocable. I also knew that he had the right to fire any member of the executive branch."

It is this last statement that persuades me no adequate investigation of Watergate and related scandals can ever take place unless the President is prevented from removing a prosecutor who gets too close to the White House door. It is well to remember here that analogies to past scandals, like Teapot Dome, are inadequate. There, a prior adiministration was being investigated. President Coolidge, who retained authority to appoint and fire the prosecutors in the case, was not himself under investigation. Even imputing the best of motives to President Nixon in the current case, there is no way he can be impartial about an investigation which concerns his own involvement.

Mr. President, the issue is simply whether an administration, any administration, can investigate itself with the fullness and fearlessness that the American people demand. After all we have gone through in this year of trauma and crisis, I believe it is clear that the people, whose confidence in the administration has been so badly shattered, would not, nor could not accept such a charade.

It is well to remember that appearances sometimes take on the quality of reality. It seems to me in view of this that we must have legislation that will create a special prosecutor wholly outside the executive branch.

Therefore, I join today in cosponsoring the Independent Special Prosecutor Act of 1973, a bill which a number of my collegues on the Judiciary Committee and myself developed to establish a special prosecutor immune from the whims of the White House. At this moment, a total of 42 Members of the Senate have agreed to cosponsor the legislation.

Essentially, the bill provides that the chief judge of the U.S. District Court for the District of Columbia—currently Judge Sirica—would appoint a special prosecutor and deputy special prosecutor to serve for a 2-year term, subject to extension if litigation is in process. The powers of the prosecutor include all those mentioned in Mr. Cox's charter and, in addition, include the power to review all evidence sought but withheld on grounds of national security, and the power to act as attorney for the Government. All materials in the possession of Mr. Cox or his staff are to be delivered to the new prosecutor, and he has authority to carry on all prosecutions, cases, litigation, and other proceedings that Mr. Cox had begun, even if some of those activities have been halted by successor counsel after Mr. Cox was fired on October 20. The prosecutor and his deputy can only be removed by the chief judge if he finds either of them has committed "extraordinary improprieties," and for no other reason.

Mr. President, I acknowledge that some raise the issue of whether such a mechanism can be set up outside of the executive branch. Considerable research has been done on this point and the conclusion is that, on balance, the precedents and the specific language of the Constitution justify the approach we have taken. Moreover, in the case at issue here, the President has shown that he is unwilling to allow any employee subject to his control to carry out the independent investigation necessary to, in the words of one Member of the House, give the President a clean bill of health or a bill of impeachment.

The President—and the American people—deserve an end to these long months of agony. Only through the approach mandated in this legislation will we reach an end.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ALLEN. Mr. President, if the Chair will recognize me, I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for an additional 10 minutes.

Mr. TUNNEY. Mr. President, I thank the Senator from Alabama. I will not need 10 minutes.

I think it is most important that the Senate Judiciary Committee begin early hearings on the legislation so that we can have a bill out of committee within the next 10 days to 2 weeks. I would then urge a quick vote in the Senate, so that the special prosecutor will be able to continue the investigation that was stopped as a result of the firing of Mr. Cox.

In reading through my mail and my telegrams, I have been alarmed by the loss of credibility that the President of the United States has sustained at this time. I think that when we talk about loss of credibility of the President, we are talking about not only the problems that the President has had in getting a legislative program through Congress and the crisis of confidence domestically, but we are also talking about the fact that other nations may very well begin to doubt that the Government of the United States can function in an effective and efficient manner.

I have no reason to know why it was that the National Security Council and the President decided to call for an alert of our Armed Forces around the world, other than the statement that Mr. Kissinger made yesterday. I am prepared to take Mr. Kissinger at his word that it was necessary to call for such an alert, because there was the fear that the Soviet Union might take initiatives, including the unilateral sending of troops into the Mideast situation, which would not only polarize matters in that area, but could lead to a great power confrontation.

Even so, I cannot help but speculate, in my own mind, that the Soviet Union may have been prepared to send troops unilaterally into the Middle East, because there was a perceived weakness in the ability of the President of the United States to govern. This perceived weakness is critical, not only in the context of the Middle East situation, but with respect to our international relations throughout the world.

We never know when the next crisis may erupt. Therefore, in order to overcome this perceived weakness in our leadership at home, the Congress must not allow this matter of the special prosecutor to be delayed or to protract the consideration of this legislation. I think it is absolutely essential that the special prosecutor be in office within the next 10 days or 2 weeks to pursue and resolve the matters under investigation by Mr. Cox when he was fired.

I would also like to say that I am one person, one Democrat, who does not feel that we ought to hold GERALD FORD's confirmation hostage to a resolution of the Watergate investigation. I think that Mr. FORD is entitled—not only under the 25th amendment of the Constitution and not only because of the Senate's responsibility to consider his nomination, but in terms of common decency—to have his background investigated by the appropriate committees of the House and the Senate, so that there can be an expeditious vote on his qualifications to be Vice President. It would be my hope that while the Judiciary Committee of the Senate moves ahead with the consideration of legislation to create the office of a special prosecutor and to designate a new special prosecutor, the Rules Committee will continue, as they plan to do, to hold hearings on Mr. FORD. I would also hope that the House Judiciary Committee, which has the responsibility not only for the passage of special prosecutor legislation but also the investigation of Mr. FORD, will continue apace on a dual track system on both matters.

Unless this crisis of confidence is resolved expeditiously, this country will suffer irreparable damage. I do not mean that we ought to limit the investigation in any way, or that we should try to whitewash any White House involvement in illegal matters.

The Constitution of the United States applies to any man, no matter how powerful, be he the President or some other person not in such exalted office. This issue was resolved at Runnymede in England, back in the days of King John, when he was forced to sign the Magna Carta. We do not apply divine right to our leaders in this country any more than the divine rights of kings is accepted in those countries that have monarchies.

I do think, however, that time is of the essence, and I am deeply concerned that if delays occur, we will not only lose credibility as to our capacity to rule effectively in matters of this kind, but I think such a loss of credibility could be very damaging to us around the world. The Soviet Union may well attempt to take advantage of such a situation. It is, therefore, imperative that we move expeditiously to solve this crisis of confidence in our Chief Executive.

Mr. President, I ask unanimous consent that a statement by the distinguished Senator from Massachusetts (Mr. KENNEDY) be included in the RECORD following my remarks on the bill that was introduced today to establish an independent special prosecutor.

Senator KENNEDY is unavoidably absent today and he wanted his remarks on this bill to be included in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR KENNEDY

I join Senator Philip Hart, six other Senate Judiciary Committee members and over 40 other colleagues today in introducing legislation to establish an independent Special Prosecutor—totally, completely, and unquestionably free from White House influence—to investigate Watergate and all other offenses related to the 1972 Presidential election.

I emphasize that independence because it is the influence, interference, and other actions of the White House and the President which have carried the nation to the brink of a Constitutional crisis.

Only an unprecedented public outcry produced an 11th hour reversal of the President's announced intention to defy a court order.

Yet, even that action cannot erase from the public record the unprecedented and frightening events of the past days, events which have further eroded public confidence in the institutions of government.

The President ordered the firing of the Special Prosecutor, Mr. Cox. He ordered the abolition of the Office of Special Prosecutor. He sought to deny to the courts material that was viewed as essential to the prosecution of those who are being investigated for their complicity in a wide range of criminal offenses.

Finally, the President forced the resignations of the Attorney General and the Deputy Attorney General, two men who placed their pledges to the Constitution and to the public interest above their loyalty to a single individual.

Had others within this Administration shown an equivalent courage, the ship of state would not be facing the violent gales that now threaten its future.

Instead, we now find ourselves left once again with a proposal by the Administration to forget about the headlines of the past year, to forget about the indictments against a former Attorney General and a former Secretary of Commerce, to forget about the clouded departure from office of Dwight Chapin, Jeb Magruder, Patrick Gray, John Dean, Richard Kleindienst, H. R. Haldeman, John Erlichman, David Young, Gordon Strachan, Robert Odle, Egil Krogh, and John Caulfield, to forget about the recent resignation of the Vice President, to forget about the charges of perjury and obstruction of justice against former White House aides, to forget about the wiretapping, to forget about the secret campaign funds, to forget about the officially inspired burglaries of the Watergate and of Daniel Ellsberg's psychiatrist.

We are being told again to forget and to rest assured that the investigation of possible felonies, which may reach far into the White House, will be carried out vigorously by men whose authority rests in the White House.

The American people have had that assurance before. They recall President Nixon's statement concerning the investigation of the Watergate of October 5, 1972. "I agreed with the amount of effort that was put into it. I wanted every lead carried out to the end because I wanted to be sure that no member of the White House staff and no man or woman in a position of major responsibility in the Committee for Re-Election had anything to do with this kind of reprehensible activity," he said.

That was a year ago when the President was satisfied with the effectiveness of the investigation.

Again, this year on March 3, they recall the President said: "I will simply say with regard to the Watergate case what I have said previously, that the investigation conducted by Mr. Dean, the White House Counsel, in which, incidentally, he had access to the FBI records on this particular matter because I directed him to conduct this investigation, indicates that no one on the White House Staff, at the time he conducted the investigation . . . was involved or had knowledge of the Watergate matter."

Again, the President was satisfied with the investigation.

They recall also when the President stated with regard to another investigation, this one allegedly carried out by Mr. Ehrlichman, "An investigation was conducted in the most thorough way."

They recall that throughout the past year we were assured that acting FBI Director Gray was leaving no stone unturned in getting to the bottom of this sordid affair.

Yet those investigations did not break through the cover-up. They did not bring the guilty to the bar of justice. Time after time, the investigations under the thumb of the White House produced only whitewashes.

Finally, it was for those reasons that the Senate Judiciary Committee, the entire Senate, and the American people demanded an independent special prosecutor who would not be responsible to the White House.

In the wake of the resignations of Mr.

Haldeman and Mr. Erlichman and Mr. Kleindienst, even the President seemed to recognize the public demand for an independent prosecutor.

In his statement announcing the appointment of Mr. Richardson, he stated: "I have given him absolute authority to make all decisions bearing upon the prosecution of the Watergate case and related matters. I have instructed him that if he should consider it appropriate, he has the authority to name a special supervising prosecutor for matters arising out of the case."

"Whatever may appear to have been the case before, whatever improper activities may yet be discovered in connection with this whole sordid affair. I want the American people, I want you to know beyond the shadow of a doubt that during my term as President, justice will be pursued fairly, fully and impartially, no matter who is involved," continued the President.

When Mr. Richardson came before the Committee he stated that he would name a special prosecutor, independent of his own control and independent of the White House.

He said: "I do think that the public is entitled to an additional measure of reassurance as to the integrity of the process, and that, of course, is why I would propose to appoint a special prosecutor."

In the agreement finally submitted to the Committee establishing the independence of the Special Prosecutor, Mr. Richardson, as the President's nominee, established a contract with the Committee. The agreement read: ". . . the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. The Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part."

Under no conceivable construction could the actions of Mr. Cox be deemed "extraordinary improperties." His actions were approved by the U.S. District Court and the U.S. Court of Appeals.

Indeed, the President's action in dismissing the Special Prosecutor may well have been an "extraordinary impropriety" on his own part. Certainly, James Madison, the principal architect of the Constitution and one of the greatest founding fathers, thought that such an act would be an impeachable offense in and of itself. The point was raised by Madison in 1789 during the famous "Removal Debate" in the First Congress. At the time, Madison was a member of the House of Representatives from Virginia. In discussing the possible abuse by the President of his power to remove officials in the Executive Branch of Government, Madison said:

"The danger, then, consists merely in this—the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power, and the restraints that operate to prevent it? In the first place, he will be impeachable by this House, before the Senate, for such an act of maladministration, for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust.

"But what can be his motives for displacing a worthy man? It must be, that he may fill the place with an unworthy creature of his own.

"The injured man will be supported by the popular opinion; the community will take sides with him against the President; it will facilitate those combinations, and give success to those exertions which will be pursued to prevent his re-election."

Two days ago, Mr. Richardson told the American public exactly where he stands on the firing of Mr. Cox. When asked what he would have done in Mr. Cox's shoes, he said: "I would have done what he has done."

Mr. Richardson had told the Judiciary Committee in May that the President "could dismiss me, but the special prosecutor would be my appointee, in this case an appointee who, although not technically confirmed by the Senate, would still have been the subject of full opportunity for the Senate to satisfy itself as to his qualifications. And if I were directed to fire him and I refused, and I would refuse in the absence of some overwhelming evidence of cause, then the President's only recourse would be to replace me."

"Now again, these are things that in the present circumstances are so remotely possible as to be practically inconceivable.

Yet that is precisely what has occurred.

And it has occurred through the President breaking his pledge to the Senate and to the American people.

Once again, Mr. Richardson stated in his testimony: "The President . . . is pledged to a full and thorough investigation. He is pledged to cooperate in assuring that all the facts emerge."

The contract with the Senate was obviously agreed to by the President. Had he disagreed, he could have withdrawn the nomination.

We also had the statement of President Nixon on May 22 regarding the Special Prosecutor's determination to secure the full truth. "In this effort, he has my full support," the President told the nation.

We had as well the statement of Senator Scott at the Richardson hearings, in which he commented: "Now, the President this morning made it clear to me that he will in no way intervene in the selection of the prosecutor nor in the conduct of his office . . . that the investigation must proceed without fear or favor to the full and complete truth and toward the final fixing of responsibility through the judicial process."

Now we have the final admission by Charles Alan Wright, the President's attorney, the admission made two days ago, that the President indeed had broken his pledge to permit the independent special prosecutor to pursue justice, "fairly, fully and impartially."

The pledge was clearly made and now the pledge has been clearly broken, shattered in a billion pieces.

The intervention of the President, Mr. Richardson said, in "the way that the special prosecutor does his job and so on, would be totally at variance with the whole approach he set forth. It just will not happen."

It has happened.

And today, the nation watches as this 200-year experiment in constitutional government stands against its most severe test since the Civil War.

The President not only ordered the firing of a man who was conducting the inquiry with dedication, sacrifice, and commitment, he ordered the firing of a man who was conducting the inquiry with success.

It was that success that apparently has prompted the President to break his own pledges and to unilaterally abrogate the agreement with the Senate.

The President not merely fired Mr. Cox, but he also abolished the Office of Special Prosecutor. That action emphasizes the small value that ultimately was placed on producing the whole truth in the tragic Watergate affair and the corruption of the political process which accompanied it.

For by his unilateral action, the President has said that the system of justice shall not operate freely. Instead, he has tucked the investigation safely back into the Justice Department—from where the Senate and the public originally demanded it be removed—with no guarantee of independence, in fact, no pretense of independence.

It is the Administration again attempting to sit as prosecutor, judge and jury of its own indictment. And it is a continuation of the past history of White House whitewashes of the alleged involvement of the nation's highest officials in the Watergate Affair.

This week the Acting Attorney General has placed in the hands of Assistant Attorney General Henry Petersen the responsibilities formerly carried out by the Special Prosecutor.

Without casting any aspersions on the integrity or competence of Mr. Petersen, he has been on the record in the past in questioning the need for the special prosecutor. He, as all Justice Department employees, ultimately can be dismissed at the willl of the President. Mr. Petersen recognizes that fact, telling the Watergate Committee last August: "If the President calls you up . . . you click your heels and say, 'Yes, sir.'" While I have no doubt that Mr. Petersen would reject any effort to compromise his investigation, we are operating in an area where the public confidence has been badly shaken. No appearance of being responsive to the will of the President in conducting this investigation can be permitted.

Finally, we know that if there is a belief that the investigation is not totally independent, then it is less likely that individuals will come forward and offer potentially incriminating evidence to the prosecutor. Earlier this year, convicted Watergate conspirator James McCord offered an explanation why he wrote directly to Judge Sirica. Mr. McCord said, "I cannot feel confident in talking with an FBI agent, in testifying before a Grand Jury whose U.S. Attorneys work for the Department of Justice, or in talking with other government representatives."

For all of these reasons, it is simply unacceptable to permit the Special Prosecutor's office to be abolished and the investigation submerged within the Justice Department.

For these reasons, and in this light, I have taken the following steps:

First, I introduced a resolution in the Senate Judiciary Committee urging that now that the tapes issue has been removed as a matter of controversy, Mr. Cox be reinstated as Special Prosecutor to permit his work to continue while the Senate is acting on legislation to establish a fully independent Special Prosecutor. I hope that the Committee will consider and act on this resolution next week.

Second, I asked for hearings of the Senate Judiciary Committee on the firing of Mr. Cox. The hearings that begin Monday will permit us to explore in depth not only the reasons for his dismissal, but also the lessons that we have learned concerning the need for full independence of the White House in the conduct of this investigation.

Third, I urged along with other Senators that the materials, documents and files of the Office of Special Prosecutor be retained by that task force and that none of those documents be turned over or made available to persons at the White House or to any other unauthorized person or to any person under investigation.

Finally, I am joining other Senate Judiciary Committee members in introducing legislation today to establish a permanent independent Special Prosecutor's Office totally free from the control of the President to complete the investigations begun by Archibald Cox. The single loophole of the guidelines establishing the special prosecutor is that he ultimately can be fired by the President—one of those being investigated. That loophole has now been used by the President

to thwart the Watergate investigation. We must act now to see that this loophole is closed once and for all.

The bill I am introducing today would provide for the appointment of a Special Prosecutor to fulfill the duties and responsibilities vested in the former Special Prosecutor set up by Attorney General Richardson pursuant to agreement with the Senate Judiciary Committee. Since it has become clear that the President will not respect the independence of a prosecutor over whom he has any authority, our bill establishes the Special Prosecutor outside the President's reach. The Special Prosecutor and a Deputy Special Prosecutor are to be appointed by the Chief Judge of the United States District Court for the District of Columbia. I believe that Congress clearly has the constitutional power to vest such appointment in the Chief Judge under Article II, section 2 of the Constitution, which states that "the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."

It is certainly clear that Congress can vest in the courts appointment power over officials performing duties relating to the responsibilities of the Courts. Congress has also provided that the courts can fill vacancies in the office of the United States Attorney, and upon such appointment by the court that U.S. Attorney is vested with the full prosecutorial powers of one duly nominated to that office by the President and confirmed by the Senate. But some question has been suggested whether, once properly appointed, the Special Prosecutor can exercise what is essentially considered an "executive function, given the Constitution's vesting of "executive power" in the President in Article II, section 1.

The most recent precedent we have is the Senate's passage of S. 272, which would establish a "Federal Election Commission" with authority to initiate civil and criminal proceedings and to prosecute, defend, or appeal any court action to enforce the law established by that bill and certain named statutes previously enacted. But as early as 1870 and 1871 Congress enacted "Enforcement" Acts which provided for judicial appointment of election supervisors—a role later incorporated into executive branch responsibilities under the 1965 Voting Rights Act. So there exist clear precedents for the vesting of what might otherwise be considered "executive" powers in officials appointed by the Judicial branch of government.

In addition to Article II, section 2, the Constitution provides authority for this bill under the "necessary and proper" clause. Under that provision, the Congress may "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." In the bill being introduced today, Congress makes explicit findings that the "serious allegations of illegal activities of high officials of the Executive branch of government cannot, under present extraordinary circumstances, be fully and properly investigated and prosecuted," and that "public confidence in the integrity" of the criminal justice system and of such investigation and prosecution cannot be maintained if they are "carried out under the authority of the Executive branch itself." Thus we believe that, under these extreme and special circumstances, the extraordinary step of establishing a Special Prosecutor as an appointee of the Judicial Branch is necessary and proper.

Mr. Nixon, as United States Senator in 1951, apparently believed it constitutional and indeed desirable that under ordinary circumstances a "special counsel" could be "appointed by the court" and empowered to conduct investigations and even sign indictments. A number of law school deans and professors and other constitutional experts around the country have concluded that the approach embodied in our legislation is constitutional. So did Mr. Nixon when he was in the Senate. And so do the sponsors of this bill.

(I ask unanimous consent that this bill introduced by then Senator Nixon in 1951 be printed in the RECORD at the conclusion of my remarks.)

The jurisdiction and powers given the Special Prosecutor in this legislation are adapted from the original charter for the Office of Special Prosecutor, developed between the Senate Judiciary Committee and Attorney General-designate Elliot Richardson in May of this year. Of course, the Special Prosecutor is vested with such additional authority as he needs to function fully and effectively without approval or any special authorizations necessary from the Attorney General or any other official of the Executive Branch. Thus, for purposes of appearances in court, entry before the Grand Jury, and signing indictments under the United States Code and the Federal Rules of Criminal Procedure, the Special Prosecutor is deemed to be an "attorney for the government."

In addition to those powers and authorities contained in the original Special Prosecutor's charter, our bill gives the Special Prosecutor authority to "receive appropriate national security clearance and review all evidence sought to be withheld on grounds of national security and if necessary contest in court, including where appropriate through participation in in camera proceedings, any claim of privilege or attempt to withhold on grounds of national security." This provision is added, although the original Special Prosecutor's authority in this regard was established through questioning during Judiciary Committee hearings with Mr. Richardson, to make clear Congress' intent that the full and thorough prosecutions undertaken by the Special Prosecutor not be impeded by continuing claims of the Executive branch that vague and often abstract notions of national security prohibit disclosure of information necessary for the Prosecutor's faithful performance of his responsibilities in enforcing the laws of the United States.

The proposed legislation provides further that all files and papers relevant to the work of the Special Prosecutor be delivered into his possession, and that he become successor counsel to any actions initiated by the original Special Prosecutor, even where there has been some intervening action by the Department of Justice.

While the Special Prosecutor will be authorized to call upon the Federal Bureau of Investigation and the Department of Justice generally for assistance in carrying out his responsibilities under the act, he will also have the authority to appoint his own legal and investigative staff. Of course we make it explicit that the Special Prosecutor be given access to departmental records, not only of the Criminal Division but also to the FBI, including fingerprint and other such records, as well as investigative and substantive materials.

As in the Judiciary Committee charter for the first Special Prosecutor, the new independent Special Prosecutor will be authorized to make statements and reports as appropriate and to submit a final report of his activities to the Congress and the President. And the Special Prosecutor will be able to go directly to Congress for appropriations to carry out his functions under this act.

Our bill provides that the Special Prosecutor shall carry out his duties for a two-year term, except as necessary to complete trial or appellate action on matters then pending, and the Chief Judge is given the power to dismiss the Special Prosecutor or his Deputy if the Judge finds that he has violated the provisions of the act authorizing his appointment or if he has committed "extraordinary improprieties," and for no other reason. This language is also borrowed from the Senate Judiciary Committee charter for the original Special Prosecutor. Congress, I believe, has full confidence that the Chief Judge will abide by these provisions faithfully—certainly a confidence that can no longer be extended to the Executive branch.

Finally, the bill states: "Neither the Chief Judge or the President of the United States, nor any other officer of the United States shall have any authority to direct, countermand, or interfere with any action taken by the Special Prosecutor pursuant to this act. Neither the President of the United States, nor any other officer of the United States, shall have any authority to remove the Special Prosecutor from office." This is the heart of the legislation. For even if the President decides to appoint another Special Prosecutor to replace Mr. Cox, that person will take office knowing that the President can dismiss him at any time, and will dismiss him for doing his job too well and too independently. Only legislation creating an independent Special Prosecutor insulated from such pressures and threats can fully restore the nation's confidence in the ability of our criminal justice system to weather the current crisis.

S. 2086

A bill to authorize in certain cases the appointment of special counsel and investigators to assist grand juries in the exercise of their powers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the analysis of chapter 215 of title 18, United State Code, is amended by inserting immediately after item 3328 the following new item:

"3329. Powers of grand jury; special counsel and investigators; limitations on discharge; signing of certain indictments; charge."

SEC. 2. Title 18, United States Code, is further amended by inserting immediately following section 3328 a new section as follows:

"§ 3329. Powers of grand jury; special counsel and investigators; limitations on discharge; signing of certain indictments; charge

"(a) Any grand jury impaneled before a district court may inquire at the instance of the court or an attorney for the Government, or at its own instance, whether a crime cognizable by the court has been committed.

"(b) Any grand jury undertaking an inquiry upon its own initiative shall be entitled to the services of a special counsel and special investigators, not exceeding in number, who shall be appointed by the court before which any such grand jury was impaneled with the approval and upon the request of twelve or more jurors. Any such special counsel shall be entitled to compensation at the rate of $, and any such special investigators shall be entitled to compensation at the rate of $, per day for each day engaged in investigating or presenting evidence in connection with such inquiry. Such compensation shall be paid by the United States marshal on the voucher of the foreman of the jury out of any funds available for the payment of fees to grand and petit jurors.

"(c) Whenever a grand jury shall give notice to the court that it wishes to undertake an inquiry, such grand jury shall not be discharged by the court prior to such time as the court shall receive notice that such inquiry has been completed. The notice provided for in this subsection shall be given in writing signed by twelve or more members of the grand jury.

"(d) Upon the completion of any inquiry undertaken by a grand jury upon its own initiative, the grand jury may prepare one or more indictments upon the concurrence of twelve or more jurors and return such indictment or indictments to the judge in open court. Any such indictment shall be signed by the foreman and by the special counsel, if one shall have been appointed pursuant to subsection (b).

"(e) The district judge, on empanelment of a grand jury, shall charge the grand jury of its rights under this section."

Mr. FULBRIGHT. Mr. President, I have today cosponsored S. 2611, a bill to direct the chief judge of the U.S. District Court for the District of Columbia to appoint a special prosecutor. I fully believe that a special prosecutor is needed to help restore the confidence of the American people in the operation of our system of justice. I do not believe that the American people will be satisfied with an investigation carried out by a department of a President's own administration, no matter how highly regarded the officials conducting that investigation may be. While I fully support the basic philosophy behind S. 2611 of creating a prosecutor with complete authority to investigate and, where appropriate, to prosecute all offenses connected with the 1972 Presidential election and all offenses alleged to have been committed by the President, his appointees, or members of his White House staff, I believe that my fellow Senators and I will want to consider any suggestions that could improve this bill. I shall consider myself free to make such suggestions as the bill moves through the legislative process, and I am confident that such suggestions will be thoroughly considered by the Senate Judiciary Committee.

By Mr. STEVENSON:

S. 2612. A bill to amend title 28, United States Code, to make the United States liable for damages caused as the result of ultrahazardous activities in which the United States is engaged. Referred to the Committee on the Judiciary.

Mr. STEVENSON. Mr. President, at present, if a private party engages in an ultrahazardous activity—which courts have traditionally defined as an inherently dangerous activity involving a high risk of harm—and thereby causes damages, the private party may be held strictly liable for the damages caused. But if that same activity is engaged in by the Federal Government, the Federal Government may not be held strictly liable.

This anomaly was put in clearer perspective by the 1972 Supreme Court decision in *Laird* v. *Nelms*, 406 U.S. 797. In that case the sonic boom of an Air Force SR–71 caused $16,000 in damages to the private residence of Jim Nelms. Nelms sued the Government under the Federal Tort Claims Act. It seems clear that he could have recovered in almost every jurisdiction if a private plane flying at supersonic speeds had caused the damage. The Supreme Court held, however, that since the Federal Tort Claims Act is only a partial waiver of immunity, a claimant must prove that the Government acted negligently beyond its discretionary function in order to be awarded relief. In other words, the Court held that the Federal Government is not strictly liable for this and presumably all other ultrahazardous activities under the Federal Tort Claims Act.

Except through private bills enacted by Congress, an injured party does not have the right to seek recovery under existing Federal law.

The Military Claims Act of 1956 affords an administrative remedy, awarded at the discretion of the Secretary of Defense, for damages to property or for personal injury or death where the loss was not caused by a negligent or wrongful act of the claimant. But this act does not provide adequate protection. From 1961 to 1970, over 39,000 sonic boom claims were filed with the Air Force seeking over $29,000,000 in damages. Of the 39,000 claims, only 14,000 were settled for a little over $1,000,000. This is only 2 to 3 percent of the original relief sought. In addition, claimants under the Act do not have the right to a judicial review of the decision, and before 1970, claims could not exceed $5,000 and had to be accepted in full satisfaction of the claim. A 1970 amendment increased the ceiling to $15,000. It should be noted that the Military Claims Act has not been used as a vehicle for claims involving ultrahazardous activities other than sonic booms, and Congress has not taken any other steps to insure a right to relief from loss of property of personal injury caused by ultrahazadous activities.

I see no reason why the Federal Government should remain immune while private persons can be sued for the identical dangerous conduct. I am therefore introducing legislation to eliminate the inequity of Federal immunity from liability for such tortious conduct. The bill amends the Federal Tort Claims Act to allow for recovery from the Federal Government of damages caused by ultrahazardous activities in which the Federal Government engages.

Except for sonic booms, which the bill clearly sets forth as an ultrahazardous activity, what constitutes an ultrahazardous activity would depend on the laws of the State where the activity occurred. This is the procedure under the Tort Claims Act in negligence and other cases.

I would emphasize that the scope of the amendment is not limited to sonic boom cases but covers other types of ultrahazardous activities as well. I anticipate that such activities as blasting, storing explosives, nuclear testing, airplane spraying, test-firing guns, and testing experimental planes would also be covered by the bill.

Mr. President, this bill seeks justice. It is only fair that a person who suffers damages because of a dangerous activity engaged in by the Federal Government should be "made whole." We have already recognized this principle in the Federal Tort Claims Act for other kinds of tortious activity engaged in by the Federal Government and its representatives. Surely we can apply this same principle of fairness and equity to ultrahazardous activities. I urge the Congress to act quickly on this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2612

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1346 (b) of title 28, United States Code, is amended by adding at the end thereof the following: "Jurisdiction under this subsection shall include exclusive jurisdiction of civil actions on claims against the United States, for money damages, for injury or loss of property, or personal injury or death caused by the act or omission of any employee of the Government acting within the scope of his office or employment and while engaged in an ultrahazardous activity. For the purpose of this subsection, the term 'ultrahazardous activity' includes, but is not limited to, flying an aircraft at a speed in excess of the speed of sound.

(b) Section 2680(a) of such title 28 is amended by inserting after "Any claim" the following: "(other than a claim based upon the act or omission of a Government employee committed while engaged in an ultrahazardous activity)".

SEC. 2. The amendment made by the first section of this Act shall not apply to any claim arising prior to the date of enactment of this Act.

By Mr. McGOVERN:

S. 2613. A bill to amend section 2 of the National Housing Act to increase the maximum principal amount of home improvement loans which may be insured thereunder and to increase the maximum maturity of such loans. Referred to the Committee on Banking, Housing and Urban Affairs.

HIGHER FARM LOAN LIMIT

Mr. McGOVERN. Mr. President, I introduce for appropriate referral an amendment to the National Housing Act. The amendment is very simple and inexpensive, but it will fill a great need in the farming communities around the country as well as in South Dakota.

During recent visits to my home State, I encountered a number of constituents who feel that the maximum loan amount provided for financing new construction of farm buildings is much too low. The present figure is $5,000. My amendment would increase that figure to $10,000 and extend the maturation period of the loan by 5 years.

I have discussed this problem with bankers and builders as well as farmers, and their opinions are unanimous. They all agree that farm buildings of whatever nature—whether barns or sheds or shops or simple storage—simply cannot be constructed for $5,000 or less.

Mr. President, we have very few opportunities to present relatively simple changes that will not overburden the Federal budget and that will make a big difference to the small family farmer who is struggling to keep up with the corporate interests and the move toward agribusiness. This amendment presents just such an opportunity and I sincerely hope that the Senate Banking Committee will see fit to include it in the final version of the omnibus housing legislation they are now considering.

I ask unanimous consent that the text of my amendment be printed in the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2613

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(b) of the National Housing Act is amended—

(1) by striking out "$5,000" in clause (1) and inserting in lieu thereof "$10,000"; and

(2) by striking out all before the proviso in clause (2) and inserting in lieu thereof the following: "(2) if such obligation has a maturity in excess of twelve years and thirty-two days, except that such maturity limitation shall not apply if such loan, advance of credit, or purchase is for the purpose of financing the construction of a new structure for use in whole or in part for agricultural purposes".

By Mr. HUGHES (for Mr. EAGLETON):

S. 2614. A bill to amend the Economic Stabilization Act of 1970 to provide for the application of price controls to certain export sales. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. HUGHES. Mr. President, on behalf of the Senator from Missouri (Mr. EAGLETON), I introduce a bill and I ask unanimous consent that a statement prepared by him in connection with the bill be printed at this point in the RECORD, together with the text of the bill itself.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR EAGLETON

Mr. President, I send to the desk a bill to amend the Economic Stabilization Act and ask that it be referred to the appropriate committee. I further request that the text of the bill be printed in the Record at the conclusion of my remarks.

The purpose of this amendment is to require the Cost of Living Council to subject exports of fertilizer to the same or equivalent price controls that apply to domestic sales of those commodities.

Mr. President, the American farmer today is confronted with a potentially calamitous shortage of fertilizer. Unless immediate steps are taken to deal with the problem, our whole farm program could be undermined and with it hopes for lower food costs.

Secretary of Agriculture Earl Butz recently forecast a shortage of 4 million tons of fertilizer in the next growing year, which translates into 20 million tons of lost grain production. There are many who think that that is a conservative estimate. The Fertilizer Institute, for example, puts the shortage at 5 million tons or 25 million tons of grain.

To get some idea of the impact this could have on food production and prices in this country, one should consider that the Russian grain deal involved only 16 million tons of grain.

The fertilizer problem stems in the first instance from restricted plant capacity and from the shortage of phosphates and of natural gas which is used in manufacturing anhydrous ammonia. Even so, I believe we would have an adequate supply of fertilizer next year were it not for the impact of Phase IV price regulations which have stimulated a substantial increase in U.S. exports of fertilizer, up some 30 per cent in the last fiscal year.

Under the Cost of Living Council program, most domestic sales of fertilizer are subject to strict price controls. Foreign buyers, however, are free to bid whatever they want. Given the enormous world demand for this basic commodity and given the abundance of devalued American dollars available overseas, it is not surprising that foreign buyers are scrambling to get what they can of our domestic production, even while some of these same countries—Korea, Taiwan and the Philippines—have placed embargos on their own exports.

The price being bid today by foreign buyers of U.S. fertilizer is, on average, about 30 per cent above the controlled domestic price and, in specific cases, 75 per cent or higher. For example, ammonia in September was selling at $40 a ton here at home, but attracting bids of $70 a ton when sold abroad. Urea was going for $67 a ton in the U.S. but $110 to foreign buyers.

No one can fault U.S. producers—who incidentally turn out about 25 per cent of the world's supply of fertilizer—from yielding to this price differential despite their preference to supply American farmers first. Even without foreign competition, I believe the present price ceiling is too low to assure these companies a fair return on their investments let alone to provide incentive for expanding production. So, in connection with the proposal I am making today, I would strongly support an upward adjustment of the ceiling price.

However, I would not favor complete deregulation of fertilizer prices at this time, as some have proposed. I am very much concerned that this would lead to unconscionable price increases and windfall profits. Even then it might not accomplish the purpose since foreign buyers would still enjoy the advantage of bidding with devalued American dollars.

It might be another matter if deregulation would stimulate additional production—the normal consequence of increased prices. In the case of fertilizer, however, production is sharply limited by plant capacity (already fully utilized) and the scarcity of raw materials, especially natural gas and phosphates. No matter what is done it will be several years before any substantial new supplies will come on line. Before that happened, unlimited world demand would drive the price out of reach of many farmers.

So long as the ceiling price is set at a level that allows recovery of cost and a decent return to the producers I think we will have a long range expansion of our fertilizer production while keeping price within reasonable bounds.

The bill I am offering would not create any obstacle for foreign buyers that was not there before the imposition of Phase IV price controls. It seeks merely to equalize the competition between our own farmers and those abroad and to correct the decisive advantage given foreign buyers by the Phase IV program. Under this program, I anticipate that overseas purchases would return to historical patterns, with the foreign buyer actually benefiting since the price he would pay would presumably be below the level which unlimited competition would produce.

Mr. President, it makes no sense for this country to follow policies which encourage the export of a commodity as basic to our food production as fertilizer. It is urgent that we correct this situation and I urge prompt action on my bill.

S. 2614

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203 of the Economic Stabilization Act of 1970 is amended by adding at the end thereof the following:

"(k)(1) Except as provided in paragraph (2), any order or regulation which is issued under the authority conferred by this section, and which stabilizes the price of fertilizer shall apply to export sales of fertilizer, except that in applying any price ceiling to the price of any fertilizer export, there shall be excluded the additional cost of transportation and handling caused by the fact that the fertilizer is being exported.

"(2) The President or his delegate may exempt from the provisions of paragraph (1) any export sale which is determined to be necessary to meet fertilizer needs of the United States."

By Mr. HARTKE:

S. 2615. A bill to establish an Office of Counsel General in the legislative branch of Government, and for other purposes. Referred to the Committee on Rules and Administration.

A LEGAL COUNSEL FOR THE CONGRESS OF THE UNITED STATES

Mr. HARTKE. Mr. President, today I introduce a bill to establish a legal counsel for Congress to assist the legislative branch in the performance of its duties.

I first introduced a bill to establish a legal counsel in the Congress in 1967, as S. 1384. The bill that I introduce today was introduced in the 93d Congress on September 10, as an amendment to S. 1541, and is now being considered by the Committee on Government Operations.

The Founding Fathers of our Nation provided that the powers of the U.S. Government be distributed among the legislative, executive, and judicial branches. By this separation of powers and a number of checks and balances, the writers of the Constitution hoped to avoid excessive concentration of power which would lead to abuse. This system has stood the test of time because it has allowed for flexibility and change in a world in which enormous changes have taken place. To meet the changes, major shifts of power from the States to the Federal Government and from the legislative branch to the executive branch have taken place. These shifts in power have to some extent been necessary to cope with the problems of our age. The courts have kept in step with the times by challenging the encroachment of the Federal Government upon the rights and liberties of citizens. The executive has grown to meet the demands of a modern society. However, the legislative branch has not kept in step with these developments and has not acted to preserve its domain in a changing world. Consequently the doctrine of separation of powers and the doctrine of checks and balances are threatened by the fact that the legislative branch has not developed the means of dealing with the vast amount of power in the executive bureaucracy.

As the volume of business, size, and number of agencies and departments in the executive branch has proliferated, Congress has been forced to allow the executive branch to develop its own rules, regulations, and procedures, while at the same time relying more and more upon the executive branch to supply it with the information needed to legislate on complex subjects. As the size of this executive leviathan has grown to powerful proportions, Congress has done little to see that it remains responsive to congressional oversight and thus to the people. Today the legislative powers of Con-

gress are in fact threatened by the vastness of the executive complex.

There is an increasing need for Congress to expand its watchfulness not in order to interfere with the proper functioning of the executive branch, but to insure its proper functioning by timely action to prevent abdication of its powers and abuse of powers delegated to the executive agencies. When Congress has been specific in its delegations of power, the agencies concerned have tended to be more able to apply themselves to the tasks at hand. By the same token, agency performance should be improved if Congress has a means to indicate when the departments and agencies have lost sight of the direction Congress has set forth.

The conflicts between the interests of Congress and those of the executive branch have increased with the proliferation of departments and agencies designed to serve special constituencies. These constituencies represent separate interests, which makes it increasingly necessary for Congress to have someone who can speak not for the constituencies which become involved in the daily administering of legislation, but for the Congress and the people who sought the legislation in the first place. Congress has always depended upon the courts and litigation to control the executive branch, and upon the Justice Department, which is simply another arm of the executive, to represent the view of Congress before the courts. However, in view of the vast changes which have taken place in recent years, the time has now come to equip Congress with the tools needed to challenge the growing supremacy of the executive in this area.

There have been cases in which there has been a sufficient conflict of interest between Congress and the Executive, or sufficient special interest by Congress, to make it desirable for special counsel for the Congress to be appointed to appear before the courts as amicus curiae. It is the duty of Congress to enact legislation, and there is certainly enough work in this area to keep it busy, but Congress needs assistance in seeing that the legislation once passed actually becomes the law and remains the law. This is not to suggest that the enforcement of laws or the interpretation of laws is the proper domain of Congress, nor that the courts have an obligation to read statutes the way Congress reads a statute. Indeed, Congress does not always have one clear intention, nor has its intention always been expressed clearly in the law it enacts. However, in an age where executive powers have become so extensive, the courts should be eager to seek the viewpoint of Congress on its laws in order to offset the growing power of the Executive, and it should be the practice for Congress to present its view before the courts if it so chooses.

At present the Justice Department represents the "United States" in court proceedings, and this is as it should be. However, the courts, like the framers of the Constitution, have always been concerned about the absolute power of the man who not only enforces the law but can also make the law he will enforce. Thus, since the Justice Department acting as a party to a case often presents the view of the executive branch that has made the regulations involved in the outcome of the case, it would seem to be only appropriate for the courts to consult Congress which made the law as to whether those regulations were an appropriate exercise of its delegation of authority. A counsel for the Congress would not be in the business of enforcing the law, but rather he would provide an authoritative interpretation of the laws on behalf of the institution of Congress rather than for the courts to rely solely upon the Justice Department or another party to the case. The court in the final analysis is to make the decision in the case as to which view of the law will be held valid, but it will be after listening to arguments, not only by the executive branch, but by the Congress as well.

Thus, in some cases, a remedy to abuse of executive powers may be found by the presentation of congressional intent to the Court. However, there often is no real remedy to be obtained from a court. In these cases which involve resolutions on foreign affairs or cases which are still at an earlier stage of executive rulemaking, if Members and committees of Congress could obtain the legal opinion of its counsel upon matters in dispute, some restraining influence might be exerted upon the executive branch.

To summarize, Congress needs a voice after legislation has been passed. This voice is that of a lawyer who will go before the courts and represent the Congress just as a private lawyer does, but he will not, except in exceptional cases such as contempt of Congress, actually intervene or initiate a case. Like a private lawyer, he will have functions as an adviser to Congress and in the presentation of legal opinion to committees or Members of Congress he will indicate whether the laws which Congress has adopted are being respected by the executive branch of the Government. I am today introducing legislation to establish a legal counsel for Congress.

The counsel of Congress should be the finest legal counsel Congress can obtain. Although this proposal limits his term of office to 4 years, it is probable that he would remain in office even as the composition of Congress changes. That is not only because his appointment is to be made without regard to political affiliation, but also because Congress would hesitate to remove a man who conscientiously attempted to ascertain the meaning of legislation and represent the interest of Congress as an institution. Congress would hesitate to politically devalue an office which would be so valuable to it. It is not, however, inconceivable that Congress may decide that its counsel has failed to maintain those high standards for which it hopes. In such cases, it would be in congressional interest to name a new man. Thus, the power of the congressional counsel would be directly proportional to his loyalty to ascertaining as accurately as possible the meaning and intent of legislation.

There are certain built-in checks on the Counsel General. First, he must have the authority of either the House or Senate Judiciary Committee to enter a court as an amicus. Second, his position as an amicus is limited to presenting the viewpoint of Congress on the constitutionality of its laws and to representing Congress in assisting the courts to ascertain the meaning of its legislation. To the extent that his views on the meaning of legislation are solidly based, he will become respected by the courts. However, to the extent that he would come under control of some political faction, he would tend to be disregarded by the courts.

There will be a great deal of restraint acting on any man who dares to present the legislative intent of Congress and act as the lawyer representing Congress. Like a private lawyer he must represent his own client, and also be persuasive to the court. It is indeed the quality of the counsel which would determine his success. Furthermore, there is essentially nothing new in his function since the Congress already has someone interpreting its intent in the form of the Attorney General. However, no matter how fine a lawyer he may be, the Attorney General is still a part of the executive branch which the Congress is seeking to control and cannot escape representing the interests of the executive branch. In an age where the volume of business has become so great that Congress cannot maintain a watchful eye over all the executive agencies, the idea that the Attorney General can present the view of congressional intent is in effect to allow the administrative agencies of the Government to have more and more opportunity to promulgate law at variance with the will of Congress. Much of the history of administrative law centers around the question of the delegation of authority of a growing and complex society. This delegation of authority has often been necessary. However, the courts in their development of administrative law have laid down limitations on the powers of the legislative agencies to make their own law. The delegation doctrine may at times seem rather broad, but the idea remains that Congress must not abdicate its powers wholesale to the executive branch. The Congressional Counsel General might be considered as an additional check against the executive power in support of that doctrine.

The precedent for such an officer in the legislative branch comes in part from the existence of the General Accounting Office which functions as an agency of Congress. The General Accounting Office under the Comptroller General makes independent examinations of the way that government agencies fulfill their financial responsibilities. The Comptroller General has access, with limited exceptions, to the papers of all departments. He also determines accounting procedures, settles accounts for disbursing and collecting officers, and renders decisions on the legality of expenditures of public funds. In many respects the Congressional Counsel General would be far more limited than the Comptroller General in that he will have no access to papers nor will he have any decision-making powers affecting the other branches of the government.

THE FUNCTIONS OF THE CONGRESSIONAL COUNSEL GENERAL

The counsel for Congress under my bill will perform functions at several stages of the legal process subject to "such rules as the Committees on the Judiciary of the Senate and House of Representatives may prescribe jointly from time to time."

First of all, the Congressional Counsel General would "perform such duties with respect to legislative review of executive actions as shall be prescribed by such rules." Congress often fails to take into account all the factors which later arise in the administration of legislation. In order to encourage the administrative agencies and departments to respect congressional legislation, Congress must do a far better job of legislative oversight. Thus, the counsel of Congress could assist Congress in the initiation of new and corrective legislation. By reviewing the actions of courts and administrative agencies, he will uncover areas of policy where there is no existing legislation, where the existing legislation is unclear, or where legislation is in effect being made by the Executive. Each year, the counsel could present to Congress an agenda of law revisions with recommendations and alternatives to be considered. This would greatly help Congress perform its oversight and legislative review function. Emphasis upon this particular role of the Counsel General may very well reduce the role he will have to play in subsequent court proceedings.

Second, the counsel of Congress would "render to committees and Members of Congress advice with respect to the purpose and effect of provisions contained in acts of the Congress or to be inserted in proposed legislative measures." Thus; the counsel would provide upon request confidential advisories on the effects and constitutionality of proposed legislation during the legislative process so that legislation will have more likelihood of having effect and being enforced.

Third, the counsel of Congress would "render to committees, Members, and disbursing officers of the Congress, and to the Comptroller General, legal opinions upon questions arising under the Constitution and laws of the United States." The Congressional Counsel General, through the rendering of legal opinions upon the laws of Congress to committees of Congress, will provide a way for Members and committees of Congress to present an authoritative viewpoint to executive departments and agencies upon the validity, but not the merit, of regulations such as the new antidumping regulations or various income tax regulations. In this capacity the counsel will speak authoritatively in the sense of being the counsel representing Congress. However, he will have no dictatorial powers in as much as any department or agency will still be able to promulgate any rules it wishes and then test their validity in court.

In this capacity the counsel of Congress could maintain, with the coordination of the respective committees of Congress, the history, purpose, and intent of legislation so that after enactment of legislation there will be a complete and authoritative legislative history. This legislative history would become part of the material to be sent to the President with a bill and entered into the Federal Register or a similar publication. This will not only enable the executive to perform its function better but also assist future counsels of Congress in performing their functions of rendering legal opinions and representing Congress before the courts on the meaning of its laws. It should be noted that the proposal does not seek to integrate the legal staffs of the committees or legislative counsel. This is deliberate in order to maintain the pluralism of views within the Congress which the present system provides.

Fourth, the counsel would "appear as amicus curiae, upon the request, or with the approval, of the Committee on the Judiciary of the Senate or House of Representatives, in any action pending in any court of the United States in which there is placed in issue the constitutional validity or interpretation of any act of the Congress, or the validity of any official proceeding of or actions taken by either House of Congress or by any committee, Member, officer, office, or agency of the Congress." The courts will still have the right to determine who may appear as amicus curiae, but this section will make it possible for the courts to accept the Congressional Counsel General in the capacity of lawyer for Congress.

Fifth, the counsel would "represent, upon the request, or with the approval of the Committee on the Judiciary of the Senate or House of Representatives, either House of Congress or any committee, Member, officer, office, or agency of the Congress in any legal action pending in any court of the United States to which such House committee, Member, office, or agency is a party and in which there is placed in issue the validity of any official proceeding of or action taken by such House, committee, officer, office, or agency." The Congressional Counsel General would be authorized to replace the Attorney General in this capacity. The reason for this stems from the peculiar interest of Congress in these cases, and the right of Congress to prosecute its own contempt cases. Although this authority has been in the past delegated to the Justice Department, the existence of a full-time congressional counsel would only make it appropriate that he be responsible for a case within the traditional powers of Congress.

The purpose of these provisions is to restore the authority of Congress to make valid law. Individual Congressman or committees could follow the course of a bill after its enactment, but Congress already has its hands full with current legislation. Furthermore, no one Congressman can speak with much authority, nor can a committee coordinate these efforts without a large staff working in this area exclusively. On the other hand it has been suggested that the Justice Department could be made into an independent agency, but the question would then arise as to how to control it and make it responsible to the people. The Congressional Counsel General would be tied directly to the legislative branch.

In summary, the proposal to create a Congressional Counsel General is perhaps a novel one, but one which is necessitated by the growth of administrative bureaucracy. It is a means to assist Congress internally by assisting it in performing its oversight function, by review of executive and judicial acts as well as by assisting in improving its legislation. It is also a means to assist Congress externally by keeping the administrative departments and agencies responsive to Congress from which their authority is derived. In both his internal and external functions the Congressional Counsel General will assist in making Congress a more effective branch of our Government and thus strengthen the principle of separation of powers.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2615

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF PURPOSE

SECTION 1. That the Congress finds and declares that there is a need for a professional legal counsel to the Congress learned in the law, the Constitution and the legislative process; that the Congress is a coequal branch of the United States Government with specific powers under Article I of the United States Constitution; that the enactment of laws necessitates the continual review of such laws under the United States Constitution; that representation of the Congress in the co-equal Judiciary branch in all matters of law and fact is now a function of the co-equal branch, the Executive; that to ensure the continued equality of the three branches of government under the United States Constitution and to advise Members of the constitutionality of proposed legislation, it is hereby declared to be the intent of Congress to establish within the legislative branch an Office of the Counselor General which will carry out the purposes herein setforth.

ESTABLISHMENT

SEC. 2. (a) There is established in the legislative branch of the Government the Office of Counsel General (hereinafter referred to as the "Office");

(b) There shall be in the Office a Counsel General (hereinafter referred to as the "Counsel") and a Deputy Counsel General (hereinafter referred to as the "Deputy Counsel"), each of whom shall be appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives and confirmed by a majority vote of each House;

(c) The Counsel and Deputy Counsel shall be chosen without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office;

(d) The Office shall be under the control and supervision of the Counsel, and shall have a seal adopted by him. The Deputy Counsel shall perform such duties as may be assigned to him by the Counsel, not inconsistent with this Act, and during the absence or incapacity of the Counsel, or during a vacancy in that office, shall act as the Counsel;

(e) The annual compensation of the Counsel shall be the same as Members of Congress. The annual compensation of the Deputy Counsel shall be at the rate provided for level IV of the executive schedule in Title 5 of the United States Code.

(f) No person may serve as Counsel or

Deputy Counselor while a candidate for or holder of any elected office, whether local, State or Federal, or while engaged in any other business, vocation, or employment;

(g) The terms of office of the Counsel and the Deputy Counsel first appointed shall expire on January 31, 1977. The terms of office of Counsels and Deputy Counsels subsequently appointed shall expire on January 31 every four years thereafter. Except in the case of his removal under the provision of subsection (h), a Counselor or Deputy Counsel may serve until his successor is appointed.

(h) The Counsel or Deputy Counsel may be removed at any time by a joint resolution of the Senate and House of Representatives, when, in the judgment of the Congress, either has become permanently incapacitated, or has been guilty of any felony, misconduct, or any other conduct involving moral turpitude.

DUTIES OF THE COUNSEL GENERAL

SEC. 3. (a) It shall be the duty of the Counsel General, under such rules as the Committees on the Judiciary of the Senate and the House of Representatives may jointly prescribe from time to time, to:

(1) Render to committees, Members, and disbursing officers of the Congress, the Comptroller General and other officers exclusively within the legislative branch, legal opinions upon questions arising under the Constitution and laws of the United States;

(2) Render to committees and Members advice with respect to the purpose and effect of provisions contained in Acts of the Congress, or to be inserted in proposed legislative measures;

(3) Perform such duties with respect to legislative review of executive actions as shall be prescribed by such rules;

(4) Appear as *amicus curiae*, upon the request, or with the approval, of the Committee on the Judiciary of the Senate or the House of Representatives, in any action pending in any court of the United States in which there is placed in issue the constitutional validity or interpretation of any Act of the Congress, or the validity of any official proceeding of or action taken by either House of Congress or by any committee, Member, officer, office, or agency of the Congress; and

(5) Represent, upon the request, or with the approval of the Committee on the Judiciary of the Senate or the House of Representatives, either House of Congress or any committee, Member, officer, office, or agency of the Congress in any legal action pending in any court of the United States to which such House committee, Member, officer, office, or agency is a party and in which there is placed in issue the validity of any official proceeding of or action taken by such House, committee, Member, officer, office, or agency.

(b) Upon receipt of written notice from the Counsel to the effect that he has undertaken pursuant to subsection (a)(5) of this section to perform any such specified representational service with respect to any designated action or proceeding pending or to be instituted in a court of the United States, the Attorney General shall be relieved of responsibility and shall have no authority to perform such service in such action or proceeding except at the request or with the approval of the Counsel General.

(c) The Counsel shall seek the assistance and cooperation of a Member, committee, officer, office, or agency in all proceedings under this Act when such Member, committee, officer, office, or agency is a party to an action or has a present or future interest in the action.

ADMINISTRATIVE PROVISIONS

SEC. 4. (a) In order to carry out the provisions of this Act, the Counsel is authorized to—

(1) appoint and fix the compensation of such Assistant Counsels General, clerks, and other personnel as may be necessary to carry on the work of the Office, Assistant Counsels General shall be appointed without reference to political affiliations and solely on the basis of fitness to perform the duties of the office;

(2) to make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the duties of the Office under this Act;

(3) delegate authority for the performance of any such duty to any officer or employee of such Office;

(4) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(5) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

AUTHORIZATION OF APPROPRIATIONS

SEC. 205. There are hereby authorized to be appropriated to the Office of the Counsel General such sums as may be required for the performance of the duties of the Counsel General under this Act. Amounts so appropriated shall be disbursed by the Secretary of the Senate on vouchers approved by the Counsel General.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 847

At the request of Mr. ROBERT C. BYRD (for Mr. NELSON), the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor of S. 847, the School Bus Safety Act.

S. 1769

At the request of Mr. ROBERT C. BYRD (for Mr. MAGNUSON) the Senator from Washington (Mr. JACKSON) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 1769, a bill to establish a U.S. Fire Administration and a National Fire Academy in the Department of Housing and Urban Development, to assist State and local governments in reducing the incidence of death, personal injury, and property damage from fire, to increase the effectiveness and coordination of fire prevention and control agencies at all levels of government, and for other purposes.

S. 2422

At the request of Mr. MATHIAS, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 2422, a bill to establish a National Center for the Prevention and Control of Rape and provide financial assistance for a research and demonstration program into the causes, consequences, prevention, treatment, and control of rape.

S. 2602

At the request of Mr. STEVENSON, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 2602, a bill to provide that daylight saving time be observed on a year-round basis.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE JOINT RESOLUTION 165

At the request of Mr. DOMENICI, the Senator from Oklahoma (Mr. BARTLETT), the Senator from Utah (Mr. BENNETT), the Senator from Tennessee (Mr. BROCK), the Senator from New Jersey (Mr. CASE), the Senator from Texas (Mr. TOWER), the Senator from Kansas (Mr. DOLE), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of Senate Joint Resolution 165, the Vocation Education and Vocation Industrial Clubs of America Week.

PUBLIC WORKS AUTHORIZATION ACT OF 1973—AMENDMENT

AMENDMENT NO. 635

(Ordered to be printed and referred to the Committee on Public Works.)

Mr. STEVENSON submitted an amendment intended to be proposed by him to the bill (H.R. 10203) authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes.

SOCIAL SECURITY AMENDMENTS OF 1973—AMENDMENT

AMENDMENT NO. 636

(Ordered to be printed and referred to the Committee on Finance.)

Mr. HARTKE. Mr. President, I am introducing today an amendment to H.R. 3153, to liberalize the provisions of the Federal disability insurance law for blind persons.

On five separate occasions, the proposal has been approved by the Senate during the past dozen years. As an indication of the support which this disability for the blind bill has received in this Chamber, no less than 61 of my colleagues joined me in sponsoring the proposal as a bill this year.

My amendment would make it possible for a blind person who has worked for a year and a half in social security-covered work to qualify and draw disability benefits payments so long as he remains blind and regardless of his earnings. The present law requires that a blind person have worked in covered employment in 20 of the last 40 quarters. That eligibility requirement fails to take into account the fact that a blind person finds it difficult to secure work of any kind, however employable he may be on the basis of talents and training.

My amendment gives legal recognition to another hard fact confronting the blind—they must always function without sight in a society structured for sight, and they must work in an economy organized by sighted people for sighted people. As a result, the blind person will need varying degrees of sight to assist him no matter what he does or how able he may be, and the only sure way to get this help is to hire it. The blind person must thus have disability insurance payments to serve as a continuing source of funds to hire sighted assistance.

It is my hope, Mr. President, that this 93d Congress will be known as the most important of all Congresses for blind Americans. It can achieve that distinction if we enact the disability insurance for the blind amendment which I introduce today so that, at long last, blind people can be liberated, and elevated to

a more equal relationship with their sighted fellows.

Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD at this point.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 636

At the end of the bill, insert the following:

SEC. 6. (a) Section 214 (a) of the Social Security Act is amended by adding "or" after the semicolon at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

"(4) in the case of an individual who has died and who was entitled to a benefit under section 223 for the month before the month in which he died, 6 quarters of coverage;".

(b) Section 215(b)(1) of such Act is amended by striking out "shall be the quotient" and inserting in lieu thereof "shall (except as provided in paragraph (5)) be the quotient".

(c) Section 215(b) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5) In the case of an individual who is blind (within the meaning of 'blindness' as defined in section 216(i)(1)), such individual's average monthly wage shall be the quotient obtained by dividing (A) the total of his wages paid in, and self-employment income credited to, all of the calendar quarters which are quarters of coverage (as defined in section 213) and which fall within the period after 1950 and prior to the year specified in clause (i) or clause (ii) of paragraph (2)(C), by (B) the number of months in such quarters; except that any such individual who is fully insured (without regard to section 214(a)(4)) shall have his average monthly wage computed under this subsection without regard to this paragraph if such computation results in a larger primary insurance amount."

(d) Section 216(i)(3) of such Act is amended to read as follows:

"(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) are satisfied by an individual with respect to any quarter only if—

"(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for benefits under section 202(a) on the first day of such quarter, and (i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or (ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage; or

"(B) he is blind (within the meaning of 'blindness' as defined in paragraph (1) of this subsection) and has not less than 6 quarters of coverage in the period which ends with such quarter.

For purposes of clauses (i) and (ii) of subparagraph (A) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage."

(e) The first sentence of section 222(b)(1) of such Act is amended by inserting "(other than such an individual whose disability is blindness as defined in section 216(i)(1))" after "an individual entitled to disability insurance benefits".

(f) Section 223(a)(1) of such Act is amended—

(1) by striking out the comma at the end of subparagraph (B) and inserting in lieu thereof "or is blind (within the meaning of 'blindness' as defined in section 216(i)(1)),";

(2) by striking out "the month in which he attains age 65" and inserting in lieu thereof "in the case of any individual other than an individual whose disability is blindness (as defined in section 216(i)(1)), the month in which he attains age 65"; and

(3) by striking out the second sentence.

(g) Section 223(c)(1) of such Act is amended to read as follows:

"(1) An individual shall be insured for disability insurance benefits in any month if—

"(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for benefits under section 202(a) on the first day of such month, and (i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or (ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

"(B) he is blind (within the meaning of 'blindness' as defined in section 216(i)(1)) and has not less than 6 quarters of coverage in the period which ends with the quarter in which such month occurs. For purposes of clauses (i) and (ii) of subparagraph (A) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage."

(h) Section 223(d)(1)(B) of such Act is amended to read as follows:

"(B) blindness (as defined in section 216(i)(1))."

(i) The second sentence of section 223(d)(4) of such Act is amended by inserting "(other than an individual whose disability is blindness, as defined in section 216(i)(1))" immediately after "individual".

SEC. 7. In the case of an insured individual who is under a disability as defined in section 223(d)(1)(B) of the Social Security Act, who is entitled to monthly insurance benefits under section 202(a) or 223 of such Act for a month after the month in which this Act is enacted, and who applies for a recomputation of his disability insurance benefit or for a disability insurance benefit (if he is entitled under such section 202(a)) in or after the month this Act is enacted, the Secretary shall, notwithstanding the provisions of section 215(f)(1) of such Act, make a recomputation of such benefit if such recomputation results in a higher primary insurance amount.

SEC. 8. The amendments made by sections 6 and 7 shall apply only with respect to monthly benefits under title II of the Social Security Act for and after the second month following the month in which this Act is enacted.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 565

At the request of Mr. TUNNEY, the Senator from New Jersey (Mr. CASE) was added as a cosponsor of amendment No. 565, intended to be proposed to the bill (S. 1724) to amend title 28, United States Code, to provide more effectively for bilingual proceedings in certain district courts of the United States, and for other purposes.

AMENDMENT NO. 575

At the request of Mr. ROBERT C. BYRD (for Mr. MONTOYA), the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of amendment No. 575, intended to be proposed to the bill (S. 1029) to provide, in cooperation with the States, benefits to individuals who are totally disabled due to employment-related respiratory diseases and to the surviving dependents of individuals whose death was due to such disease or who were totally disabled by such disease at the time of their deaths.

NOTICE OF HEARINGS ON PROPOSED HELLS CANYON LEGISLATION

Mr. JACKSON. Mr. President, it was recently announced that hearings on proposed Hells Canyon legislation would be conducted at LaGrande, Oreg., on December 3, by the Senate Subcommittee on Parks and Recreation. This date has subsequently been changed to December 6. Hearings on this proposed legislation will also be held at Lewiston, Idaho, on December 14 and 15.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

John H. deWinter, of Maine, to be U.S. marshal for the district of Maine for the term of 4 years, reappointment.

Henry A. Schwarz, of Illinois, to be U.S. attorney for the eastern district of Illinois for the term of 4 years, reappointment.

John J. Twomey, Jr., of Illinois, to be U.S. marshal for the northern district of Illinois for the term of 4 years, vice John C. Meiszner.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Friday, November 2, 1973, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

INFORMATION HEARINGS ON REPORT OF NATIONAL COMMISSION ON MATERIALS POLICY

Mr. METCALF. Mr. President, I wish to remind all interested Senators and the public that the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs is holding information hearings on the report of the National Commission on

Materials Policy on October 30 and 31 and November 1.

The Commission's report contains many important recommendations about the need to strike a balance between production of goods and protection of the environment. The subcommittee will hear from a number of witnesses from Federal agencies and industry and from individual experts. We have asked them to discuss the need for legislation or administrative action by Federal agencies.

These hearings mark the beginning of a continuing study by the subcommittee of national materials policy.

The hearings will begin at 10 a.m. in room 3100, Dirksen Senate Office Building.

ADDITIONAL STATEMENT

YEAR-ROUND DAYLIGHT SAVING TIME

Mr. STEVENSON. Mr. President, tomorrow night millions of Americans will turn their clocks back 1 hour as the Nation goes through the annual ritual of changing from daylight saving time to standard time.

This year, however, it is a ritual we can ill-afford.

The United States faces the most serious energy shortage in its history. Standard time will increase the shortage.

Last Thursday when I introduced S. 2602—a bill providing for year-round daylight saving time as the centerpiece of a nationwide energy conservation campaign—I had hoped that the Congress and the administration might act in time to avoid the energy loss and personal inconvenience that would occur following the time change this weekend.

As the week passed, it became increasingly clear that it would be impossible to hold hearings on S. 2602 before Saturday. In the absence of hearings, the only hope of passage soon enough to avert the time change depended upon administration support. While repeated contacts throughout the week with administration officials proved encouraging, as of this morning the administration had not been able to reach an official position on daylight saving time. So now it appears we will turn our clocks back tomorrow night.

While the Congress and the administration remained silent, the people spoke out. Chicago Today asked its readers to fill in a ballot indicating their position on my bill. In one of the largest returns ever recorded by the paper for this kind of poll, readers expressed support for year-round daylight saving time by a margin of 20 to 1.

I have received—and I understand other Members of the Congress have, too—hundreds of letters favoring the change. The two most frequently mentioned reasons for favoring year-round daylight saving time were energy conservation and greater personal safety and convenience.

Much has been said about the energy crisis. But increasingly the people want to know what the Government is going to do about the energy crisis.

In the short run—particularly this winter—our hope lies in energy conservation. Yet, it is almost November, and we do not have a nationwide energy conservation program.

The time is long overdue for the Federal Government to provide the leadership it will take to make energy conservation work—in our homes, in our businesses and nationwide.

As both a national energy conservation measure and a psychological focal point for individual conservation initiatives, year-round daylight saving time would go a long way toward restoring the public's confidence in the ability of the Federal Government to deal with our shortrun energy problems.

Combining savings in electricity, natural gas and fuel oil, year-round daylight saving time could conserve anywhere from one-half to 1½ percent of the Nation's total winter energy needs. This is a substantial portion of our total projected shortfall of three percent.

In conjunction with a conscientious nationwide energy conservation program of individual action, the energy savings associated with daylight saving time would increase manifold. S. 2602 resolves that it is time we embark upon a nationwide energy conservation campaign.

S. 2602 provides for a 1-year test of year-round daylight saving time and authorizes the Department of Transportation, as the administrator of the Uniform Time Act, to submit an evaluation of this 1-year trial to the Congress.

In addition to offering substantial fuel savings, year-round daylight saving time would also help reduce crime, improve traffic safety, produce more daylight for the convenience and pleasure of most people, and eliminate the confusing twice-yearly time changes. Work and school schedules could be adjusted to the convenience of those adversely affected by early morning darkness.

Because I believe the Nation's confidence in the Government's ability to deal with our energy problems is at stake, I am fully committed to the passage of a bill like S. 2602 as soon as possible.

In view of the substantial energy savings that could be achieved with year-round daylight saving time and the critical shortages we face this winter, the Senate Commerce Committee will convene hearings on November 9 for the purpose of considering the necessary legislation. It is my hope that the committee will be able to report out a bill in time for enactment prior to the peak winter electrical load months of December, January, and February. It is unfortunate that in the interim we must suffer both unrecoverable energy losses and the personal inconvenience of further time changes.

In an effort to speed the passage of this legislation, I have today written to the Secretary of the Interior, the Secretary of Transportation, and the Director of the President's Energy Policy Office to urge again that the administration support the concept of year-round daylight saving time as an energy conservation measure.

The time has come to let the nations of the world know that the United States is taking decisive action to deal with its short-range energy problems.

An effective conservation program—nationwide and personal—is the best answer we have to foreign governments which would exploit our current energy shortages. We can demonstrate that we will not be intmidated by oil producers. By showing that we can and will act decisively to conserve energy, we will enhance the prospects of peace in the Middle East.

The stakes are simply too high to ignore a measure as promising as daylight saving time.

Mr. President, I ask unanimous consent that several articles and an editorial from Chicago Today, and an editorial from WBBM–TV in Chicago be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Chicago Today, Oct. 22, 1973]

SAVING DAYLIGHT—AND ENERGY

Sen. Adlai Stevenson [D., Ill.] has come up with a proposal that strikes us as extremely sensible: in fact it struck us that way six weeks ago, when we ran an editorial favoring it. At a press conference Thursday, Stevenson called for keeping the nation on daylight saving time all year round, instead of the present patchwork system in which some states [including Illinois] have six months of daylight saving, and others have none. Under present federal law, this is the only option the states have.

Year-round daylight saving—to quote our Sept. 7 editorial—"would mean that a bigger share of most people's active working day would take place in daylight, with resultant sizable savings in electricity for lighting." Stevenson estimates the electrical reduction at 2 per cent; the savings in oil used for electrical generation would be perhaps 30,000 barrels a day.

The amount is not decisive, but it would be a big help—not only in saving energy resources, but in lessening American dependency on foreign oil supplies with all their touchy political involvements.

We hope the Senate Commerce Committee, which will have the first chance at Stevenson's bill, gives it a sympathetic hearing.

[WBBM–TV editorial, Chicago, Ill.]
Oct. 24, 1973]

DAYLIGHT SAVING TIME

On October 28th, Illinois and 46 other states will adhere to a silly practice that has far outlived its usefulness. We're going to shave off the hour we gained during the summer and return to Central Standard Time. Daylight Saving Time will be gone again until next season.

We are supporting Sen. Adlai Stevenson, who is calling for year-round Daylight Saving Time. The only way to make the change is through Congressional decree.

We need Daylight Saving Time for several reasons. Having that extra hour of daylight would certainly help improve traffic safety, especially with all those cyclists on the road. Stevenson's main contention is that Daylight Saving Time would help conserve fuel in a time when gas and oil reserves are sinking. The extra hour would save as much as 2% in electrical output. This translates into something like a saving of 30,000 barrels of oil a day. Another strong reason for Daylight Saving Time is the possible prevention of crime. It takes an hour of darkness from the criminally inclined.

Those in favor of Standard Time are in the main farmers who say Daylight Saving Time disrupts their chores and upsets the animals. We have no doubts, however, that cows can be trained to give milk on Daylight Saving Time. If you're tired of turning over at 2:00 in the morning twice a year to keep setting your clock, then write to Sen. Stevenson in support of his bill for year-round Daylight Saving Time.

That is the opinion of management of WBBM–TV.

[From Chicago Today, Oct. 25, 1973]

READERS BACK DAYLIGHT TIME, 20–1

Sen. Stevenson's bill calling for a one-year test of year-round daylight saving time has been overwhelmingly endorsed by Chicago Today readers.

In response to Today's poll, readers responded 20 to 1 in favor of the bill introduced in the Senate Tuesday by the Illinois Democrat.

Stevenson said if his bill is passed before the nation switches back to standard time on Sunday, it could result in a saving of half the nation's projected fuel shortage for the next year.

Of the 1,448 readers who responded to the poll, 1,300 approved the year-round daylight saving plan and only 65 said they preferred year-round standard time.

The greatest number of persons who gave reasons for approving perpetual daylight time cited the energy savings and added personal safety for both adults and children by extending daylight into the winter evening hours.

The other reason cited most frequent was elimination of the inconvenience of having to shift time twice each year.

"The Chicago Today poll shows that this certainly is a case where the people are way ahead of the politicians," a spokesman for Stevenson said.

He said the senator will cite the results of the poll tomorrow when he will attempt to obtain Senate approval of his daylight time bill.

Stevenson's bill was drawn up with the aid of preliminary findings of a comprehensive study on domestic fuel usage by the Rand Corporation.

"It previously has been admitted that the greatest energy savings from year-round daylight time would result from decreased electrical generation," Stevenson told the Senate.

"Perhaps the most significant finding of the Rand study is the 2 per cent projected savings of fuel oil and natural gas which may result from decreased commercial and residential heating needs."

Stevenson noted that the savings on heating and electrical generation resulting from daylight time combined with individual fuel economics could save the nation one-half its projected fuel shortage.

"Daylight time was initiated as an emergency conservation measure during both World Wars," Stevenson said. "The need is great now—and the need is to move quickly."

"Every effort must be made to avoid the energy loss and personal inconvenience which will occur with the scheduled time change this Sunday. Now is the time for Congress to move," he said.

The senator urged all persons who favor year-round daylight time to write or telegraph Secretary of Transportation Claude Brinegar. The Department of Transportation, which administers the current Uniform Time Act of 1966, will make the official evaluation of year-round daylight time under the terms of Stevenson's bill.

Other government officials who have an interest in the bill are Secretary of Interior Rogers Morton and former Colorado Gov. John Love, head of the federal Energy Policy Office.

State Rep. Harold Katz [D.,Glencoe], long-time advocate of year-round daylight time, said he will introduce a resolution in the Illinois House next week in support of the Stevenson bill.

Katz said he believes much of the opposition to daylight time in the state's rural areas simply does not exist except in the minds of some legislators.

"I agree with Sen. Stevenson that the people are ahead of the politicians on this issue," Katz said.

[From Chicago Today, Oct. 22, 1973]

YEAR-ROUND DAYLIGHT SAVING?

The first America's proponent of daylight saving time was Benjamin Franklin, a notorious tightwad, seeking solution to his personal energy crisis—the excessive use of expensive candles.

While ambassador to Paris be advocated setting clocks ahead an hour, making more daylight hours available for human activities thereby cutting down on his consumption of candles.

He told Parisians the new time scheme would spare them from unnecessarily inhaling candle smoke when they arose in the morning and would enable them to fully enjoy the early part of the day.

PRO

Now, another energy crisis has spurned another major push for year-round daylight time. Last Thursday Sen. Stevenson (D., Ill.) announced he will introduce a bill this week calling for daylight time as a part of a plan to conserve dwindling reserves of gas and oil.

He supported his proposed legislation with a study by the Rand Corp. showing that the nation's electrical consumption would be cut by as much as 2 per cent by the adoption of perpetual daylight saving time.

The Stevenson bill will be the third calling for year-round daylight time introduced in the Senate since mid-March, indicating considerable support from Senate colleagues, particularly among urban and suburban constituents.

An avid supporter of extended daylight time here is State Rep. Harold Katz (D., Glencoe).

Speaking for his North Shore constituents, Katz says he particularly favors extended daylight time because of the extra daylight hours it affords families—and particularly children—and the added safety factor during the winter months.

"It's much better for our kids because it gives them daylight in the afternoon hours when they can use it the most."

Illinois and 46 other states, will return to Central Standard Time on Oct. 28 under the terms of the Uniform Time act of 1966.

Sen. Stevenson (D., Ill.) has pledged to mount a campaign in the Senate this week to pass legislation calling for year-round daylight saving time which he says will save the nation thousands of barrels of scarce oil daily by reducing electrical consumption by 2 per cent.

Under the current federal Time Act, states may adopt one of two plans—six months of daylight time and six months of standard time or 12 months of standard time.

The issue of daylight time has been bitterly contested for years with the major division of opinion between the urban and rural communities.

This article presents the opposing viewpoints.

Chicago Today also wants to know your opinion. Please fill out the coupon and send it to TIME, Chicago Today, 441 N. Michigan Av., Chicago, Ill. 60611.

CON

"You can't tell a milk cow we're going on daylight saving time," said George Doup, president of the Indiana Farm Bureau Inc.

"And we're totally opposed to year-round daylight time," said Doup, head of the state farm bureau which in 1967 persuaded the state legislature to exempt virtually all of the state from central daylight time.

"Indiana tried daylight time one year and then at the next general assembly it was removed and I have not heard any static from either the urban or rural communities," Doup said.

He said one of the major reasons for opposing saving time on either a part, or full-time basis is the disruption it causes the farmer who is becoming increasingly dependent on the urban community.

"Farmers need to attend more meetings, classes, and other events off the farm than they did before," he said.

Doup scoffed at Sen. Stevenson's citing of the energy shortage as the reason for proposing year-round daylight time.

"There are plenty of other ways to conserve energy and we will have to be willing to accept some of them," he said.

He also said the government should get off dead center and immediately begin construction of the trans-Alaska pipeline to allow development of the huge North Slope oil fields.

But most important, Doup said, "We must find ways to trade grain for energy—we have grain and we don't have oil so we must keep the agricultural trade channels open."

Both Doup and Fay Meade, secretary-treasurer of the Wisconsin Farm Bureau Federation, cite the National Farm Bureau resolution to support daylight time only for the months between Memorial Day and Labor Day, with the right of each state legislature to vote total exemption.

Meade said farmers are "bothered a lot" by the twice-annual time changes. He also said a major objection to daylight time is that it forces rural children to wait by the roads in the dark for school buses in the morning.

YOU BE THE JUDGE

With the current energy crisis and this nation's increasing dependence on imported oil, do you think we should adopt a year round daylight saving time law?

Yes _____

No _____

Comment _____

_____

_____

Send to Time, Chicago Today, Room 530, 441 N. Michigan Av., Chicago, Ill., 60611.

THE MEANING FOR DÉTENTE

Mr. DOMENICI. Mr. President, this morning's edition of the Washington Post carried an editorial discussing what it termed to be "the true contours of Soviet-American détente." I think it is illuminating. The editorial correctly, I think, denies the notion that détente is or should be a sure and easy solution to great-power tension. Rather, détente is an attitude, an understanding, a frame of mind in which the great powers continue to conduct their rivalry and pursue their sometimes conflicting goals with, as the editorial states, "some sense of the need for pulling back on this side of the brink." Perhaps détente is a sober understanding of the responsibility imposed on a great power, a responsibility to the rest of the world—indeed, to all humanity—that the holder of the power to annihilate humanity must exercise extra restraint, even in the face of grave provocation. I think that if we can understand this, we can finally recognize the limits and true contours of détente and thus enable us to use it wisely and well.

Mr. President, I ask unanimous consent that the entire editorial from the Washington Post of October 26, 1973, entitled "And the Meaning for Détente" be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

AND THE MEANING FOR DÉTENTE

The culmination of the Mideast crisis yesterday etched in unforgettable if not historic terms the true contours of Soviet-American detente. As a result of the failure of the United Nation's earlier cease-fire calls to halt the momentum of battle, the Soviet Union apparently found itself faced with the imminent collapse of its Egyptian ally's army. As a great power, the Kremlin simply could not countenance being seen again, as in 1967, as an unreliable patron—a "pitiful helpless giant," if you will. So Moscow took steps aimed—we may not soon know which—either to introduce its own forces at the side of Egypt or to precipitate a political crisis whose intended result was to offer Egypt another form of relief.

President Nixon was then confronted with a situation in which his own ally's fortunes, and the United States' own principle of great-power conduct, were coming under challenge. He responded, in our view, with admirable firmness and restraint. On the unanimous advice of his National Security Council, he took certain "precautionary" moves to alert American forces, in order to convey to the Russians, who had made moves of their own, that he understood the great-power stakes. Through Secretary of State Henry Kissinger, he made known unmistakably the American judgment that either power's introduction of military forces into the Mideast, and especially a unilateral Soviet entry, could threaten "all that has been achieved" in improvement of relations so far. Again through Dr. Kissinger, he kept open an avenue for Soviet moderation, by not laying down an open challenge to Moscow and not spelling out the details of the situation in a way that would have tightened the demands on Soviet pride. Finally, he produced in the United Nations a satisfactory alternative—an enlarged emergency force, without participation by either Russians or Americans—to deal specifically with the possibility of Egyptian collapse. We presume Mr. Nixon also let the Israelis know just how important he regarded their own restraint to be.

The result was, in our view, perhaps the single most significant vindication of "détente," that much abused word, which the world has seen to date. It was a vindication all the more valuable for preventing an extremely serious potential disruption of great-power relations. It is entirely wrong, we believe, to say that the very flowering of the crisis demonstrated how illusory or unworkable détente. That is a view which may flow easily from the rosy and unreal image elaborated earlier by Mr. Nixon and others who spoke feelingly of building a "structure of peace." But it is a view consistent with the continuing reality of great-power rivalry.

Détente should never have been received, or purveyed, as the sure and easy solvent of great-power tensions. It never could be more than what it turned out to be this week: an attitude, an understanding, a frame of mind in which the two great powers could pursue their various political interests, and conduct their rivalry, with some sense of the need for pulling back on this side of the brink. Whether in this crisis we were in fact that close is something we may know more about when the administration produces, as Dr. Kissinger said it would, the appropriate texts and facts. A judgment on that can wait. What is important now is to note, with sober thankfulness, that the relationship created by Mr. Nixon and Mr. Brezhnev in recent years served both of them well in their contest this week.

"The United States and the Soviet Union are, of course (ideological and to some extent political adversaries," Dr. Kissinger said yesterday. But, he went on, "we possess, each of us, nuclear arsenals capable of annihilating humanity. We, both of us, have a special duty to see to it that confrontations are kept within bounds that do not threaten civilized life . . .We will oppose the attempt by any country to achieve a position of predominance, either globally or regionally. We will resist any attempt to exploit a policy of détente to weaken our alliance. We will react if a relaxation of tensions is used as a cover to exacerbate conflicts in international trouble spots. We have followed this principle in the current situation."

Dr. Kissinger added a final observation about the contours of détente: "If the Soviet Union and we can work cooperatively, first toward establishing the ceasefire and then toward promoting a durable settlement in the Middle East, then the détente will have proved itself," he said. It must now be the American and Soviet purpose to make the second part of the statement—promoting a durable settlement—real.

CONSERVING OUR ENERGY

Mr. MATHIAS. Mr. President, my distinguished colleague from Maryland in the Senate recently received the recognition due him for his activities on behalf of conservation of our natural resources. Senator BEALL's efforts were the subject of a report by Leo J. Paulin, one of Maryland's most eminent columnists, in his publication, the Paulin Letter. I ask unanimous consent that Mr. Paulin's report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

CONSERVING OUR ENERGY

Maryland's Senator J. Glenn Beall, Jr., is moving to the front as an advocate for conservation of our national resources. In a recent address before the Maryland Chamber of Commerce and before the National Association of County Agricultural Agents, he advanced some very practical suggestions for conserving our energies.

"Increasing our supply of fuel is one answer to America's energy problem but conservation may be even more important," he said.

"Increasing our supply is something that we must rely on our government and our great scientific and business communities to handle, but conservation is something that we all can participate in.

"In the long run, it may be more important than discovering vast new resources of fossil fuels," he said.

Senator Beall said a recent Commerce Committee report estimated that nearly 60 per cent of the energy used in the United States is wasted.

"Experts have concluded that by the year 2000, we could reduce per capita energy consumption by some 37 per cent with proper conservation procedures—without reducing in any way our standard of living," the senator said.

The size of automobiles is a major factor in fuel waste. Increasing the weight of a car by 500 pounds can cut gasoline mileage by 14 per cent.

Senator Beall said there are estimates that if the average weight of an automobile was reduced to 2500 pounds, the projected consumption of fuel in 1985 would be the same as the 1975 level. That would represent a savings of 2.1 million barrels of oil per day.

Improving home insulation could save a home owner up to $150 a year in heating bills. A two-degree adjustment in thermostats would save the equivalent of 600,000 barrels of oil per day by 1980.

Senator Beall said long-range solutions to the energy crisis may be found through research involving new sources of power, such as solar, nuclear and geothermal energy.

For the time being, however, America's energy needs can only be met by increasing our use of convention fuels or finding ways of using these fuels more efficiently.

"A vigorous energy conservation program can give our nation the extra time it needs to fulfill the promises of these new technological developments, the senator said.

RURAL HOUSING

Mr. ABOUREZK. Mr. President, it has recently come to my attention that the Farmers Home Administration's "strategic objectives" for fiscal years 1975–79 do not include a priority for rural housing.

I count myself among the many in Congress who would like to see the Farmers Home Administration programs for rural housing strengthened and expanded in every possible way.

Thus it is my hope that the failure of the Farmers Home Administration to include a strong priority for rural housing in its stated goals was an accident or an oversight.

In any event it is a question which I think deserves clarification from the administration.

This is no slight matter, because the Congress is right now in the process of considering new housing legislation and the Farmers Home Administration, despite whatever its own in-house priorities may be, is in fact the primary vehicle for delivery of assisted mortgage credit in rural America.

Mr. President, I ask unanimous consent to print in the RECORD a recent newsletter from the Housing Assistance Council on this subject as well as a copy of the FHA directive to which I have referred.

There being no objection, the newsletter was ordered to be printed in the RECORD: as follows:

CONTRADICTIONS AT FARMERS HOME?

Although the Farmers Home Administration has focused nearly half of its attention—and funds—on rural housing programs, an apparent trend has emerged over recent months that seems to contradict these efforts.

The latest indication of this trend is the exclusion of rural housing from the recent listing of FmHA "Strategic Objectives" for Fiscal Years 1975–79. The list is part of a directive issued in August by new Administrator Frank B. Elliott to all FmHA state directors outlining future policy.

The non-mention of housing in the list of objectives, representing "the principal focal points for program planning, priority-setting, and resource allocation," will effectively reduce home construction for low income families in rural areas. Although not specifically noted in the same directive, housing could be included under "Resource Constraints": "Every effort should be made to redirect resources from obsolete, ineffective or lower priority on-going programs to meet higher priority needs."

An earlier move to dampen Farmers Home housing activity was a directive in May call-

ing for an average of 10.3 percent reduction in FmHA staff nationwide by July 1, 1974 (HAC NEWS # 16). The cut will severely limit new loan activity.

The de-emphasis of housing seems ironic at a time when FmHA program activity is one of the highest in years. There was an 804 percent increase in program level from FY 1960 to 1972, but only a 67.5 percent staff increase. In addition, Farmers Home made 44.4 percent of its Section 502 loans with interest credit nationwide in FY 1973, despite the housing moratorium.

It also is peculiar that Elliott issued two June bulletins calling for increased lending activity to minorities and new emphasis on the Section 504 program (HAC NEWS # 21). A June 8 bulletin to all state directors stated "Recognizing that a large percentage of substandard housing in rural areas is occupied by minorities, special efforts should be made to increase minority participation in our Rural Housing loan program." A June 29 bulletin said, "Approximately 50 percent of the annual authorization for Section 504 loans has been used in recent years. A special effort should be made to meet the housing needs of low-income families with this authority."

The President, in his housing message to Congress on September 19, did not criticize the FmHA programs, and in fact, highlighted the need to emphasize rural housing. There is no question that without FmHA's unique production record, thousands of rural families would remain in substandard homes.

It is obvious that some clarification of policy at FmHA is needed.

STRATEGIC OBJECTIVES

Agency FY 1975–1979 program and financial plans should give priority to approved Presidential Objectives and should emphasize increasing supplies of agricultural commodities to meet growing domestic and export demands; assuring adequate farm income and strengthening the family farm; increasing agricultural exports; improving agricultural productivity; eliminating poverty-caused hunger and malnutrition; accelerating the development of rural communities; assuring adequate supplies of timber within environmental constraints and achieving equal opportunity.

While additional problem areas will receive consideration, including activities for improving the quality of the environment and developing natural resources, these eight strategic objectives represent the principal focal points for program planning, priority-setting, and resource allocation.

RESOURCE CONSTRAINTS

Proposed program levels for FY 1975 should conform to outlay targets specified in the June 20, 1973, memorandum calling for program and financial plans. Projections for subsequent years should assume continuation of a restrictive Federal budget for the next five years. Priority should be given to funding levels needed to meet approved Presidential Objectives.

Every effort should be made to redirect resources from obsolete, ineffective, or lower priority on-going programs to meet higher priority needs.

Limitations on Federal employment and average grades will continue to be restrictive. Preference will be given to alternatives that make maximum use of State and local agencies and private enterprise.

ORGANIZATION AND MANAGEMENT FACTORS

Management objectives to be built into forward planning include:

Continued progress under the President's New Federalism program, including decentralization; streamlining of assistance programs; and relocation of USDA activities from Washington to the field, with consolidation of field offices.

Achieving economies through full application of new technology and expansion of Department-wide centralized common services;

Consolidating research facilities and coordinating Federal and State research activities for the purpose of improving overall efficiency of agricultural research operations and programs;

Improving Department-wide management through an effective career development program;

Achieving equality of participation in USDA programs, and equality in USDA employment opportunities, for all minority groups; and

Implementing the management information and control system to improve attainment of approved annual targets and long-range guides.

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Washington, D.C., August 8, 1973.

Subject: Objectives and Constraints.
To: All State Directors, FHA.

As we move out together in the Farmers Home Administration, we will be doing so under the objectives, constraints and organization and management factors as listed on the attachment.

Please review these in order that we may make all of our actions consistent within these policies.

FRANK B. ELLIOTT, *Administrator.*

NUCLEAR POWERPLANTS

Mr. DOMENICI. Mr. President, late last month, here on the Senate floor, some concerns were expressed about the safety of nuclear powerplants. Several good points were raised, to some of which I hope to reply today.

At the outset, let me admit that I am neither a professional scientist nor a member of the Joint Committee on Atomic Energy. But I do represent a State which probably has more outstanding nuclear scientists than any other and which, for all intents and purposes, has been the cradle of applied nuclear science.

I number many of those scientists among my friends, and, as friends do, they offer me the benefit of their guidance and counsel. I would like to share with this body today some of their observations on the question of the safety of nuclear powerplants.

Before we look at the subject of safety alone, however, perhaps we should examine some ideas which must underlie any observations we make about it. Here is what many of my scientific friends tell me:

First, it is an incontrovertible fact of life that we cannot go on indefinitely consuming fossil fuels of which we have only a finite supply. Sooner or later, it is going to run out. Therefore, while our fuels still last, we must do the research necessary to develop practical alternate sources of energy.

Second, we must recognize there are other demands on our fossil fuel supply: these same fossil fuels, which took millions of years to form, are the critical raw material for our vast petrochemical industry which contributes so much to our lives, with products ranging from synthetic fibers to life-giving medicines. Considering the potentially greater economic and social value of coal as a chemical raw material, there may come a time when we will have to raise serious questions about the wisdom of merely oxidizing it to obtain the energy it contains.

For these reasons alone, it is clearly incumbent on us to slow and eventually end the voracious consumption of this vital raw material for fuel, and proceed with all deliberate speed to develop every potential source of energy—solar energy, geothermal energy, controlled thermonuclear energy, energy from fission reactors, and others. And the time is now.

It is this urgency that requires us to examine carefully every possible energy resource available to us right now, and it is a fact that of all the sources I have listed, only one has presently been developed to the point where it can be of help to us in the short term. That one is the nuclear fission reactor, on whose safety some of my colleagues have cast some doubt.

While I share the concern for safety and hope that some answers on the issue will be forthcoming from the Atomic Energy Commission, I remind this body of three things:

The first is that since the fission reactor is the only such resource we presently have at hand in this crisis, it must be used. That does not mean that we must risk a nation's safety to use it. Rather, it means the opposite, that we must find ways to make it safe to use, if need be.

Second, and almost in passing, I will ask this body when and where we ever can proceed in any of our affairs with the kind of total safety some seem to insist on only when it comes to nuclear affairs. What, that is worthwhile, has ever been achieved without risk? What does a prudent man ever do except weigh risks against potential benefits before deciding whether or not to proceed?

But the prudent man—and this is my third point—weighs real risks, not merely fancied ones.

What do we really, factually know about nuclear powerplants? Well, here is one thing—perhaps not as lurid as the Wall Street Journal or the Washington Post would like—but a fact all the same: experience to date shows that nuclear powerplants cost less in fatalities and injuries per megawatt hour produced than does the conventional generating station in your own hometown.

Let me be even more specific. As many of you know, the National Safety Council is composed of organizations that have committed themselves to promoting greater safety in their operations. Each year, it presents an award to the organization with the best safety record. I think it is of interest that this award has been won every year since 1962 by none other than the Atomic Energy Commission and its prime contractors, representing more than 100,000 workers.

Let me explain how it works. The award is based on the number of accidents per million man-hours. In 1970, the last year for which complete figures are available, the national average for all industry was 15.2 accidents per million man-hours. National Safety Council members nearly halved that with a rate of 8.87 accidents per million man-hours. The private nuclear power industry

bettered that mark with a rate of 6.2, and the AEC topped everybody with a rate of only 1.28 accidents per million man-hours, less than a tenth of the national average.

In his comments last month, one of our colleagues raised the specter of a nuclear accident in which fission products could be dispersed in the countryside killing many people. I was concerned about this and consulted with some of my scientific friends. Here is what they told me about that:

In order for this sort of accident to occur, the following four events would be required. First, the primary cooling system would have to rupture, an event, I am told, that has never occurred. Second, the emergency core cooling system also would have to fail. Third, the containment vessel would have to rupture. And finally, the containment building also would have to rupture. The AEC has previously referred to the chances of this remarkable coincidence of events as "an unlikely accident." My friends told me it has about the same chances as that of a 747 crashing in JFK Stadium during a Redskin game.

The question of nuclear plants susceptibility to sabotage or enemy attack also was raised. When I asked about that, I was told that nuclear powerplants are so heavily constructed that it would take an atomic bomb to rupture them from the outside. If you already have an atomic bomb in the area or can target one in that precisely, why bother with the nuclear plant?

Finally, since some people are concerned about the possibility of an explosion in a nuclear plant, I asked my friends about that. The phrase they used to characterize this possibility is an exact, scientific one: "essentially nonexistent." I repeat: the possibility of an explosion is essentially nonexistent.

Why then is there so much fear about the use of nuclear power? One of my scientific friends put it this way:

> If the first form in which gasoline was introduced into the world had been napalm, we would still be riding around in horse-drawn carriages.

I think that part of the problem is that we are used to one method of power generation and so tend to think of it as safe—as we think of our own homes as safe, which is far from factual. The other method is new—hence mysterious, and to many eyes, dangerous.

But this is no time for such superstition—if there ever is a time for that sort of deliberate suspension of intelligent thinking. We need nuclear power, and all the other suorces we can develop, as fast as we can develop them.

So, in view of this need, what must we do? It appears to me that if we are concerned about potential hazards of nuclear power, we should embark on a kind of research that will increase their safety and reduce still further the chances of "an unlikely accident." We can make the level of hazard from nuclear plants as small as we wish, depending only on the amount of research we are willing to do and the construction costs we are willing to tolerate. In short, our situation is this: We cannot let potential danger stop development of nuclear powerplants. Instead we must solve the danger problem, as intelligent men will always try to do.

At the same time, we also must provide the research and development funds to expand our knowledge about each of the other energy sources on which exploration has begun—solar, geothermal, and controlled thermonuclear energy. We also must be concerned about the limited availability of fissionable uranium. And it is this very problem that gives a special urgency to our development of the fast breeder reactor which can supply us with a virtually limitless supply of fuel and energy.

Just as I plead with you not to let fear stand in the way of our expansion of our supply of nuclear fission reactors, with equal strength I urge you not to let false economy stand in the way of research to develop these other alternate sources of energy, which we so urgently need.

Too often we have seen the Congress of the United States take a position of pride over the stemming of a flood when it has in fact only inserted a finger in the dike. That kind of shortsightedness will not serve us here, because our energy problem is of such depth and breadth as to be amenable only to broad gage solutions.

Mr. President, I most respectfully urge this body to give careful consideration to these facts concerning both the safety of current nuclear powerplants and the need for the development of new sources of energy with all deliberate speed. This problem is upon us right now and challenges this body to take intelligent and aggressive action now. I am confident that we will rise to meet it.

DAYLIGHT SAVING TIME

Mr. PELL. Mr. President, once again this Sunday, people throughout the United States will go through the annual ritual of turning back their clocks, ending daylight saving time for another 6 months. Unfortunately, in the present circumstances, as we are confronted by a growing energy crisis, the return to standard time will place an added burden on energy supplies.

Early in this session of Congress, on March 15, I introduced a bill (S. 1260) to provide for year-round daylight saving time. Since that time, the case for year-round observance of daylight saving time has become even more persuasive. I am pleased that the Senate Commerce Committee has taken cognizance of the merit of this proposal by scheduling a hearing on the subject.

Just a few days ago I returned from Rhode Island where I spent several days examining the effects of the fuel shortage upon firms in the State. While we experienced difficulties this summer, the disruptions now are even more noticeable with several firms having to lay off employees or cutback operations because of the inability to obtain petroleum products or raw materials made from crude oil and natural gas. In my State, already severely affected by economic disruptions, fuel shortages would lead to further serious problems beyond mere inconvenience.

Unquestionably, the most significant effect of the daylight saving time extension is the potential for energy savings in the consumption of electricity. Although more information is needed, reports do indicate the possible reduction in consumption of electricity by 1 to 2 percent. While this may seem insignificant in light of total energy consumption, it is important to note that the production of electricity consumes one-fourth of all our Nation's energy resources. Furthermore, it is the fastest growing consumer of energy. By 1985, it is expected that electric utilities will consume the largest percentage of all energy through the production of electricity. Hence, the potential for energy savings will be even greater in 10 years at a time when demands for Mideast oil will more than double.

I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks, a memorandum on potential energy savings under daylight saving time prepared by the Rhode Island Turnpike and Bridge Authority and provided by Mr. James Canning, director.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PELL. Recently Senator STEVENSON brought to my attention a Rand Corp. comprehensive study of the potential for energy savings from year-round daylight saving time. This data, which shows fuel oil and natural gas savings, has added new dimensions to the importance of energy savings. Combining all the savings, Rand estimates a total energy savings of as high as 1½ percent. This reduction would represent from three to four times the total energy consumption for the State of Rhode Island or more than one-fourth of all energy consumption in New England for a year. Given the problems faced across the Nation last year as a result of the fuel shortages and the widespread disruptions to date, these potential energy savings should be enough to warrant the extension of daylight saving time.

There are, however, some equally important benefits by extending daylight saving time. According to the National Safety Council for example, the rate and severity of traffic accidents is the highest just after sundown. Hence, as we return to standard time on Sunday, commuters from then on will be forced to return home during the hours of greatest hazard and at a time when more fatigued and least alert. That additional hour of daylight would make it possible, during most of the winter months, for commuters to reach their homes before the onset of darkness, without requiring them to travel to work in darkness during the morning.

Another key benefit would be the reduction in street crime. Statistics indicate that robbery, muggings and purse snatching are most frequent during the early evening. With the extra hour of daylight saving time at a time when most of the work force is enroute home, criminals would be less apt to threaten these individuals returning to their families.

It seems quite clear to me that the benefits of extending daylight saving time far outweigh the continuation of the present system. As we look ahead to the increased demands upon our energy sources, the reasons for changing to year-round daylight saving time become all the more important. This would be one of the wisest energy conservation moves we could make and at no cost or loss to anyone, and I urge early and favorable consideration of this legislation.

EXHIBIT 1

ESTIMATE OF SAVINGS IN FUEL USED FOR LIGHT AND HEAT BY REMAINING ON DAYLIGHT SAVING TIME INSTEAD OF CHANGING TIME AS SCHEDULED TO BE DONE ON THE LAST SUNDAY IN OCTOBER

In Rhode Island in winter months, November, December, January and February, the sun sets at about 5:00 P.M. on Standard Time. Twilight begins before this and accordingly all over the New England region households turn on their lights at about 4:00 P.M. These lights remain on until an average time of 10:00 P.M., or a period of six hours. If the New England region should remain on Daylight Saving Time the sun would set in winter months at about 6:00 P.M., with twilight beginning about one-half hour before this, and household lights going on at about 5:00 P.M., or one hour later than if on Eastern Standard Time. Lights in the average household will still be turned off at about 10:00 P.M., having been on for a period of only five hours instead of six. This is a saving of 16.6% in energy (fuel) needed to produce electric power for household lighting. The saving for light in office buildings and business establishments will approach 50% since they close much earlier than the 10:00 P.M. figure used for households.

Also, in talking to engineers from various New England power companies, I find that prior to shifting off of Daylight Saving Time, there are two peak load periods of energy consumption. One of these is called the evening cooking load, and the other is the evening lighting load. One boiler generator combination can carry these two loads since they do not coincide. However, immediately after shifting off of Daylight Saving Time in October, these two loads occur at the same time, and most all power companies in New England find it necessary to put another generating combination on the line. This is very costly in terms of fuel consumption and could be eliminated by staying on Daylight Saving Time, especially since this extra generating system is only needed for the period of the peak load.

Further, in talking to an engineer from a local power company, I find that immediately after changing time at the end of October, the electrical load increases about 9%, and when the time is changed back in late April the electric load drops about 6%. Some of this is due to the higher heat needs for the months of November and April vs. the months of May and October. However, most of this change I believe is due to the change in the lighting load.

Concerning heating, usually household heat is maintained at or about 72° between the hours of 7:00 A.M. to 10 P.M. As the evening approaches the thermostat is turned higher and higher to maintain this heat. After changing time in October, this act of turning up the thermostat occurs earlier (at about 4:00 P.M. vs. 5:00 P.M.) and still continues until 10:00 P.M. In effect, if we did not change time we would have one more hour of solar heat heating our homes during our waking hours, or, also, we would delay by one hour the need to turn the heat up. At 10:00 P.M. the heat would be turned down for the night. The saving would not be as much as that for light, but it would be at least one hour out of the fifteen hours we are awake. One out of fifteen is a saving of 6.7%. This, averaged with the saving for light, will average out to about 10.0% by not changing time.

This is significant and I believe might just be the amount needed to carry us through the winter on a short fuel supply.

The above considerations are mainly for the State of Rhode Island, but the use of electricity and fuel in New England is quite regionalized. However, the further East one goes within the same time zone, the more fuel is saved by staying on Daylight Saving Time. There are some rather larger metropolitan areas in the Eastern side of this zone, such as Boston, Portsmouth (New Hampshire), Portland, Fall River, and New Bedford, wherein the saving would exceed the 10% if time were not changed. Hence I would recommend that the entire New England Region stay on Daylight Saving Time.

These principles, although not new, first became apparent in Germany after World War I, and were used successfully after World War II in Europe when fuel was in a critically short supply.

I am sure that the possibility of effecting these savings could be established by a study of the records of the various utility companies in New England, and I would recommend that this be done also.

MICHAEL P. SMITH,
Chief of Maintenance.

SAFEGUARDING THE PRIVACY OF INDIVIDUAL BANK ACCOUNTS

Mr. MATHIAS. Mr. President, recently, the Supreme Court announced that it would review lower court decisions concerning the constitutionality of the 1970 Bank Secrecy Act. I am pleased at this development, for I feel very strongly that this law permits unconscionable and unconstitutional invasions of the privacy of all Americans. I am hopeful that the Court will significantly decrease the opportunities for such serious mischief.

It should be clear to all of us, however, that there is an urgent need for statutory standards which would insure the privacy of individual bank accounts. Such standards should make clear that no Government officials would be able to review individual bank accounts without receiving consent from the bank customer or permission from a Federal judge.

Last year, Senator ERVIN and I submitted legislations which would establish such a standard. Hearings were held on the bill. On July 19, 1973, Senators CRANSTON, BROCK, TUNNEY, ERVIN, and myself introduced similar legislation, S. 2200. This bill is now pending before the Subcommittee on Financial Institutions of the Senate Banking, Housing and Urban Affairs Committee. I am hopeful that action will be taken on this important legislation in the very near future.

In order to further explain the importance of this legislation, I ask unanimous consent that a news account of the Supreme Court's decision to review the constitutionality of the Bank Secrecy Act be printed in the RECORD.

There being no objection, the news account was ordered to be printed in the RECORD, as follows:

HIGH COURT TO DECIDE IF BANK SECRECY ACT IS CONSTITUTIONAL; CABLE-TV CASE DOCKETED

WASHINGTON.—The Supreme Court agreed to decide whether the 1970 Bank Secrecy Act is Constitutional.

A lower court has struck down the law's requirements for reporting domestic banking transactions, but it has upheld the act's record-keeping regulations and its provisions requiring reports of foreign banking transactions.

BANK SECRECY ACT

The Bank Secrecy Act was adopted by Congress in October 1970 to "reduce the maintenance of appropriate types of records . . . where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." It requires financial institutions to maintain customary ledger-card records for commercial and savings accounts, plus microfilm of almost all checks, drafts or similar instrument drawn on or presented for payment or received for deposit or collection.

The Bank Secrecy Act also authorizes the Treasury Secretary to subpoena certain of these records and to share them with other government agencies, such as the Federal Bureau of Investigation, in connection with specified inquiries.

The act had been scheduled to take effect July 1, 1972, but was held up when the law was challenged in separate lawsuits filed by the American Civil Liberties Union and by the 158-member California Bankers Association. In September 1972, a three-judge federal appeals court panel in San Francisco held two to one that the law's domestic reporting provisions are unconstitutional. The panel said those provisions, along with the Treasury Secretary's subpoena power, violate the right of privacy guaranteed under the Constitution's Fourth Amendment.

However, the panel said it didn't find any constitutional violations in the act's record-keeping requirements or provisions covering foreign banking transactions. Both the government and those challenging the act sought high court review, urging the Supreme Court to reverse that part of the lower court ruling adverse to them. The court is likely to rule on the case later in its present term.

HON. ALF M. LANDON SPEAKS AT BAKER UNIVERSITY

Mr. DOLE. Mr. President, former Kansas Gov. Alf M. Landon recently shared his insight on the current political and international scene with the faculty and student body of Baker University. Speaking at the Baldwin, Kans., campus of this outstanding institution, Governor Landon brought his years of experience and finely honed powers of observation to bear on many of the trends and events making headlines today.

I found his views—particularly those relating to the importance of our national defense capabilities—to be quite thought-provoking and timely. And I ask unanimous consent that the text of his remarks be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ON POLITICAL QUESTIONS

(By Alf M. Landon)

I am honored with your invitation to be the first speaker on your convocation for the ensuing academic year.

I am not going to discuss the obvious advantages you have in this splendid university to cultivate cultural and spiritual values. However, a well-rounded education requires interest in what is occurring in daily life around us as covered by daily newspapers, radio and television. This gets us closer to life as it is than what we read in books.

I am going to discuss—as a proud politician—the exciting and stimulating venturesome and unending time-consuming

task of politicians necessary in governing people. That is true at all levels of government, starting with the public officials of municipalities, counties, states and the nation. Euphemistically, they are frequently referred to as public servants, when, as a matter of fact, they are the governing people. Yet they are never the masters of the people because they must always bear in mind that the ultimate power always rests in the hands of the voters.

The saving grace of America is that there are always sizeable groups interested in public service of one kind or another. Some love to preach or to teach—or to participate in civic clubs, chambers of commerce or lodge activities. Some love politics.

While I have been interested and active in politics from my earliest days, it has not been a vocation with me. The only paying full-time public job I ever had was four years as governor of our great and beloved state.

I cut my eye teeth in politics as County Chairman in the Progressive Party campaign in 1914. That old Bull Moose party was the party of the youth. We were the "wild" men of those days.

Before the Bull Moosers were the Populists. Their party lasted longer than the old Progressive Party. Yet both had a definite effect in shaping future state and national governments. The principles they advocated were subsequently adopted by the two major parties and have long been the law of the land.

The principal legislative changes they advocated were: direct primaries; popular election of U.S. senators; state and national regulation of big business; government warehouses for surplus agricultural crops; organization of free labor; women's suffrage and stringent regulations of women and child labor.

The old Bull Moose slogan, "Pass prosperity around," along with the New Nationalism that Theodore Roosevelt advocated in his Osawatomie, Kansas, speech in August, 1910, really describe the policies of both major parties that brought government in tune with the changing times in subsequent years to the extent that government power is now used to plan our national economy.

That, of course, means a great increase in the power of central government. So politicians are necessary not only in making decisions by the voters and working them out in both legislation and administration.

That brings me to the present heated discussion of the constitutional use and extent of executive power and the law, on which the judicial system will have the final say, as so many times in our history.

The question of executive privilege communication—although of great importance in the efficient operation of our immense government bureaucratic structure of today—misses the basic issue—compared to the steadily growing concentration of power in the chief executive that has been created by the Congress in managing the country's economy in meeting modern problems of our complex industrial and social life. That was never dreamed of in the original constitutional debates dealing with individual civil rights.

George Washington is rightfully called the father of our country. By the same token, John Marshall, the first Chief Justice of our Supreme Court—in establishing the implied powers of the presidency by his constitutional decisions—could rightfully be called the father of the executive power of the presidency.

That issue was fought over in the state conventions ratifying the constitution and has been fought over ever since. Perhaps the Watergate scandal will occupy a place in history of bringing—through judicial decisions—a clear definition—a summation—of the constitutional relationship between the President and the Congress and the vested power of each.

It is interesting that the warnings in those state conventions of the opposition speakers—like Patrick Henry—of the danger to our Republic of the ambiguous terms in the constitution as to the powers of the presidency—are now being heard once more from those rightfully incensed by the Watergate scandal, yet who are unmindful of far greater concentration of power in the hands of the chief executive.

The Watergate scandal is going to wind up in the courts where it started. Archibald Cox, the special prosecutor, and his staff—all strong and energetic active Democrats named by President Nixon's attorney general—are energetically and carefully preparing their criminal cases for presentation to the federal grand jury.

I do not dismiss lightly the extent of the stupid Nixon appointees' participation in the abuse of law and free political expression of human political rights.

I do not believe that the Watergate scandal threatens the future existence of our republic, as the ebullient Senator Sam Irvin describes it.

Af far as the future of our great and beloved republic is concerned, I have protested for forty years at the lack of concern at the steady increase in executive power concentrated in the presidency by and through the steady streamlining of economic legislation that started with President Franklin Delano Roosevelt's administration.

In the present Congress, there is pending legislation that will further nationalize American railroads. Just consider the tremendous increase in presidential power that is.

Furthermore, it is not a sound answer to the drastic changes in American transportation that are plainly in sight. America's railroads are not only the cheapest way of transportation; they also best meet ecological demands.

There are pending in the Congress some four or five different proposals for a solution to the northeast railroad crisis. These grow out of the Order of the Federal District Judge in charge of the Penn Central reorganization in granting further delays on the plea of the trustees that Congress should be given an opportunity to act in the matter. The court, by its inaction and refusal to exercise its powers, has confronted the Congress with unacceptable alternatives.

The trustees of the Penn Central, appointed by this judge, have been unable to secure funds for its continued operation. Why does not the judge give them the wide authority of receivers to liquidate the present indebtedness of the Penn Central and thereby have available its tremendous assets of some 15.8 billion dollars for refinancing and continuing its operation? The creditors—including preferred and common stock holders—would have to be satisfied with a scaling down of their investments, with the hope that—with sound financial and operating management—they could recover some of their loss.

Instead, he is asking the Congress to provide the necessary capital to continue the operation of the Penn Central.

What right does the Congress have to protect private investors against losing any money, at the expense of the American taxpayers?

I am opposed to the Congress taking this action. I opposed the Lockheed loan. If we start in now again with the Penn Central, will we have to bail out the five other northeastern railroads in bankruptcy and the six or seven other American railroads in financial distress? If the Congress is to assume the responsibility the Federal District Judge in the Penn Central case somewhat arrogantly confronts them with, it will mean they must also appropriate funds for these other railroads.

That is nationalization of the railroads through the back door. Think what awesome power this adds to the presidency—and what huge amounts of taxes the American taxpayers will have to dig up.

There is also legislation pending in the Congress that delegates increased power to the president of raising and lowering tariffs. It is almost impossible for the Congress to act on the spot when immediate action is required on matters of this kind. But the American presidents have already power to act on tariff questions that they have not used. Then why should the Congress give them additional power?

In almost any area you choose, it is awesome the power the Congress has delegated to the President—or to the executive officers under his control. This great increase in executive power has occurred with little protest in the last 40 years.

In 1974—certainly 1976—the basic issues are going to be what they have always been—even in tribal days—under any form of government—at any time and in any clime: simple existence. The cost of living. What you eat and what you wear. Whether times are good or bad. Jobs.

I sum it up easily—prosperity—and that requires enduring peace.

Peace is dependent on the foreign policies of President Nixon. We are not out of the bad lands of the cold war yet. Much can happen in foreign affairs between now and November, 1976.

For twenty-odd years, I have urged a detente with Russia and China—and promptly supported President Nixon's momentous policies with them.

Our President is in an extremely difficult position of pushing the Congress for adequate defense appropriations and, at the same time, pursuing his foreign policies that have changed the world.

Now is no time for the Congress to cut the President's defense budget, thereby endangering maintenance of our present level of military strength.

Such action would jeopardize President Nixon's work plans for a general disarmament agreement between governments, for it would prematurely and unilaterally disarm our nation. It would rob the United States of its strongest negotiating element, since other countries would have no great motivation to disarm.

It would leave America in a weakened position to reach a genuine and workable detente with Russia.

Peace is vitally based on multilateral disarmament and mutually beneficial trade relations. President Nixon's remarkable ability to negotiate those must not be reduced at this crucial juncture in the world's history. The stakes are high—peace and prosperity. We cannot afford to throw them away.

If we continue to find our way to the sound ground of collective agreements between different major governments that induce realistic cutting of enormously expensive military structures and promote better trade and commerce, and a higher standard of living—then the worldwide prosperity caused by enhancing continued peaceful prospects for the future will be of great importance to peoples all over the world for generations to come.

RESTORING NORMAL RELATIONS WITH SWEDEN

Mr. PELL. Mr. President, as a strong supporter of Senate Resolution 149 calling for restoration of normal friendly relations with Sweden and a prompt exchange of ambassadors—action long overdue—I was delighted by the Senate action on October 4 adopting the resolu-

tion. I had hoped that the administration would respond to this urgent sense of the Senate by some immediate indication of intention to seal the breach in our traditionally close and beneficial relations with Sweden. I have maintained all along that this interruption should never have occurred in the first place. As I informed the Senate at the time (CONGRESSIONAL RECORD, January 6, 1973, p. 415), our refusal to receive a new ambassador from Sweden was "mistaken, petty, and inappropriate." It resulted from an unfortunate tendency on the part of the administration to take action affecting foreign affairs on the basis of pique.

In the case of Sweden, our brusque action was obviously prompted by the outspoken words of the Swedish Prime Minister in condemning U.S. terror bombing of North Vietnam during the Christmas season last year. In doing so, the Prime Minister reflected, too, the dismayed reaction of many of us in the Congress and of millions of other American citizens.

Happily, congressional action finally terminated our military involvement in Indochina. Thus a source of friction has been eliminated from the relations between two old and good friends with far more in common than in dispute.

Both our countries have much to gain from working closely together in defeating common enemies of mankind—poverty, violence, environmental, economic and social disorders. I have often said that if you want to foresee what is going on in the world on these fronts 5 years from now, take a look at what Sweden and the rest of Scandanavia are doing today.

The present sullen state of our relations with Sweden does not foster this mutually beneficial cooperation. This is why I think it is so important that the administration act in accordance with Senate Resolution 149. I urge this action now.

NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS

Mr. MATHIAS. Mr. President, this week—the week of October 21–27—the National Federation of Business and Professional Woman's Clubs, Inc., is recognizing all working women in their programs across the country. Appropriately in Maryland, this week follows by just a few days an event that was held in Baltimore. It was a women's fair, held in recognition of efforts by women to create a more meaningful role for themselves in society. The programs of the Business and Professional Women's Clubs, Inc., in Maryland and across the country, are a constructive part of this process. They deserve recognition and commendation. I am pleased to be able to join in the tribute that is being paid to the National Federation of Business and Professional Women's Clubs, Inc., as they observe this special week.

ARMS TO ISRAEL

Mr. STEVENSON. Mr. President, I am pleased that, after an initial delay, the administration decided to supply Israel with the equipment necessary to offset the massive infusion of Soviet armaments to the Arab belligerents in the current conflict. This step will help eliminate incentives to aggression and thereby create a climate in which a durable cease-fire and ultimately a settlement can be arrived at.

I ask unanimous consent that a copy of some remarks I made on this subject on October 12 be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

EXCERPTS FROM A SPEECH BY SENATOR STEVENSON, AS DELIVERED IN NEW YORK CITY, FRIDAY, OCTOBER 12, 1973

When I ran for the Senate in 1970, I was charged with having a split personality when it came to matters of war and peace; I was, according to my accusers, a dove about Vietnam—but a hawk about Israel.

I explained then that Israel is a free and democratic state—devoted to the principles of cooperation, not coercion. South Vietnam was not.

Israel has sought to buy arms and fight her own battles. South Vietnam did not.

There are some other, deeper reasons why Israel deserves the support and admiration of our government and our people.

The tiny nation of Israel symbolizes mankind's atonement for ancient injustices. Israel represents one of those rare moments when mankind has sought to restore what was taken away; to recompense a people dispossessed for centuries.

Israel shows what faith and energy and genius can do. The people of Israel have literally made the desert bloom, and Israel has made herself a model of economic and social creativity. Such achievements deserve to stand.

Israel is something rare among the nations of the earth: a nation founded not for reasons of conquest or empire, but in the service of an idea. The United States, also, is such a nation—and perhaps that is one reason we feel such a kinship with Israel: both of us trace our roots as nations to some deep and worthy principles.

For all these reasons, Israel deserves to live.

For all these reasons, Israel deserves to prosper.

And for all these reasons, Israel must have the means to defend herself against attack and the means to protect herself in the future.

I believe the Administration should immediately use its power—power that Congress gave the President in 1971—to help Israel re-supply herself with arms: arms to match the arms supplied to her enemies by other nations, and arms to assure the continued defense of Israel against aggression.

I urge the President to use that power—to use it immediately. It will be a sad day in the history of our proud country if it submits to blackmail. History would not look kindly upon our generation if we failed to grant Israel the means to survive, to succeed—and to live in peace. *Israel must not be sold for a barrel of oil.*

We must live up to our difficult responsibilities in the Middle East: to guarantee the survival of Israel, and promote a climate within which the parties will negotiate, as only they can, a just and enduring peace.

MILITARY RECORDS FIRE AT ST. LOUIS

Mr. HARTKE. Mr. President, as members of this body will recall, early on the morning of July 12, 1973, a fire was discovered on the sixth floor of the Military Personnel Records Center near St. Louis, Mo. That fire burned for 5 days, and when it was over, some 21.8 million military service records, principally belonging to Army veterans discharged between 1912 and 1959, were severely damaged or destroyed. As chairman of the Committee on Veterans' Affairs, I immediately sought to determine how this would affect applications for veterans' benefits which must be based on proof of service or, in the case of a disability, service connection. I therefore continue to closely follow developments in the aftermath of the fire, and recently received a detailed status report from the General Services Administration (GSA) which I believe will be of interest to my colleagues.

EXTENT OF DAMAGE TO RECORDS

GSA has informed me that an estimated 3.2 million of the 21.8 million records located on the sixth floor at the time of the fire can be salvaged. Records on the other floors were not damaged by the fire, although some suffered minor water damage. The specific files affected are as follows:

Army personnel discharged between November 1, 1912, and December 31, 1959: 2.5 million of 20 million can be salvaged;

Air Force personnel discharged between September 25, 1947, and December 31, 1963, last names beginning with the letters "I" through "Z"; 423,000 of 1.4 million can be salvaged; and

Army personnel discharged between January 1, 1973, and time of the fire; 314,000 of 316,000 can be salvaged.

It is interesting to note that some papers are being saved by placement in a space age vacuum chamber where they are dried out by lowering the humidity to approximately 15 percent.

SUBSTITUTION OF RECORDS

An Interagency Military Personnel Records Policy Working Committee was established by the Archivist of the United States to determine how much of the information destroyed is available from other Government records. The group met four times during the summer and reported that the information required to obtain benefits in the 18.6 million cases where service files were destroyed can be obtained in most instances from Veterans' Administration records, military payrolls and pay vouchers, Selective Service records, and other similar material maintained by Federal agencies.

PREVENTING A REPETITION

GSA has concluded that—

There were serious deficiencies in the fire protection system at the Military Personnel Records Center.

Sprinklers had not been installed; some 60 percent of the records were in cardboard boxes rather that metal file cabinets; in addition, there had been 11 minor fires at the Center in the 2½ years prior to the July 12 blaze, six of them classified as cases of suspected arson. GSA has submitted to Congress a $7.9 million prospectus for restoring and upgrading the facility, including the installation of fire-rated partitions, fire detection systems, and automatic sprinklers. A request for supplemental fund-

ing is being prepared, and I stand ready to support it with the hope that my colleagues will see fit to do so as well. It appears to me that the duplication of military service records, perhaps by microfilm, with placement in a second location, also deserves careful consideration as an advisable precaution. I certainly expect that one such unfortunate tragedy, inconveniencing on the order of 20 million veterans, is sufficient to insure that all necessary steps will be taken promptly to prevent a recurrence.

The Senate Committee on Veterans' Affairs, which I am privileged to chair, is encouraged by the speed and good sense displayed by the GSA and other agencies in responding to this crisis affecting so many former American servicemen and their families. My distinguished colleagues can be assured that I and the members of the Veterans' Affairs Committee will continue to keep close tabs on this matter, and that we will initiate any legislation that the situation dictates as necessary to insure that the veterans affected receive the benefits and services to which they are entitled.

THE UNITED NATIONS

Mr. McGEE. Mr. President, on Wednesday of this week, the United Nations celebrated its 28th anniversary. In connection with this historic event, I believe we all should pause to reflect upon the intense difficulties of the Middle East and turn to serious consideration of the shared hopes of all Americans for a renewed faith in the United Nations.

We have seen for the first time, under the aegis of the United Nations, the Soviet Union and the United States cosponsoring resolutions calling for an end to major conflict in the world. The U.N. Security Council action has been a most hopeful sign for citizens of the world as the two major powers of our planet have turned to the only universal body we have in search of a solution to a very dangerous and delicate conditon in the Middle East.

Secretary-General Kurt Waldheim has often pointed out that collective measures for the prevention and removal of threats to the peace are required. Certainly, the United States and the Soviet Union are to be congratulated for this shared collective response. The crisis in the Middle East is not over, as events of yesterday bring reality harshly into focus. The situation remains potentially explosive, although the crisis appears to be easing. However, at some other time in the past, the major power resistance to seeking a solution would have been out of the question. Today, we are witnessing an historical period whereby the mutuality of interests between the two major powers, no matter how limited they might be, have apparently kept us from going over the brink. As a result, we have seen both the Soviet Union and the United States turning to the United Nations for a resolution of the crisis.

For the first time, the two major powers have also jointly requested the Secretary-General to "take measures for immediate dispatch of United Nations observers to supervise the observance of a cease-fire." Realistically, this is the manner by which the Security Council is able to play effectively its intended role under the Charter for the effecting of peace and security throughout the world.

As we are within the second quarter century of the United Nations, it seems appropriate to consider our goals in relation to improving the effectiveness of the United Nations and how the United States may reasonably proceed with that task.

Our firsthand experience at the U.N. has brought home the realization that, after 28 years of existence, the Organization, established to "save succeeding generations from the scourge of war," has not been able to exert any significant part of its cardinal mandate. However, with the joint efforts of the major powers, and particularly Secretary of State Henry Kissinger's responsible leadership, it is clear Security Council action may indeed move us to a new day and a new atmosphere of understanding, no matter how painfully slow the process may be. Previously, without a joint understanding between the Soviet Union and the United States, the U.N. had neither the power nor the moral authority to cope with the member nations' proclivity for violence.

In the past, the U.N. became an instrument through which concerted international action became possible in limited areas of human endeavor. The Organization has served as a mirror of the complex, disjointed, at times unpleasant reality, which characterizes the international community. The fault lies not with the institution, but with those who made it what it is—the sovereign nations of this world, each governed by its own ambitions and fears, each jealous of the prerogatives of its independence. The United Nations is uniquely their creature. It is neither more nor less than what the member states have been willing to make it.

The United States is one of the members partly responsible for this state of affairs; for, although we have played a major role in the founding and perpetuation of the Organization, American policy has encouraged little real growth in the U.N. Futhermore, we have extolled the virtues of international cooperation, while withholding from the U.N. the full measure of our political support which the Organization has needed in order to become an effective instrument for peace and progress in the world community.

It is hoped, as we reflect upon the observance of the 28th anniversary of the United Nations, that, under the leadership of Secretary Kissinger, a new emergence of American policy at the U.N. will be forthcoming—a policy which will bring the U.N. from the perimeter of our foreign policy efforts into the center of our international considerations.

It is also appropriate to reflect on congressional attitudes as they concern the United Nations. We are continually besieged by assaults on the organization in the Congress. Hardly a week passes that expressions of disenchantment, condemnation, or calls for disengagement from the institution are not heard.

I suppose these expressions are to be expected since certain appeals have to be made to certain constituencies. It is an easy way out, for it does not require making difficult decisions which result in constructive approaches to our involvement in the U.N. I believe it also reflects a certain loss of faith in all mankind, a dilemma I personally do not share.

I would point out that the United Nations provides us with the vehicle to search out what limited areas of mutual interest may exist in the world today. In this way, we are laying a foundation, based upon a mutuality of interest, which can only serve to strengthen the international bond among nations. I sincerely believe that we must aggressively pursue this course if we are ever to have the chance of coming to grips with chaotic global concerns and problems.

With these reflections in mind, it would be my hope that sincere efforts be launched in the Congress to gain a greater appreciation for the potential of the United Nations and its positive accomplishments. To do otherwise is to "cop out" on the world as an admission that we do not possess the capability or capacity, as a nation, to work effectively in strengthening our institutions.

A HOME ON SINKING SAND

Mr. HARTKE. Mr. President, the mobility of the 20th century has made interstate land sales a very attractive market. Most of the purchases are of vacation homes or of land to be used when the buyer retires. The ownership of such property continues to rise sharply. In 1967, 1.7 million households owned second homes. In 1970, this figure rose to 2.9 million, approximately 4.9 percent of all households.

There are an estimated 10,000 developers of vacation homes in the United States. Many of them are honest and provide a quality vacation home. However, some developers take a person's lifetime earnings in exchange for a swamp or patch of desert. It is the unscrupulous dealer that must be regulated before more families lose their savings.

Mr. President, Robert H. Boyle wrote an article for the July 23, 1973, issue of Sports Illustrated magazine which, after thorough investigation, notes many of the frauds and swindles being perpetrated on the people.

My bill, S. 1753, which I introduced May 8, 1973, would require the licensing of developers and their agents. In order to attain a license, a developer would have to be of good character and business reputation; trained and experienced in the field; and not have committed any acts contrary to the intent of the bill within the past 5 years.

Mr. President, my bill would go a long way toward securing and preserving the savings of the families in America which seek a vacation home.

Mr. President, I ask unanimous consent that the article by Mr. Boyle appearing in the July 23, 1973, issue of Sports Illustrated, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BUY NOW AND CRY LATER

(By Robert H. Boyle)

(Step right up, folks. Hurry, hurry. Get some land and build your dream house for those declining years: golf in your backyard, tennis two blocks away, water all around, and fish—suckers—everywhere.)

The case of Mrs. Gomer Jones, widow of the Oklahoma athletic director and football coach, is simple and instructive for potential buyers of vacation homesites. When Mrs. Jones went to see the New Mexico lots that her husband had bought for retirement, she broke down and cried and subsequently *gave* her lots away.

There are an estimated 10,000 developers in the vacation home business in the U.S. Some have projects that are well conceived both financially and environmentally. But unfortunately, there are too many projects that are bad on either one count or the other or both. Indeed, the vacation home business, especially undeveloped lot sales, is rife with deceptive practices, and state and federal agencies have their hands full running down complaints from the victimized. There is so much fraud rampant that Vince Conboy, a real estate broker in Naples, Fla. and a crusader against the bunco artists roaming his state, says, "It's the single biggest swindle in the country."

George K. Bernstein, who recently took over and shook up the Office of Interstate Land Sales Registration in the U.S. Department of Housing and Urban Development, says of the industry, "Though there are many reputable developers who have every intention of performing their promises, there are those who are not reputable. We are dealing with salesmen—across the board, even among the reputable companies—who promise you the world and who are working on a commission, and thus have an incentive to sell and lie through their teeth."

For all the warnings by responsible public officials, it is almost impossible for any American with a postal address or a telephone to escape the hard-sell salesmen. Slick brochures bursting with color photographs of the great outdoors pour through the mail, and the phone rings with unsolicited calls about your chance for a second home in the wilderness—that retreat by the lake, your own beach on the sea. There are all sorts of come-ons, ranging from free plastic dishes to a free dinner at a local restaurant. The gullible who accept are met by an army of salesmen who wear bell-bottom trousers and have more teeth than Bert Parks. They pin a card on your lapel proclaiming you "Mr. V.I.P.," and within two minutes they are calling you by your first name. The pitch varies, but essentially it has the same opener. After dinner a movie is shown about the paradise you can buy. Both the film and the salesmen emphasize that Sleazy Acres is "totally planned," down to the new lake stuffed with bass built along the lines of Chicago aldermen. If the project is in Florida, anywhere in Florida, it is always "near Disney World." Wherever the locale there almost always are swimming, water skiing (and maybe skiing, too), sauna baths, a yacht club, horseback riding, sailing, golf and, if you're lucky, a kiddie zoo! You can't miss. The salesmen have an assortment of lines. "Why I'm buying here myself just as an investment." "Sail into coves no one else knows about." "Go out in the early morning, breathe deeply and catch a whiff of the American dream." In too many cases the dream turns out to be a nightmare. That desert "ranchette" turns out to be a quarter-acre lot miles from nowhere, and the water only 800 feet away is just that, straight down. The southern hideaway is just that, too; many buyers can never find theirs behind the stands of swamp grass. Resale value is often nil. But then again, you have to have vision, as the salesman says.

Whenever a land-development scheme is announced, conservationists are usually the first to protest. Aside from any rip-off of the public—and there may be none at all involved—a development might not only put a stress on the environment but become a tax burden. Last year the Northern Environmental Council in Duluth, which takes in a host of organizations from Michigan to the Dakotas, issued a paper noting that "Local and county zoning regulations have, with very few exceptions, shown themselves to be almost useless when dealing with large-scale developments. These mass recreational promotions suddenly create vast new urban communities without adequate local government or public services." As the study points out, the promoter departs when the lots are sold, and "Left behind is usually a weak landowners association and the same rural township government to deal with mounting demands imposed by hundreds of new homeowners who expect road maintenance, sanitary-waste disposal, fire and police protection, lake and (often) dam management and miscellaneous public services including schools for those who become permanent residents. In fact, a whole new urban community arises overnight, too large and complex for the capabilities of local governments to deal with."

When the NOREC made a study of a shore development on Lake Superior in Minnesota it reported that 40% of the shore surveyed was "unsuitable for soil absorption sewage disposal systems because the soil is too heavy or underlain with rock to permit percolation. And an additional 27% of Minnesota shoreline . . . is so permeable that it permits too rapid a percolation rate for complete neutralization of sewage contaminants before reaching the lake water." In Wisconsin, Senator Gaylord Nelson warned, "With vast areas of the state still unzoned, and weak controls on the massive new leisure living developments now being planned throughout the state, we are about as well equipped to deal with the recreation revolution as someone planning to shoot spitballs at a tornado. If we don't act decisively now, in a decade the once pristine environment of northern Wisconsin will be turned into a recreation slum. . . ."

Senator Nelson is working on an amendment to Senator Henry Jackson's federal land use bill that would make developers prove that their projects are environmentally justified, but the fact is that even where there are laws some developers will do their best to bend them. In New York, for example, it is not just a matter of legislative statute but an actual state constitutional amendment that forest preserve lands in the Catskills and Adirondacks must remain "forever wild." This constitutional amendment, adopted in 1894 after destructive logging of lands owned by the state since colonial days, has been upheld time after time by the voters. Even so, battles crop up, and there are several fights going on now. In the Catskills, John H. Adams, a former assistant U.S. attorney who is now the executive director of the Natural Resources Defense Council, has personally filed suit, along with Friends of the Earth, the Atlantic chapter of the Sierra Club and the Theodore Gordon Flyfishers, against Rockland Town authorities to prevent Mr. and Mrs. Fred Haas from developing Edgewood Lakes, Inc., a 400-acre property divided into half-acre vacation lots. Adams alleges that the town unlawfully amended zoning to allow the subdivision and, moreover he charged that sewage from the development would pollute Waneta Lake and the Beaver Kill, which are designated as forever wild areas under the state constitution. The Haases filed a counterclaim against Adams alleging that he was indulging in malicious prosecution and had prompted newspaper articles to appear that caused them financial harm. Decisions in the case may be a year off, but the New York State Department of Environmental Conservation has ruled, as the result of a hearing requested by petition, that although it is not opposed to the project, no sewage effluent could be placed either in Waneta Lake or the Beaver Kill.

In the Adirondacks, the largest wilderness area east of the Mississippi, conservationists have been contesting two proposed mammoth developments. The first of these, dubbed "Ton-Da-Lay" by promoter Louis Papparazzo, would house 20,000 people on 18,5000 acres near Tupper Lake. The second, as yet unnamed by the Horizon Corporation, is supposed to be set on 24,000 acres in the northern section of the mountains. Now, however, both projects may come to naught, at least as envisioned in the eyes of the developers. Following the recommendations of the Adirondack Park Agency, the state legislature last May passed a bill imposing strict rules on development of privately owned land, so strict in fact that one conservationist says, "Massive second-home developments in the Adirondacks will be a thing of the past."

In part, the Horizon Corporation's announcement of its purchase of land in the Adirondacks prompted the legislative action. In an open letter to New York newspaper editors and state officials, Harvey Mudd II, director of the Central Clearing House, a conservation group in Santa Fe, N. Mex., wrote in June 1972, "The people of New York will get no 'bargain' if the Horizon Corporation is allowed to develop the 24 thousand acre property in the Adirondack State Park. . . . Horizon Corporation controls nearly a quarter of a million acres of land in New Mexico in or near two gigantic parcels known as Paradise Hills and the Rio Communities (Rio del Oro, Rio Grande Estates, Rancho Rio Grande). Their massive sales organization in New York State sells these 'sure fire investments' to thousands of New Yorkers every year who are led to believe that they are buying a lot on the edge of a verdant golf course, when in fact they are getting a piece of worthless desert half a dozen miles from the nearest utility tie-up or community services.

"Horizon Corporation sends many thousands of letters urging people to invest successfully in real estate, Horizon Corporation itself is the successful investor. They purchase large tracts of land in New Mexico, the price often under $200 an acre, cover the land with lot grids and sell it to the gullible in small size lots at prices that usually exceed $4,000 an acre. . . . The real estate section of the *Albuquerque Journal* is full of Horizon Corporation resales, which are well under the original price paid. The market is glutted with second-sale subdivision lots, and the company is certainly making no repurchases itself.

". . . Horizon's largest holding in New Mexico exceeds 145 thousand acres. As of July 16, 1971 (when the latest Property Report was filed), only 154 homes had been built. In this operation, core unit development, a few houses, a golf course, and a sales office is used as the bait to sell the remote desert land."

In New Mexico, a Nirvana for big-city dwellers, more than one million acres have been scissored into small lots on paper. This land, if built upon, could accommodate more than eight million people, eight times the present state population. New Mexico's landscape is now ticktacked with roads bulldozed out of the desert (state law requires developers to provide access to lots), and the dust they raise contributes to air and stream pollution. In essence most of the parcels are ghost lots, peddled to people far away. Often the sales theme is investment. Horizon has advertised, "You can make money here even if you can't spell

Albuquerque." When various civic, consumer-protection and conservation groups banded together last year to back a bill in the legislature that would have allowed the state to reject new developments that lacked sufficient water supply, they were soundly beaten, even though the legislation was supported by Governor Bruce King and leading newspapers. As State Senator Eddie Barboa argued in debate, "I don't see why we should spend hours worrying about somebody in New York spending $1,500 or $2,000 on a worthless piece of New Mexico land that doesn't have water. If they're that stupid, let them spend it. . . . I have a friend who is a stewardess with one of the airlines that flies them in and she tells me these people don't even drink water."

Many out-of-staters who buy lots are surprised to discover that it can rain heavily in the desert. A South Carolina man who bought a Deming ranchette after reading an ad in the *Washington Post* later decided to sell. He wrote a realtor in New Mexico, and the realtor replied, ". . . I am very sorry to inform you that I have been unable to interest anyone in [your property] at any price. . . . I don't know if you have seen the lots or not, but all the access roads, as well as the lots themselves, are under water during wet weather . . . when it is wet not even four-wheel drive vehicles can reach them"

Land sales in Florida are often an impossible mess. Robert J. Haiman, managing editor of the *St. Petersburg Times*, which has run a series of exposes, says, "The sale of Florida swampland to unsuspecting Northerners has long been a national joke. But it's not funny. It's a national scandal." With all deference to conservationists, Vince Conboy points out that the state has spent more money to protect alligators than it has to prevent buyers from being devoured by salesmen. Florida is crisscrossed with paper lots that are either under water or unreachable or hold no likely prospect of development for several hundred years, as Conboy makes clear in a book he wrote and published, *Expose, Florida's Billion Dollar Land Fraud*. Conboy is no anarchist slinging mud at the real-estate establishment. He has short hair and belongs to Kiwanis and the Knights of Columbus. Now 70 years of age, he is a native of Wisconsin who moved to Florida 15 years ago as a real-estate broker. In Wisconsin he had worked for the Federal Government as an appraiser, and what he found going on in Florida real estate shocked him into becoming a crusader. When the *St. Petersburg Times* assigned Staff Writer Elizabeth Whitney to check Conboy's allegations in *Expose*, it found him "virtually unimpeachable on almost every point." Conboy, who has gotten little help from either state or federal authorities, is particularly outraged by Golden Gate Estates near Naples in Collier County. GAC Properties, formerly the Gulf American Land Corporation, noted in a recent report that it had sold almost all the 113,000 acres in the subdivision. "They paid $100 to $150 an acre and sold it for as much as $1,800 an acre," Conboy says. "They went in and drained it so there are fires now. In fact, it's a forest-fire nightmare. The company boasted it would be the largest subdivision in the world, but in all this 113,000 acres there are just three houses after 10 years."

One of the houses is occupied by Wald and Mary Mitchell from Akron. The Mitchells, who are in their 70s, sank almost $6,000 of their savings into their lot, and rather than lose most of that trying to sell, they decided to build. However, they are so far out in the boondocks that they cannot afford a telephone. The phone company said the house was so remote that it would cost the Mitchells $2,880 to bring in a line. Even if the Mitchells could afford a phone, they would have little time to chat on it since fire fighting is a full-time job. In a two-month period they had to fight off fires on four fronts that threatened to engulf their little home.

Conboy says, "More than $100 million has been invested in that drained swamp by wonderful people. Some might call them suckers or fools for buying lots there, but these buyers were people who had been reared in a trusting way, people who couldn't believe that human beings could be so low as to steal their life savings." According to Conboy, Florida has more than two million lots that have little or no resale value even though many were purchased at fancy prices as an investment. When he began making noises about this, a General Development Corp. subsidiary wrote to his wife offering a $2,000 profit on lots she owned in Port Charlotte. Conboy replied that he would be happy to sell if General Development would repurchase all similar lots owned by other buyers for $1,500 each. The company refused.

The hard-sell hucksters peddling second home lots in Florida, New Mexico and other parts of the U.S. are having a feast on U.S. servicemen overseas. The European edition of *Stars and Stripes* last December devoted three special eight-page news supplements to U.S. land sales companies doing about $30 million a year of business in Europe with GIs. "All companies plead innocence of wrongdoing." *Stars and Stripes* said, "but exhaustive research in Europe turned up case after case of misrepresentation and half-truths, sins of omission and commission, advertising exaggeration and high-pressure sales tactics." Misrepresentation went so far that a salesman told one soldier that Discovery Bay was in Florida and not Mississippi.

Although European Command regulations prohibit land companies from operating on posts, the companies make the regulations a farce by routinely hiring military personnel as salesmen or scouts to find buyers. One master sergeant admitted he had collected $5 for every husband and wife "unit" that he steered to GAC. The former U.S. Army Europe commander-in-chief, General Bruce C. Clarke, has gone to work for Horizon to handle public relations. General Clarke, who last fall invited key military authorities to have lunch with him at various locations in Germany, prepared a mail-order flyer for Horizon entitled, "Why the Military Man Should Acquire Land—by General Bruce C. Clarke, U.S. Army, Retired." General Clarke was hopeful that authorities would allow salesmen who "qualify" to solicit on posts, but, as Captain David Naugle, chief of the Army's legal assistance division in Europe, advised *Stars and Stripes*, the best way to handle land salesmen is to "boot them into the North Sea."

For all the fraud and misrepresentation going on, relatively few of the swindled realize that they have recourse to a federal agency that has recently started going after the swindlers. The agency is the Office of Interstate Land Sales Registration run by George Bernstein and his deputy, John McDowell, in the Department of Housing and Urban Development. The agency, usually abbreviated as OILSR, came into being in 1968, primarily because Senator Harrison Williams Jr. of New Jersey was angered at seeing the elderly victimized while buying retirement lots. Still, until Bernstein took over the agency had accomplished little and was considered a lap dog of the land-sales industry.

A lawyer by profession, Bernstein is unusual in that he wears two hats; before he took over as OILSR chief, he was, and still is, the Federal Insurance Administrator, a position in which he caused some flap by going after Blue Cross. When he assumed controls at OILSR, he adopted the policy that he has followed to this day. "I publicly called our relationship with the land-sales industry an adversary relationship. They said we should 'work together.' My constituency is not the regulated industry but the public." That is rather a mild statement for Bernstein, who is given to such comments as "This is a bad industry—it's an industry not used to being regulated," or "I cut the big red apple and watch the worms crawl out." An aide has said, "Around here we rate developers from zero to minus 10."

The law under which Bernstein operates, the Interstate Land Sales Full Disclosure Act, requests developers selling subdivisions of 50 or more unimproved lots less than five acres in size, in interstate commerce, to file a detailed Statement of Record with OILSR. They must also give purchasers a Property Report that contains 19 items taken from the Statement of Record on such matters as the availability of sewer and water service or septic tanks and wells, distances to nearby communities over paved or unpaved roads, the number of homes currently occupied, soil conditions that could cause problems in construction, utility services and other matters. If the developer fails to give the buyer a copy of the Property Report either before or when he buys, the buyer may void the purchase. Moreover, should the developer fail to comply with the Full Disclosure Act in any way or indulge in fraud, the buyer may sue for damages, which are often measured by the purchase price and court costs. In addition, OILSR can seek criminal penalties of up to five year in prison, a fine up to $5,000, or both. Even if a developer is operating only within one state, Bernstein and OILSR can get him if he has used the U.S. mails. There are some drawbacks to the law. For one, if a buyer fails to understand the property Report and fails to understand or doesn't read the fineprint saying no water is available, he is in tough luck. As they say at OILSR, "The law will light the threshold but not unlock the door." Then again, as Bernstein puts it, "A developer could be raping the land ecologically, and there's not a thing we could do as long as there is full disclosure."

Still, the law can be effective, and to make certain that the public became aware of it and his office, Bernstein and McDowell made a nationwide swing of 17 cities last year to hold public hearings on the law and to listen to the aggrieved. They heard one horror story after another. The company that drew the most complaints was GAC, one of the largest developers. Most of the complaints concerned misleading sales practices and misrepresentation.

Last October Bernstein really stunned the American Land Development Association when he announced that a federal grand jury in Atlanta had returned a 22-count criminal indictment against four individual corporate officers, three corporations and eight land salesmen. One of the corporate officers indicted was Frank A. Carcaise, president of Great Northern Development Corporation and also chairman of the board of the American Land Development Association. Adding salt to the wound, Bernstein said, "If we were looking for a case illustrating all the abuses about which we have been warning the public at our abuses hearings we couldn't have found a more frightening example." Among the charges by the grand jury, all of which revolved around a development known as Treasure Lake of Georgia, Inc., were that the defendants had failed to register and file a Statement of Record prior to initial sales and that there was misrepresentation after they finally did; obtained by fraud the signatures of buyers on documents which showed that a Property Report had been received when it had not; showed buyers phony pictures of a lake, a golf course and other recreational improvements in a conspiracy consisting of "devices, schemes and artifices to defraud and establish a practice and course of business which would operate as a fraud and deceit."

In response to the land swindles and in

answer to bad planning, several states—notably Vermont, California and Maine—have recently passed legislation to protect both the buyer and the environment. In California, Boise Cascade recently agreed to a $58.5 million settlement of lawsuits brought against the company for false and misleading sales practices, following a halt last July of recreational land sales. The Sierra Club *Bulletin* noted, "What sort of enterprise is it where a large, financially responsible corporation, with millions of dollars in assets, thousands of stockholders and a large staff of experts should fall so low while dozens of tacky operations continue to thrive? Boise's experience confirms what many have known all along—that the recreational land business, dealing in a largely unnecessary product that few people can afford, usually must rely for its success on glib salesmen and naive customers."

New legislation is pending on the federal level. Congressman Morris K. Udall of Arizona has introduced a bill that would, among other things, prohibit interstate advertising, and Congressman Barry Goldwater Jr. of California is drawing up a bill that would create a Securities and Real Estate Commission patterned on the Securities and Exchange Commission. Such a commission would regulate interstate land sales, not simply administer the Full Disclosure Act.

Yet for all the laws now on the books or aborning, much of the grief involved in land sales could be avoided if potential buyers used common sense. Any buyer interested in land should personally inspect it, carefully read the Property Report, have the land independently appraised and then confer with a lawyer before signing anything. As with any major purchase, but with land especially, let the buyer beware.

THE ROLE OF THE U.N.

Mr. McGEE. Mr. President, throughout the course of this year, we have been subject to an incessant denigration of the United Nations in the U.S. Congress.

It is therefore ironic, as the world confronts another Middle East crisis, one which could have forced the great powers over the brink, that the entire international community has turned to the U.N. in an effort to resolve this confrontation.

In this morning's Washington Post, Stephen S. Rosenfeld placed the United Nations' role in the proper perspective when he succinctly observed:

It (the U.N.) provided a forum—one otherwise unavailable—in which the great powers and the Mideast combatants could register their common understanding that the shooting should end.

Egypt and Israel could not, yet, make their own cease-fire. A cease-fire call from the United States and the Soviet Union, separately or together, would have put them in a direct guarantor's role, which neither of them wanted and which the local parties would have distrusted as a great-power dictate. Only a cease-fire appeal "laundered" through the United Nations could have been politically acceptable to all.

While realistically assessing the limitations of this international organization, it should be apparent to all that there is a continuing, and even increasing, role for the United Nations to play in our highly complex world. While it may be the political thing to do in appealing to a certain constituency by calls for our disengagement from the United Nations or the dissolution of the organization altogether, it certainly does not reflect a wisdom or an understanding of international politics in the 1970's. I believe this attitude reflects a complete loss of faith in all mankind, a belief which I certainly do not share.

I believe Mr. Rosenfeld's assessment to be particularly acute and timely. For this reason, I ask unanimous consent that his article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE U.N.: FULFILLING ITS ROLE

(By Stephen S. Rosenfeld)

Let's hear it for the United Nations, not just because Wednesday was U.N. Day but because this was a week in which the U.N. once again showed its stuff. Consider, in order, what the world organization did.

It provided a forum—one otherwise unavailable—in which the great powers and the Mideast combatants could register their common understanding that the shooting should end.

Egypt and Israel could not, yet, make their own cease-fire. A cease-fire call from the United States and the Soviet Union, separately or together, would have put them in a direct guarantor's role, which neither of them wanted and which the local parties would have distrusted as a great-power dictate. Only a cease-fire appeal "laundered" through the United Nations could have been politically acceptable to all.

When the first appeal did not take, there arose the plain need to strengthen it, to turn it from an abstract summons to a real presence, and so U.N. observers were dispatched to the scene.

When Egypt began to feel the situation was souring, it turned quickly to the U.N. as the one place where a brave and indignant face could be put on its nervousness, by means of words. Those who deprecate this tactic should ask themselves whether they would have preferred to have Egyptian President Anwar Sadat launch a new offensive.

When the second cease-fire appeal did not take, still another proposal was advanced for a large "United Nations emergency force," intended as an effective alternative to direct Soviet or American participation. This result did indeed come about.

And now, one hopes, a search for an abiding settlement in the Mideast is to go forward within the framework of the U.N. Security Council resolutions of 1967 and 1973. These two settlement resolutions receive their moral authority, if not their political authority, from the fact that they represent an explicit and unanimous international consensus, a consensus which there is no other procedure or mechanism for establishing, outside the U.N.

Now, no one making a tally of the U.N.'s modest but real services during this Mideast crisis period can ignore the conventional streetwise cry that once again the U.N. has "failed"—failed because it could neither prevent nor immediately end the war and because it could not act at all until the two great powers came to a partial meeting of the minds.

A vast amount of good-willed nonsense about the U.N. is in circulation on any given day, especially, one might say, on U.N. Day. This Wednesday, for instance, the New York Times published a letter from a gentleman of the "man's best hope" school in which he declared that the problem is "the U.N. has not yet been given the authority to act as a world security system."

To that, most sensible people would have to say "amen." The day the U.N. is given the authority to act as a world security system is the day that world security utterly disintegrates. The U.N. can alternately provide a connection or a cushion between conflicting states, and this can often enhance their security. But to imagine that any state with choice in the matter would put its fate up to an international organization, whether it was dominated by friends or foes, is not idealistic but absurd, an escapist notion.

Often countries are chastised for not allowing the U.N. to roll over them. The Soviet Union used to be considered the pariah whenever it used its veto; these days it's usually Israel. It is common for countries so isolated to put the knock on the U.N., as the Russians tried to do with their aborted "troika" proposal and as the Israelis try to do with their scorn. Thankfully, the United States has been a bit less high and mighty about the matter ever since its automatic majority disappeared and its own policies came under criticism, at about the same time.

GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Mr. HASKELL. Mr. President, on September 4, 1973, the Administration on Aging announced in the Federal Register their proposed rules for the Grants for State and Community Programs on Aging. The Colorado State Department of Social Services, the State unit which implements the Older Americans Act, has reviewed the proposed rules and generally agrees that the rules will assist the State agencies in their service to the older population. The executive director, Mr. Con F. Shea, and the director, Mr. Robert F. Robinson, of the Colorado Department of Social Services have some reservations, however, about particular provisions. I ask unanimous consent that letters from Mr. Shea and Mr. Robinson to Dr. Flemming, the Commissioner on Aging, a resolution from the full Colorado Commission on the Aging, and the Notice of Proposed Rulemaking be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

STATE OF COLORADO,
DEPARTMENT OF SOCIAL SERVICES,
Denver, Colo., September 20, 1973.

Subject: Proposed Rules 45 CFR Part 903 Grants for State and Community Programs on Aging Published Federal Register September 4, 1973.

Dr. ARTHUR S. FLEMMING,
Commissioner Delegate, Administration on Aging, Department of Health, Education, and Welfare, Mary Switzer Building, Washington, D.C.

DEAR DR. FLEMMING: As one state which has diligently espoused programs for the aging, and which we feel is in the vanguard for innovation and pushing of Older Americans Act programs, we are deeply disturbed with one provision of the proposed rules, and that is Section 903.63(d) which would prohibit sub-units of a state agency on aging from being area agencies on aging. It would be permissible to designate the entire state as the area agency on aging under the proposed rule 903.57(f), but we believe that it would be better to subdivide the state for administrative convenience utilizing the structure of the 12 state planning regions Colorado has designated under provisions of OMB Circular A-95.

These would be combined as necessary so that the entire state could be served by the rather limited administrative resources available under Title III.

Such organizational structure would be prohibited by 903.63(d) as proposed and will

result in a fragmented program with many active and interested general purpose units of local government being left out because of the severe restrictions on aged, minority populations which are also in the proposed rules. Furthermore, some of the fine programs already in existence under the former Title III would not be included in the fragmented areas and could not get funding in the future.

I am sure that Congress did not intend such a result in its passage of the Amendments to the Older Americans Act contained in Public Law 93-29.

We ask that Section 903.63(d) be withdrawn so that Colorado's Department of Social Services, the designated state agency for Titles III and VII of the Older Americans Act, is allowed the option of designating regional offices of its Division of Services for the Aging for the reasons stated above.

Sincerely,

CON F. SHEA,
Executive Director.

DEPARTMENT OF SOCIAL SERVICES,
DIVISION OF SERVICES FOR THE AGING,
Denver, Colo., September 25, 1973.

Subject: Proposed rules 45 CFR part 903 grants for State and community programs on aging, published Federal Register, September 4, 1973.

Hon. ARTHUR S. FLEMMING, Ph. D.,
Commissioner, Administration on Aging, Department of Health, Education, and Welfare, Washington, D.C.

DEAR COMMISSIONER FLEMMING: The Colorado Commission on the Aging and the Division of Services for the Aging (the organizational unit in Colorado identified to implement the Older Americans Act) have reviewed the proposed Rules for the State and Community Programs on Aging. In general we accept the premise that the rules will assist the state agencies in better serving the older population. However, we take exception to some specific areas.

1. As indicated in the letter from Mr. Con F. Shea, the Executive Director of the Department of Social Services, we concur with him that "it would be better to divide the state for administrative purposes, utilizing the structure of the twelve state planning regions Colorado has designated under provisions of OMB Circular A-95." We concur in his request that this Division be given the option of establishing regional offices to implement the proposed rules.

2. We feel that the rules as currently written do not provide adequately for direct services to the older people, but are too strongly focused on planning and coordination, particularly when one considers the limited resources available to the state agency. A large state such as Colorado, with extreme geographic and demographic differences, will require large planning service areas with few centers of population. In some cases regional centers may have less than three or four thousand older people, yet will be thirty to forty thousand square miles in area. Administratively it will become extremely difficult to implement planning on an equitable basis throughout such a region.

3. We are particularly disturbed with the proposed structure for the advisory committee. We recognize the merit and desirability of including consumers on such a committee, and also the professionals, but are concerned that there is no place for public representatives. For example, currently the Colorado Commission on the Aging is composed of eleven persons on a statewide basis, all interested in the problems of the elderly and of tremendous assistance to the staff. At the same time, using the guidelines proposed in Section 903.50, Paragraph (c) there might be only one or two of those persons who could remain on the Commission should these rules become effective. One of the major values of the advisory committee is their important place in state structure and their ability to communicate with the Governor and the General Assembly and Members of Congress on a personal as well as professional level. To lose this could adversely affect the program and the older people in the state. We propose that the advisory committee include consumers, professionals, and representatives of the general public.

4. We feel that our state in particular is not receiving an equitable amount of administrative funds to carry out the purposes of this Act. For example, for Wyoming with under 100,000, Colorado with nearly 300,000, and Minnesota with over 600,000, older people to have the same fiscal support of $160,000 is not only unrealistic, but inequitable. We recognize the need of the larger states with populations in the millions, to have additional funds, but feel our state is not receiving sufficient funds to effectively administer the programs that are outlined in the Amendments.

5. We feel the one year limitation on support of area plans and area administration as outlined in Section 903.4, Subparagraph (b) is too limiting, particularly in the beginning periods of the program, because those agencies will be required to submit simultaneously, first and second year plans, and this before they have any opportunity to review the resources available in the community and do any real planning or coordination.

The State Agency will be required to make judgments based on insufficient information from these area agencies as to whether or not we have selected the best area agency on aging, though they have not been given an opportunity to prove their full capabilities.

The Colorado Commission on the Aging, at the Annual Retreat, considered and supported unanimously the attached Resolution. They requested that we forward this to you with our letter commenting on the proposed Rules.

We strongly recommend that the changes and revisions shown above be included in the Rules when they are published. We feel this would be in the best interest of the older people, and that the state agencies would be able to carry out their assigned function with a minimum of confusion and a maximum of effort.

Sincerely,

ROBERT B. ROBINSON,
Director, Colorado Commission on the Aging and Division of Services for the Aging.

COLORADO COMMISSION ON THE AGING

RESOLUTION

Whereas, the Colorado Commission on the Aging has for the duration of the Older Americans Act and its concerns, been in the forefront of the advocacy and implementation of its spirit and intent of the provision of the Older Americans Act, and,

Whereas, the Staff of the Division of Aging of the Colorado State Department of Social Services and the Commission, have made possible a variety of services for the aging in the entire state, and have successfully achieved the purposes of the Administration on Aging and created a sense of cooperation among the various segments of the aging population and those local agencies which administer to the needs of the aging which could be defeated by a change which might contribute to such a defeat.

Be it resolved that: Section 903 be modified or interpreted in such a way as to provide for a single effective state agency with an advisory relationship to the Commission, so that the Division of Aging of the Department of Social Services may continue to expand its service to the entire state in the manner it has been operating since its inception with such provisions as the revised regulations include, but modified or interpreted to make this possible.

Particularly it is the sense of the Commission that the limitations, restrictions and conditions embodied in Section 903.57 are too limiting to make possible the freedom of choice and determination of administration procedures necessary to implement a satisfactory program as called for by the legislation enacted by the Congress. Accordingly, it is recommended that such operating interpretations mutually satisfactory to the Administration on Aging and the State Department of Social Services be arrived at by negotiation between officials of the Administration on Aging and the State Department of Social Services.

Adopted September 16, 1973 at Loveland Colorado.

[From the Federal Register, Vol. 38, No. 170, Sept. 4, 1973]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 903]

GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Notice of Proposed Rulemaking

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Commissioner on Aging, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations implement a new title III of the Older Americans Act of 1965, as amended by P.L. 93-29, the Older Americans Comprehensive Services Amendments of 1973.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objectives thereto which are submitted in writing to the Commissioner on Aging, U.S. Department of Health, Education, and Welfare, Mary Switzer Building, 330 C Street SW., Washington, D.C. 20201, on or before October 4, 1973. Comments received will be available for public inspection in Room 3086, Mary Switzer Building, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Area Code 202-963-3581). The Commissioner on Aging will hold a public hearing on these proposed regulations in Washington, D.C. on September 17, 1973. Such hearings will be held between 9:30 a.m. and 5 p.m., in Room 5104, New Executive Office Building, 17th and Pennsylvania Avenue NW., Washington, D.C. Persons desiring to comment on these proposed regulations at such hearing should file a request with the Commissioner on Aging no later than September 12, 1973. Additional information may be obtained from the Office of the Commissioner, Administration on Aging, (Area Code 202-963-3581).

Upon the promulgation of these regulations, guidelines will be issued by the Commissioner on Aging. These guidelines will be designed to provide the additional guidance necessary to assure implementation of this program in conformity with the Act and the regulations.

Federal financial assistance extended under Part 903 is subject to the regulations in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

Dated August 27, 1973.

ARTHUR S. FLEMMING,
Commissioner on Aging.

Approved August 27, 1973.

STANLEY B. THOMAS, Jr.,
Assistant Secretary for Human Development.

Approved August 28, 1973.

FRANK C. CARLUCCI,
Acting Secretary.

(Catalog of Federal Domestic Assistance Program No. 13.700—Grants to States for Community Programs.)

Part 903 of Title 45 of the Code of Federal Regulations is revised to read as follows:

PART 903—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Subpart A—Purpose

AUTHORITY: Sec. 301, P.L. 93-29, 87 Stat. 36-45 (42 U.S.C. 3021-3025).

Subpart A—Purpose

§ 903-1 Purpose of the program.

(a) It is the purpose of the program under title III of the Act to encourage and assist State and area agencies to concentrate resources in order to develop greater capacity and to foster the development of comprehensive and coordinated service systems to serve older persons.

(b) The systems are to be developed by the agenies' entering into new cooperative arrangements with each other and with providers of social services for planning for the provision of, and providing, social services, and where necessary, to reorganize or reassign functions.

(c) The goals of the comprehensive and coordinated service systems are to:

(1) Secure and maintain maximum independence and dignity in a home environment for older persons capable of self-care with appropriate supportive services; and

(2) Remove individual and social barriers to economic and personal independence for older persons, including the provision of opportunities for employment and volunteer activities in the communities where older persons live.

(d) In order to achieve this purpose, the resources made available under title III shall be used to:

(1) Provide for the development and implementation by designated State and area agencies, in conjunction with other planners and service providers, and older consumers of service, of State and area plans which set forth specific program objectives and priorities for meeting the needs of the elderly with emphasis on the needs of low income and minority elderly;

(2) Increase the capability of State and area agencies to develop and implement action programs designed to achieve the coordination of existing social service systems in order to make such systems more effective, efficient, and responsive in meeting the needs of the elderly;

(3) Draw in increasing commitments from public and private agencies which have resources that can be utilized to serve the elderly, and encourage such agencies to enter into cooperative arrangements directed toward maximum utilization of existing resources on behalf of the elderly;

(4) Make existing social services more accessible to older persons in need through the development and support of services such as transportation, outreach, information and referral and escort which can increase the ability of older persons to obtain other social services; and

(5) Promote comprehensive services for the elderly through the development and support of social services which are needed by older persons but which are not otherwise available.

(e) Funds made available under this part shall be used primarily to provide maximum incentive for attracting support from public and private agencies having resources for programs for the elderly.

(f) Funds made available under this part may be used to provide social services only when it has been clearly shown that:

(1) Such services are needed and are not already available; and

(2) No other public or private agency can or will provide such social services.

(g) Agencies providing services to older persons under this part must seek reimbursement for the cost of providing the services when a third party (including a government agency) is authorized or is under legal obligation to pay such costs.

§ 903.2 Definitions.

In addition to the definitions set forth in § 901.2, of this chapter, the following definitions are applicable for purposes of this part:

(a) "Area agency" means the single agency designated by the State agency to be responsible for the program described in this part within a planning and service area designated by the State agency.

(b) "Area plan" means the document submitted annually by an area agency to the State agency for approval which sets forth goals and measurable objectives and identifies the planning, coordination, administration, social services, and evaluation activities to be undertaken to carry out the purposes of this title.

(c) The term "comprehensive and coordinated system" means a system for providing all necessary social services in a manner designed to:

(1) Facilitate accessibility to and utilization of all social services provided within the geographic area served by such system by any public or private agency or organization;

(2) Initiate, develop and make the most effective use of social services in meeting the needs of older persons; and

(3) Use available resources efficiently and with a minimum of unnecessary duplication.

(d) The term "low income" means those persons whose income is below the current Department of Commerce, Bureau of Census poverty threshold.

(e) The term "minority" means those persons who identify themselves as American Indian, Negro, Oriental, or Spanish language, and members of any additional limited English-speaking groups designated as minority within the State by the State agency.

(f) The term "multipurpose senior center" means a community facility for the organization and provision of a broad spectrum of services, which may include the provision of health, social, and education services (as defined in § 903.2(g)), and provision of facilities for recreational activities for older persons.

(g) For the purposes of this part, the term "social services" means only the following services:

(1) Coordination activities which link together, in support of common objectives, existing planning and service resources, and

assure the utilization of such resources for the purpose of developing and carrying out action programs and activities which will result in improvement, expansion, and, as necessary, initiation of services needed by older persons.

(2) Information sources or services which provide a location where State, area or other public or private agencies or organizations;

(i) maintain current information with respect to the opportunities and services available to older persons, and develop current lists of older persons in need of services and opportunities; and

(ii) employ a specially trained staff, including bilingual individuals as appropriate, to inform older persons of the opportunities and services which are available, and assist such persons to take advantage of such opportunities and services.

(3) Referral services which assist individuals to identify the type of assistance needed, place individuals in contact with appropriate services, and followup to determine whether services were received and met the need identified, and which provide for the maintenance of proper records for use in identifying services offered and gaps in existing services systems.

(4) Transportation services designed to transport older persons to and from community facilities and resources for the purpose of applying for and receiving services, reducing isolation, or otherwise promoting independent living, but not including a direct subsidy for an overall transit system or a general reduced fare program for a public transit system. Such transportation services shall be, insofar as possible, part of an area transportation plan;

(5) Services designed to encourage and assist older persons to use the facilities and services available to them, including:

(i) Outreach services, including search and find activities, which seek out and identify hard-to-reach individuals and assist them in gaining access to needed services; and

(ii) Escort services which assist individuals who, for a variety of factors, are unable to use conventional means of transportation to reach needed services, or require such assistance for reasons of personal security or protection.

(6) Counseling services which provide direct guidance and assistance in the utilization of needed health and social services, and help in coping with personal problems which threaten personal health and social functioning;

(7) Health related services which identify health needs of individuals, and assist such individuals to obtain health services under Medicare, Medicaid, or other health services programs, and from other public or private agencies or providers of health services; planning, as appropriate, with the individual in need of service, and health providers, to help obtain continuity of treatment and carrying out of health recommendations; assisting such individuals where appropriate to secure admission to medical institutions and other health related facilities; and home health services as defined in paragraph (g) (8) (iii) of this section;

(8) Preventive services to avoid institutionalization, which may include any of the following services;

(i) Periodic screening and evaluation which provide for an assessment of an individual's need for those medical and social services necessary to retain his capacity for self-care and to maintain independent living in his home as long as possible;

(ii) Homemaker services which provide care for elderly individuals in their own homes and help them maintain, strengthen and safeguard their personal functioning in their own homes through the services of a trained and supervised homemaker;

(iii) Home health services which provide basic health services to individuals who can be cared for at home, including part-time bedside nursing care under medical supervision, occupational, physical, and speech therapy, homemaker-home health aide services, the services of a home health aide, and home delivered meals services which meet the nutritional standards prescribed in part § 909 of this Chapter;

(iv) Chore services which provide for the performance of household tasks, essential shopping, simple household repairs, and other light work necessary to enable an individual to remain in his own home, when, because of frailty or other condition, such individual is unable to perform such tasks himself;

(v) Friendly visiting services which provide regular visits to the homes of socially and geographically isolated individuals to provide socialization;

(vi) Telephone reassurance services which provide for telephone calls at specified times as often as necessary, to or from individuals who live alone, or who are temporarily alone, to determine if they are safe and well, if they require special assistance, and to provide psychological reassurance;

(vii) Protective services which are designed to assist those elderly persons carry out the activities of daily living who, because of impaired mental or physical functioning are unable to manage their own affairs, or protect themselves from neglect or hazardous situations without assistance from others; and

(viii) Housing assistance to aid individuals in obtaining adequate housing through the provision of technical help (as contrasted to financial help) in order to improve their present living arrangements or to relocate to more suitable housing when needed.

(9) Recreational services which foster the health and social well-being of individuals through social interaction and the satisfying use of time;

(10) Continuing education services, including consumer education, which are designed to provide individuals with opportunities to acquire knowledge and skills suited to their interests and capabilities through either formal academic courses or informal methods, with a view toward either vocational or personal enrichment;

(11) Legal services which provide legal advice and counseling to older persons in matters of importance to the individual, including serving as an advocate of older persons who have consumer problems;

(12) Welfare services which seek to assure the health and well-being of individuals, which neither duplicate nor overlap any cash assistance and social service programs, and the health and social services provided under Medical Assistance.

(h) The term "unit of general purpose local government" means:

(i) A political subdivision of the State, or a grouping of such subdivisions, whose authority is broad and general and is not limited to only one function or a combination of related functions; or

(ii) An Indian tribal organization, including any Indian tribe, band, group, pueblo, community, or Alaskan native village, which has a recognized governing body which performs substantial governmental functions.

Subpart B—The State Plan

§ 903.12 Purpose and content of the State plan.

In order for a State to be eligible for grants for a fiscal year from the allotments of funds under title III of the Act, it shall submit a State plan, prior to the beginning of each fiscal year, to the Commissioner for approval. The State plan shall consist of:

(a) A detailed commitment that the title III program will be carried out in keeping with the provisions of the Act and all regulations, policies and procedures established by the Commissioner; and

(b) A fiscal year operating plan which shall include:

(1) An analysis of the needs and characteristics of the elderly population in the State with emphasis on low income and minority older persons, and an identification of those persons who will be given priority in the implementation of the State plan;

(2) A statement of the goals and measurable objectives, in priority order, established for the title III program which relates to the national goals and objectives established by the Commissioner for a fiscal year and announced to the States;

(3) An identification of the barriers to achievement of the objectives established;

(4) An inventory and analysis of the resources available in the State to meet the needs of older persons; and

(5) A plan of action which describes in detail how the title III program will be implemented and how the funds made available under this part will be allocated by the State agency.

§ 903.13 Designation of the State agency.

(a) The State Plan shall identify the sole State agency that has been designated to:

(1) Develop the State plan to be submitted to the Commissioner for approval;

(2) Administer the State plan within the State;

(3) Be primarily responsible for the coordination of all State activities related to the purposes of the Act;

(4) Divide the entire State into distinct areas (hereinafter referred to as "planning and service areas") in accordance with the requirements prescribed in § 903.57;

(5) Designate a public or nonprofit private agency or organization as the area agency on aging for each planning and service area for which an area plan will be developed;

(6) Approve the area plans developed by such area agencies;

(7) Monitor and assess the implementation of each area plan, including the progress toward the achievement of the objectives set forth in the plan; and

(8) Carry out all other functions and responsibilities as prescribed in this part for the State agency.

§ 903.14 Authority of the State agency.

The State plan shall contain certification by the State Attorney General that the State agency has the authority to submit the State plan; is the sole agency responsible for the conduct of all the functions prescribed for such agency in this part; and that nothing in the State plan is inconsistent with State law.

§ 903.15 Review of plan by Governor.

The State plan must be submitted to the State Governor for his review and approval, and the State plan must provide that the Governor will be given an opportunity to review and approve all amendments to the State plan.

§ 903.16 Plan submission and approval.

The State plan shall be submitted for approval within 60 days following the effective date of this part, and for each fiscal year thereafter, at least 60 days prior to the beginning thereof. Any State plan or amendment meeting the requirements of this part as determined by the Commissioner shall be approved.

§ 903.17 Plan amendments.

The State agency's administration of the program under this part shall be in conformity with the State plan as approved by the Commissioner. Whenever there is any material change in the content or administration of the State plan as approved, or when there has been a change in pertinent State law or in the organization, policies, or operations of the State agency affecting the

plan, the State plan shall be appropriately amended.

§ 903.18 Plan review.

The State plan as approved and all amendments thereto shall be subject to such review as the Commissioner may prescribe.

§ 903.19 Plan disapproval.

No State plan or any modification thereof, submitted under title III of the Act, shall be finally disapproved without first affording the State reasonable notice and opportunity for a hearing.

§ 903.20 Withholding of funds.

(a) Whenever the Commissioner, after giving reasonable notice and opportunity for hearing to the State agency administering a State plan approved under title III of the Act, finds that: (1) The State is not eligible under section 304 of the Act; (2) the State plan has been so changed that it no longer complies with the provisions of the Act; or (3) in the administration of the plan there is a failure to comply substantially with any such provision, the Commissioner shall notify such State agency that no further payments will be made to the State under title III of the Act (or in his discretion, that further payments to the State will be limited to projects under or portions of the State plan not affected by such failure) until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, no further payments shall be made to such State under title III of the Act (or payments shall be limited to projects under, or portions of, the State plan not affected by such failure).

(b) If there is no appeal, or if the action taken by the Commissioner is upheld as a result of an appeal in keeping with the procedures prescribed in § 903.21 of this subpart, the Commissioner shall take action to disburse the funds withheld in the following manner:

(1) The Commissioner shall, by whatever steps he deems appropriate, notify those appropriate public or nonprofit private organizations or agencies or political subdivisions of such State that they may submit a State plan under the authority of section 304(d)(3) of the Act for use of the allotments (or portions thereof) unused by the State as a result of action taken under paragraph (a) of this section.

(2) Any State plan so submitted must conform to all the requirements and procedures related to the submission of State plans prescribed in this part.

(3) The Commissioner shall give priority to any State level public agency submitting such a plan that has the authority and capacity to administer this program on a statewide basis. If no such State level public agency submits a plan, consideration shall then be given to those other agencies submitting such a plan that have the authority and capacity to administer this program on a Statewide basis.

§ 903.21 Appeal procedures.

A State which is dissatisfied with a final action of the Commissioner under § 903.19 or § 903.20 may appeal to the U.S. Court of Appeals for the circuit in which the State is located, by filing a petition with such court within 60 days after such final action. A copy of the petition shall be forthwith transmitted by the clerk of the Commissioner, or any officer designated by him for that purpose. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Commissioner may modify or set aside his order. The findings of the Commissioner as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Commissioner shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Commissioner's action.

Subpart C—State Agency Organization

§ 903.34 Organization of the State agency.

The State plan shall provide that there will be a single organizational unit within the State agency designated in accordance with § 903.13, with delegated authority for, and whose principal responsibilities shall be, Statewide planning, coordination, administration, and evaluation of programs and activities related to the purposes of the Act, including all other functions prescribed for such agency in this part. Such unit shall be identified in the State plan. If the State agency is an independent single purpose agency, in its entirety, may constitute the single unit. In all other cases, the single organizational unit must be placed at an organizational level within the State agency to assure effective performance of all the responsibilities of the unit prescribed in this part. In establishing an organizational structure for the unit, including determination of the need for a State regional structure for the unit, due consideration shall be given to the geography of the State, the number and concentration of older persons, and other special conditions in the State.

§ 903.35 Methods of administration.

(a) The State plan shall provide for the use of such methods of administration as are necessary for the proper and efficient administration of the plan, and for the conduct of all functions for which the State is responsible under the plan and this part, including the coordination and integration of activities related to the purposes of the Act, adequate controls over operations, procedures for the development and standards, recordkeeping and reporting procedures, monitoring programs supported under this part, evaluation of program activities, and effective supervision of staff.

(b) If certain specified portions of the plan are to be administered by an agency other than the State agency, the State plan shall provide for such methods of administration as are necessary to assure the applicability of all requirements set forth in the State plan and this part.

§ 903.36 Staffing of the single organizational unit.

(a) The State plan shall contain a staffing plan that sets forth the projected staffing of the single organizational unit for the fiscal year for which the plan is submitted. The staffing plan must set forth the number and type of personnel employed, and the timetable for the hiring of staff set forth in such plan.

(b) The State plan must provide that:

(1) The single organizational unit will be headed by an individual qualified by education and experience to assume leadership of the program, assigned full-time solely to this activity; and

(2) Adequate numbers of qualified staff, including members of minority groups, will be assigned full-time, solely to the single organizational unit, to assure the effective conduct of the responsibilities under this part.

(3) Subject to the requirements of merit employment systems of the State, preference shall be given to persons aged sixty or over for any staff positions (full-time or part-time) in the State agency for which such persons qualify.

(c) The staffing plan contained in the State plan approved for a fiscal year must be followed in all personnel actions taken by the State agency.

(d) The State agency may contract for technical assistance to assist its staff in the performance of their duties and responsibilities.

§ 903.37 Standards of personnel administration.

(a) The State plan shall provide that methods of personnel administration will be established and maintained in the State agency administering the State plan and in local public agencies conducting activities under this part in conformity with the Standards for a Merit System of Personnel Administration, Part 70 of this title, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 modifying or superseding such standards. Under this requirement, laws, rules, regulations, and policy statements, and amendments thereto effectuating such methods of personnel administration are a part of the State plan. Statements of acceptance of these standards must be obtained from all local public agencies conducting activities under this part, and methods must be established by the State to assure compliance by local jurisdictions. Citations of applicable State laws, rules, regulations, and policies which provide assurance of conformity to the standards in Part 70 of this title or to modifying or superseding standards issued by the U.S. Civil Service Commission must be submitted with the State plan. Copies of the materials cited and of similar local materials maintained by a State official responsible for compliance by local jurisdictions must be furnished to the Department on request.

(b) The State plan shall provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity as specified in § 70.4 of this title. The affirmative action plan will provide for specific action steps and timetables to assure equal employment opportunity. This plan shall be made available for review upon request.

(c) The Commissioner shall exercise no authority with respect to the selection, tenure of office or compensation of any individual employed in accordance with such methods.

Subpart D—Functions and Responsibilities of the State Agency Under the State Plan

§ 903.47 Statewide planning, coordination, administration, and evaluation.

In addition to the responsibilities of the State agency as prescribed in § 903.13, the State plan shall provide that the State agency shall:

(a) Carry out ongoing planning, coordination, administration, and evaluation activities necessary to implementation of the title III program; and

(b) Provide an ongoing program of technical assistance to the designated area agencies in the development and implementation of the area plans on aging.

§ 903.48 Planning.

(a) The State plan shall provide that the State agency shall carry out those activities necessary for effective planning on behalf of all older persons in the State, including:

(1) Establishment of specific goals and measurable objectives in aging related to the purposes of the Act, and the goals established by the Commissioner;

(2) Conduct of special studies related to the needs of the elderly;

(3) Conduct of issue analyses in areas of special concern to the elderly; and

(4) Data gathering and analysis on the needs of the elderly in keeping with paragraph (c) of this section;

(c) The State plan shall provide that the State agency shall undertake or arrange for the regular collection of data on the needs of the elderly throughout the State, in consultation with the National Clearinghouse on Aging. The data collected shall include such areas of need as:

(1) Income;
(2) Physical and mental health;
(3) Housing;
(4) Employment;
(5) Nutrition;
(6) Social services;
(7) Transportation; and
(8) Any other subject area deemed appropriate by the State agency.

The data collected must identify the location, special needs and living conditions of those older persons found to be in greatest need in the State for the purpose of determining the population of older persons that will be given priority in the utilization of the funds available under this part. In this effort, special attention shall be given to the needs of low income and minority older persons in the State. The State agency shall take such steps as are necessary to move toward the development of a system that will provide for the systematic storage, retrieval, and analysis, of such data, and other data made available from the Administration of Aging, and for the dissemination of such data to other public and private agencies and organizations having programs affecting the elderly in the State, and the public at large.

§ 903.49 Coordination and linkage of programs.

(a) The State plan shall provide that the State agency will establish such procedures and mechanisms that are necessary to assure the effective linkage and coordination of all State planning and service activities and programs related to the purposes of the Act. To this end, the State agency will seek to develop and maintain effective working relationships with those public and private agencies having programs which affect the elderly, including the following activities:

(1) Dissemination of information on the needs of the elderly;

(2) Joint funding and programming to achieve the objectives established in the State plan to the maximum extent feasible;

(3) Development of interagency actions concerning State and area plans and objectives, and assessment of progress and problems in implementation of the plans; and

(4) Reporting of activities on aging under this program throughout the State;

(b) The State plan shall provide for the furnishing of technical assistance to public and private agencies and organizations engaged in activities relating to the needs of older persons.

(c) The State plan shall provide that the State agency shall enter into agreements with appropriate State or, until such time as area plans are submitted and approved, local public or private agencies and organizations, for joint utilization of their services and facilities in the administration of the plan and in the development of programs and activities for carrying out the purposes of the Act.

(1) The State plan shall provide that the State agency will carry out those programs and activities designed to bring about maximum possible coordination between the resources available under titles I, X, XIV and XVI of the Social Security Act and title VI, added by the Social Security Amendments of 1972, and the operation of the programs under this part. The State plan shall describe the activities to be undertaken by the State agency to accomplish such coordination.

(2) The State plan shall provide that the State agency, in conjunction with the designated area agencies, shall take the initiative in endeavoring to work out arrangements whereby recipients of grants or contracts for nutrition projects under § 909 of this chapter, mutually agree with area agencies, that such nutrition projects shall be made part of the comprehensive and coordinated service system for older persons under title III.

§ 903.50 Administration.

(a) *Training and manpower development.*—(1) The State plan shall provide for the initiation of a program designed to achieve the objective of a training and staff development program concerning the implementation of the Act, for all professional staff of State and area agencies and principal staff of all service programs initiated under this part. All expenditures of Federal resources under section 301(a)(1) of the Act for training shall be consistent with such program.

(2) The State plan shall provide that personnel working on Older Americans Act programs at the State and area levels will attend such training programs that are specifically developed for such individuals by the Administration on Aging at designated training centers, and that in all title III awards, the State agency will assure that adequate funds are budgeted to pay the travel, per-diem and tuition costs of such individuals that atend such training.

(b) *Participation of Older Americans in implementation of the State plan.*—The State plan shall provide that procedures will be developed by the State agency that will assure effective participation of actual or potential consumers of services under this program in the implementation of the State plan at the State and local levels. These procedures shall provide for periodic public hearings on concerns of the elderly in the State with adequate public notice for such hearings.

(c) *Advisory committee.*—The State plan shall provide for the establishment of an advisory committee to the single organizational unit on the implementation of the State plan. At least one-half of the membership of such committee shall consist of actual consumers of services under this program, including low income, and minority older persons, at least in proportion to the number of minority older persons in the State, with the remainder being broadly representative of major public and private agencies and organization in the State who are experienced in or have demonstrated particular interest in the special needs of the elderly. This committee shall meet at least quarterly.

(d) *Public information.*—(1) The State plan shall provide for a continuing program of public information specifically designed to assure that information about the programs and activities carried out under this part are effectively and appropriately promulgated throughout the State.

(2) The State plan shall provide that the State agency will pursue a policy of freedom of information and that the State plan, approved title III program applications, all periodic reports made by the State agency to the Commissioner in accord with paragraph (g) of this section, and all Federal and State policies governing the administration of the title III program in the State will be available at reasonable times and places in the offices of the State agency for review upon request by interested persons including representatives of the media.

(e) *Review and comment on applications.*—The State plan shall provide that the State agency will review and comment on, at the request of any Federal department or agency, any application from any agency or organization within such State to such Federal department or agency for assistance relating to meeting the needs of older persons.

(f) *Fiscal administration.*—The State plan shall provide for such accounting systems and procedures as are needed to control and support all fiscal activities under title III in accordance with guidelines issued by the Administration on Aging. The State plan shall provide for the maintenance by the State agency and all recipients of awards under this part, of such accounts and supporting documents as will serve to permit an accurate and expeditious determination to be made at any time of the status of the Federal grants, including the disposition of all monies received and the nature and amount of all charges claimed to lie against the allotments to the States.

(g) *Reports.*—The State plan shall provide that the State agency will make such reports to the Commissioner in such form and containing such information as may reasonably be necessary to enable him to perform his functions under title III of the Act, and will keep such records and afford such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

§ 903.51 Evaluation.

(a) The State plan shall provide that the State agency will conduct ongoing monitoring, assessment, and periodic evaluation (including the capturing and recording of information relative to changes in public and private organizations in the field of aging and changes in the lives of older persons), of activities and projects carried out under the State plan, in accordance with criteria established by the Commissioner against national and State goals. The operations of the area agency on aging, and the total program of each planning and service area for which an area plan is developed, and each title III project outside such areas, shall be evaluated on-site by the State agency at least annually prior to the funding anniversary of such programs. The results of these evaluations shall be in writing, and shall be submitted to the Commissioner.

(b) The State plan shall provide that the State agency will evaluate on an ongoing basis the extent to which existing public and private programs in the State meet the needs of older persons, especially those older persons who will be given priority in the implementation of the programs under this part. As part of this responsibility, the State agency shall undertake an analysis of the services and resources available for serving older persons in the State. The data resulting from such analysis shall be updated at least on an annual basis and shall be submitted to the Commissioner.

(c) The State plan shall provide that the State agency and all recipients of awards under this part will cooperate in the carrying out of evaluations of the title III program by the Administration on Aging or those organizations having contracts with the Administration on Aging for such purposes.

§ 903.52 Establishment and maintenance of information and referral sources.

The State plan shall provide that the State agency will work toward establishing and maintaining information and referral sources in sufficient numbers, which will seek to achieve linkages with other information and referral sources in the State capable of serving the elderly, so as to assure that all older persons in the State who are not furnished adequate information and referral services under plans developed by area agencies will have reasonably convenient access to information normally available through such sources.

§ 903.53 Direct provision of social services by the State agency.

The State plan shall provide that no social service will be provided directly by the State agency, except where, in the judg-

ment of the State agency, based on an assessment of needs of older persons and the resources available to meet such needs, provision of such service by the State agency is necessary to assure an adequate supply of such service and that no other agency in the State could effectively deliver such service. All such cases in which the State agency anticipates providing social services directly shall be identified in the State plan. This provision does not apply when the State agency designates a single planning and service area under § 903.57(f).

§ 903.54 Demonstration projects of Statewide significance.

(a) The State agency is authorized to carry out demonstration projects of Statewide significance relating to the initiation, expansion, or improvement of social services in relation to the purposes of this part. The State plan shall identify the demonstration projects proposed for funding during a fiscal year, the objectives of the projects, the projected impact or significance of the projects, the cost projections related to the projects, and the method by which the projects will be evaluated. The approval of all such demonstration projects shall be in the form of approval of the State plan each year. Such demonstration projects, as approved, shall be financed with funds made available under § 903.110 of this part and shall be subject to the cost sharing requirements for such funds.

(b) The State agency shall evaluate such projects at least annually in accordance with the method specified in the State plan. The results of these evaluations shall be submitted to the Commissioner.

Subpart E—Designation of Planning and Service Areas by the State Agency

§ 903.57 Designation of planning and service areas.

(a) The State plan shall provide that in order to carry out the purposes of this program, the State agency shall divide the entire State, after taking into consideration the provisions of paragraphs (b) through (e) of this section, into distinct multicounty, county, Metropolitan or city areas called planning and service areas. Wherever possible, an Indian reservation shall be designated as a distinct planning and service area.

(b) The State plan shall provide that in determining the boundaries of planning and service areas in the State, the State agency shall consider those factors, including those set forth under paragraphs (c) through (e) of this section, that will most significantly contribute toward the achievement of the purposes of title III, including:

(1) The boundaries of existing areas within the State which were drawn for the planning or administration of planning or social service programs;

(2) The location of units of general purpose local government within the State;

(3) The geographical distribution of individuals aged sixty and older in the State;

(4) The incidence of need for social services as determined by the data on the needs of the elderly collected by the State agency (including the numbers of low income and minority older persons residing in such areas); and

(5) The distribution of resources available to provide social services.

(c) The State plan shall provide that in every case, in determining the boundaries for planning and service areas, the State agency shall designate as a planning and service area, any unit of general purpose local government which has a population aged sixty or over of fifty thousand or more, or which contains 15 percent or more of the State's population aged sixty or over, except that the State agency may designate as a planning and service area, any region within the State recognized for purposes of areawide planning which includes one or more such units of general purpose local government when the State determines that the designation of such a regional planning and service area is necessary for, and will enhance the effective administration of the program authorized by this title.

(d) The State plan shall provide that the State agency may include in any planning and service area designated pursuant to the provisions of paragraph (e) of this section such additional areas adjacent to the unit of general purpose local government or region so designated as the State determines to be necessary for, and will enhance, the effective administration of programs authorized by this title.

(e) The State plan shall provide that in addition to paragraphs (b) through (d) of this section, and in order to avoid creating sub-State boundaries solely for the purposes of title III, the State agency shall conform to the boundaries of those planning and development districts or regions established by the State in accordance with the provisions of Part IV, 2, of Office of Management and Budget Circular A–95 (issued pursuant to the Intergovernmental Cooperation Act of 1968), or under the Comprehensive Planning Assistance program authorized by section 701 of the Housing Act of 1954, as amended (40 U.S.C. 461), or under the Areawide Health Planning Project Grant program authorized under section 314(b) of the Public Health Service Act (42 U.S.C. 246(b)).

(f) (1) The State agency may, with the approval of the Commissioner, designate all or substantially all of the State as a single planning and service area covering all or substantially all of the older persons in the State. The Commissioner's approval will be in the form of approval of the State plan each year;

(2) In considering a State's proposal, the Commissioner will consider these factors;

(i) Is the State too small to be divided effectively?

(ii) Is the size and distribution of the elderly population such that division of the State would spread coordination and management resources too thinly to be effective?

(iii) Is the State agency capable of performing area agency functions for the entire State?

(iv) Has the State constituted the entire State as one area for other planning or social service administration purposes?

(3) With the approval of such designation, the single organizational unit of the sole State agency shall be considered the area agency for such area, and shall assume all the functions and responsibilities as prescribed for the area agency in this part. In all such cases, the area plan shall be submitted each fiscal year to the Commissioner for review and approval prior to the obligation of funds, by the State agency for the implementation for such plan.

(g) The boundaries of the planning and service areas determined by the State agency shall be identified in the State plan. The State plan shall include a certification that the proposed boundaries of the planning and service areas have been cleared through the clearinghouse process established in accordance with Office of Management and Budget Circular A–95. The State plan shall include a statement of the rationale for the manner in which the State has been divided.

§ 903.58 Determination of planning and service areas for which an area agency on aging will be designated and for which an area plan will be developed.

(a) The State plan shall provide that for the first year of implementation of the program under this part, the planning and service areas for which an area agency will be designated and for which an area plan will be developed shall encompass not less than 60 percent of the total population of persons aged 60 or over in the State. The Commissioner may approve a State plan providing for coverage of less than 60 percent if the State agency can show that:

(1) The allotment available to such State for the purposes of this title is insufficient to meet this objective;

(2) The application of such requirement will result in serious barriers to achievement of the goals and objectives of this part; and

(3) Such requirement would cause undue difficulties in implementing the title III program because of the size and distribution of the elderly population in the State.

(b) The State plan shall provide that in determining the planning and service areas for which area agencies will be designated and area plans will be developed, or which will continue to receive funds under this part, the State agency shall give priority to those areas having significant concentrations or proportions of low income and minority older persons 60 years of age or older.

(c) The State plan shall describe how the State agency determined the areas for which plans will be developed and/or the areas for which plans have already been developed and approved by the State agency.

Subpart F—Designation of Area Agencies by the State Agency

§ 903.63 Designation of area agencies on aging.

(a) The State plan shall provide that following the determination of planning and service areas for which area plans will be developed, and prior to the obligation of funds to such areas to carry out the purposes of this part, the State agency shall designate a single public or non-profit private agency or organization as the area agency on aging.

(b) The State plan shall provide that the State agency shall establish procedures for considering views, with respect to the designation of the area agency on aging, offered by units of general purpose local government in the planning and service area.

(c) The State plan shall provide that for an agency or organization to be designated as an area agency on aging, it must be:

(1) An established office of aging which is operating within a designated planning and service area; or

(2) Any office or agency of a unit of general purpose local government which is designated for this purpose by the chief elected official or officials of such unit; or

(3) Any office or agency designated by the chief elected official or officials of a combination of units of general purpose local government to act on behalf of such combination for this purpose; or

(4) Any public or nonprofit private agency in a planning and service area which is under the supervision or direction for this purpose of the designated State agency and which can engage in the planning, coordination or provision of a broad range of social service, within such planning and service area.

(d) The State agency or any regional unit thereof shall not be eligible to be designated as an area agency on aging, except as provided in § 903.57(f). In addition, no other agency of the State or regional unit thereof shall be eligible to be so designated.

(e) The State plan shall provide that in designating an area agency on aging, the State agency shall give preference to an established office on aging, unless the State agency finds that no such office within the planning and service area will have the capacity to develop and carry out the area plan and the functions prescribed in § 903.66.

(f) The State plan shall provide that when in accordance with § 903.57(a), the planning and service area boundaries are essentially coterminous with those of an Indian reservation, the tribal organization of that reservation shall be designated as the area agency, unless it is determined by the State agency that such Organization

does not have the capacity to carry out the area plan.

(g) The State plan shall provide that, before an agency may be designated as an area agency on aging, the State agency must obtain adequate assurances that the agency will have the authority and capacity to develop an area plan, and to carry out, directly or through contractual or other arrangements, a program pursuant to the plan within the planning and service area.

§ 903.64 Organization of the area agency.

If the area agency designated by the State agency in accordance with § 903.63 has responsibilities that go beyond programs for the elderly, there must be created within such agency a single organizational unit with delegated authority for, and whose principal function shall be, the effective implementation of the program described in this part. It shall be the responsibility of this unit to carry out directly all of the functions and responsibilities prescribed in this part for the area agency.

§ 903.65 Staffing of the area agency.

(a) The area plan developed by the area agency shall contain a staffing plan for the area agency which sets forth the number, type of personnel employed and the timetable for the hiring of staff to carry out the functions and responsibilities of the area agency on aging. Such plan must provide that the area agency, or unit within such agency responsible for this program will:

(1) Be headed by an individual qualified by education or experience, working full-time, solely on the implementation of the area plan on aging under this program; and

(2) Provide for adequate numbers of additional qualified staff working full or part-time, including members of minority groups, for the development and implementation of the plan and the conduct of functions prescribed in this part for such agency.

(b) Once the staffing plan of the area agency has been approved by the State agency, such plan must be adhered to in all personnel actions taken by the area agency.

(c) The State plan shall provide that, subject to the requirements of merit employment systems of local government, preference shall be given to persons aged sixty or over for any paid staff positions (full-time or part-time) in the area agency for which such persons qualify.

§ 903.66 Functions and responsibilities of the area agency.

(a) The State plan shall provide that each area agency on aging shall develop, and submit annually to the State agency for approval, an area plan on aging that conforms to the provisions of §§ 903.78 and 903.79, designed to develop comprehensive and coordinated programs for older persons throughout the planning and service area.

(b) In addition to the development and administration of an area plan on aging, an area agency shall directly carry out, to the maximum extent feasible, the following functions:

(1) Provision of leadership and advocacy on behalf of all older persons within the geographic area for which the agency is responsible;

(2) Determination of the need for social services in the planning and service area, with special emphasis on the needs of low income and minority elderly;

(3) An inventory of the resources available within the area to meet the needs of the elderly and in evaluation of the effectiveness of the services provided by the public and private agencies within the area in meeting such needs;

(4) Establishment of measureable program objectives and priorities for implementation of the area plan, in keeping with the goals and objectives established by the State agency;

(5) Planning with existing planning agencies and the providers of services in the area concerning the needs of the elderly;

(6) Either directly or through contract or grant, provide for an action program designed to:

(i) coordinate the delivery of existing services for the elderly; and

(ii) pool untapped resources of public and private agencies in order to strengthen or inaugurate new services for older persons;

(7) Periodic evaluation of the impact of activities carried out pursuant to the area plan, including the views of older persons participating in such activities;

(8) Conduct of periodic public hearings concerning the needs of the elderly;

(9) Collection and dissemination of information concerning the needs of the elderly;

(10) Provision of technical assistance to providers of social services in the planning and service area covered by the area plan;

(11) Where necessary and feasible enter into arrangements, consistent with the provisions of the area plan, under which funds under this title may be used to provide legal services to older persons in the planning and service area, carried out through Federally assisted programs or other public or nonprofit agencies;

(12) Where possible, enter into arrangements with organizations providing day care services for children so as to provide opportunities for older persons to aid or assist, on a voluntary or paid basis, in the delivery of such services to children;

(13) Establish an advisory council which shall meet at least once each month. The council shall consist of representatives of program participants and the general public, including low income and older minority persons at least in proportion to the number of minority older persons in the area, and shall advise the area agency on all matters relating to development and administration of the area plan and operations conducted thereunder. At least one-half of the membership of such council shall be made up of actual consumers of services under the area plan. Where a nutrition project established under § 909 of this chapter is located within the planning and service area for which an area plan is to be developed, the director of such project shall also be included on the advisory council. Where more than one nutrition project is located within such planning and service area, the directors of such projects shall designate one of their number to represent all the nutrition projects of the area on the Advisory Council; and

(14) Take into account, in connection with matters of general policy arising in the development and administration of the area plan, the views of recipients of services under the area plan.

§ 903.67 Direct provision of social services by the area agency.

(a) The State plan shall provide that no social service under this part will be provided directly by the area agency, except where the State agency has granted specific approval to the area agency to do so. With the exception of information and referral services and coordination activities, no such approval may be given by the State agency unless the agency designated was providing social services prior to its designation as an area agency, or it can be clearly shown that the direct delivery of a service is necessary to assure an adequate supply of such services, and that no other agency in the area can or will effectively deliver such service.

(b) The approval for the area agency to deliver a social service directly shall be in the form of approval of the area plan on aging by the State agency.

§ 903.68 Public information.

(1) The area agency shall provide for a continuing program of public information specifically designed to assure that information about the programs and activities carried out under the area plan are effectively and appropriately promulgated throughout the planning and service area;

(2) The area agency shall pursue a policy of freedom of information. The area plan, all periodic reports made by the area agency to the State agency, and all Federal and State policies governing the administration of the title III program in the area will be available at reasonable times and places in the offices of the area agency for review upon request by interested persons, including representatives of the media.

Subpart G—Area Plans on Aging

§ 903.78 Development of the area plan.

(a) In accordance with guidelines established by the Commissioner regarding the content and format of the area plan, the area agency designated in accordance with § 903.63 shall develop and submit, on an annual basis, an area plan on aging to the State agency for approval. This plan must set forth in detail how the area agency proposes to develop a comprehensive and coordinated system for the delivery of social services to the elderly.

(b) The State plan shall set forth the criteria established by the State agency for determining whether an area plan as submitted by an area agency meets all of the requirements of the Act and this part. Any area plan which fails to meet such criteria shall not be approved.

(c) The area plan shall contain an assurance that the area agency designated has the authority and capacity to carry out directly all of the functions and responsibilities prescribed in § 903.66.

(d) The area plan shall provide that the area agency, in conjunction with the State agency, shall take the initiative in endeavoring to develop arrangements with recipients of grants or contracts for nutrition projects under Part 909 of this chapter whereby, subject to mutual agreement of both parties, such projects shall be made part of the coordinated and comprehensive system of services for older persons to be established under the area plan.

(e) The area plan shall provide assurances for maximum coordination between the programs and activities under the area plan, and the resources available under titles I, X, XIV, and XVI of the Social Security Act and title VI added by the Social Security Amendments of 1972 in order to achieve comprehensive and coordinated service programs for older persons as prescribed in this part.

§ 903.79 Conditions for approval of an area plan by the State agency.

(a) In order to be approved for the award of funds under this part by the State agency, the area plan must provide for:

(1) A continuous process of planning by the area agency, including the defining and redefining of objectives and the establishment of priorities; and

(2) The launching or strengthening of action programs within the area for coordinating the delivery of existing services for older persons, and for the pooling of untapped resources in order to strengthen existing services or inaugurate new services for older persons. Such activities may be carried out directly by the area agency, by a grant from the area agency to a public or nonprofit private agency, or through a contract between the area agency and a public or private agency in the planning and service area, and are subject to the provisions of § 903.83(c).

(3) The activities under paragraph (a) (1) and (2) of this section shall be carried out throughout the designated planning and service area in accordance with criteria established by the Commissioner.

(b) After the area agency has met the requirements of paragraph (a) of this section, a State agency may award funds to

include as part of the area plan, support for those service programs found necessary to assist older persons to become aware of the social services available in the area (information and referral and outreach services) and to assist them in having access to these services (transportation and escort services).

(c) After the area agency has met the requirements of paragraph (a) of this section, and the services in paragraph (b) of this section have been made available to older persons in the planning and service area, a State agency may award funds to include as part of the area plan support for other social services needed by older persons, but which no public and private agencies of the area can or will provide. Only those services defined in § 903.2(g) (6) through (12) may be supported with funds made available under this part.

(d) In all cases, the area plan shall provide that priority be given to those activities and services which will assist and benefit low income and minority older persons throughout the planning and service area, and shall assure, to the extent feasible, and with respect to resources made available under the plan, low income and minority individuals will be served at least in proportion to their relative numbers in the planning and service area.

§ 903.80 Implementation of the area plan.

(a) Pursuant to its approval of the area plan, the State agency shall award all funds under this part to support implementation of the plan only to the designated area agency.

(b) With the exception of coordination and information and referral services which may be provided directly by the area agency subject to approval by the State agency and the conditions prescribed in § 903.67, the area agency shall enter into contracts on grants with other agencies providing services within the planning and service area for the actual delivery of those social services for which funds may be made available under the area plan. The area agency may contract with public or private nonprofit agencies or organizations, or profit-making organizations, for such purposes.

(c) The area plan shall provide for contracts or grants under the area plan to be operated by minority individuals, at least in proportion to their relative number in the planning and service area.

(d) It shall be the responsibility of the area agency to:

(1) Monitor on an ongoing basis the performance of the contracting agencies and grantees under the area plan, and ensure that funds made available by the State agency are expended in keeping with the purposes for which they were awarded; and

(2) Conduct periodic evaluations of the activities conducted under the area plan.

§ 903.81 Training of personnel engaged in implementation of the area plan.

The area agency shall make provision for the training of personnel necessary for implementation of the area plan, and the attendance of such individuals at designated training centers established by the Administration on Aging for individuals having specific responsibilities under the area plan.

§ 903.82 Establishment and maintenance of information and referral sources.

(a) The area plan shall provide that the area agency will take such steps as are designed to achieve the establishment or maintenance of information and referral sources in sufficient numbers to assure that all older persons within the planning and service area covered by the plan will have reasonable convenient access to such sources.

(b) Such information and referral sources shall be established or maintained in close coordination with the information and referral services which are available through the District Offices of the Social Security Administration of the Department. To the maximum extent possible, the services and resources available through such offices shall be utilized by the area agency for this purpose.

§ 903.83 Federal financial participation in activities under an area plan.

(a) Federal funds under this part may be used to pay up to 75 percent of the cost of the development and administration of the area plan on aging by the area agency and the conduct of the functions of such agency as prescribed in this part.

(b) Following the designation of an area agency, and prior to the submittal of an area plan, the State agency may make a one-time award of funds, subject to the provisions of paragraph (a) of this section, to the designated area agency for the development of the area plan to be submitted to the State agency for approval. Such an award may not be for a period in excess of six months.

(c) Funds under this part may not be awarded to carry out any of the activities prescribed in § 903.79 of this subpart until the area plan has been approved by the State agency. Once a plan has been approved, Federal funds may be used to pay up to 90 percent of the cost of the activities approved under the area plan.

§ 903.84 Duration of Federal support for activities under an area plan.

(a) The State agency shall approve an area plan for a maximum of one year. Funds provided under § 903.83(b) shall not be considered part of the first year of support. Prior to annual refunding of an area plan, the State agency must conduct an annual on-site evaluation of the area program. The State agency may approve refunding of the area plan, in whole or in part, when such evaluation demonstrates that:

(1) Substantial progress has been made in achieving the objectives of the area plan; and

(2) Substantial efforts have been made to attract financial resources from other public and private sources for the support and continuation of programs under the area plan.

(b) In keeping with paragraph (a) of this section, contracts made by area agencies with public or private nonprofit agencies or organizations or profitmaking organizations to conduct activities under the area plan, shall be limited to one year. Renewal of such contracts shall be limited to a maximum of one year at a time, and shall be subject to the final action taken by the State agency on refunding the area plan as a result of its program evaluation.

(c) Refunding of any social services under the area plan beyond three years must be approved by the Commissioner. Such approval by the Commissioner will be granted only when it can be shown that substantial efforts have been made by the area agency to attract resources for such social services from public and private agencies, and that the support requested will not be available from such sources in the forseeable future.

Subpart H—Activities and Services Not Under Area Plans on Aging

§ 903.94 Purposes for which awards may be made.

(a) The State plan shall provide that funds may be awarded by the State agency to projects not under area plans only when such projects will contribute directly toward achieving the purposes of title III set forth in § 903.1 of this part.

(b) Initiation of any social services under this subpart as defined in § 903.2(g) shall be permitted only when all older persons living in areas not covered by area plans have reasonably convenient access to information and referral services as defined in § 903.2(g)(2).

§ 903.95 Eligibility of applicants.

Only public or nonprofit private agencies are eligible for awards under this subpart.

§ 903.96 Approval of awards.

(a) The State plan shall provide that the State agency shall assure that each proposal to be considered for approval under § 903.94 must:

(1) Be submitted for comment to the local office on aging (if any) having jurisdiction over the geographic area from which the proposal is submitted;

(2) Be submitted for comment through the clearinghouse process established under the Office of Management and Budget Circular A–59.

(3) Have clearly specified objectives that are in keeping with the priorities established under § 903.94; and

(4) Be designed to serve primarily low income and minority older persons.

(b) That State plan shall provide that awards under this subpart will be approved initially for a maximum of 1 year. Before additional support is awarded for any subsequent year, the State agency must conduct an on-site evaluation of the project to determine if the objectives of the project are being met. The evaluation findings shall be submitted to the Commissioner.

(c) The State agency shall assure that only those projects which are making substantial progress toward achieving the objectives for which they were approved will be considered for refunding for any subsequent project year under this subpart.

§ 903.97 Federal financial participation.

(a) Federal funds under this subpart may be used to pay not more than 75 percent of the cost of activities and services under this subpart.

(b) Sponsors of existing projects must maintain the level of their non-Federal share in accordance with the requirements of § 903.138 of this part.

(c) Financial support may continue for activities under this subpart for as long as the State agency determines that such activities are effectively meeting the needs for which such award was made, and the purposes of title III, or until such activity is incorporated under an area plan.

Subpart I—Authorization and Allotments for Planning, Coordination, Administration, and Evaluation of State Plans

§ 903.107 Authorizations.

Amounts appropriated as authorized by section 303 of the Act may be used to make grants to States for paying such percentages as each State agency determines, but not more than 75 percentum, of the cost of the administration of its State plan, including the administration of the State plan amendment relating to title VII of the Act, incurred during the fiscal year for which such sums are appropriated, including the preparation of the State plan, the evaluation of activities carried out under such plan, the collection of data and the carrying out of the analysis related to the need for social services within the State, the dissemination of information so obtained, the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this Act, and the carrying out of demonstration projects of statewide significance relating to the initiation, expansion, or improvement of social services.

§ 903.108 Use of State planning funds for administering area plans.

Any sum allotted to a State under section 306 of the Act for covering part of the cost of the administration of its State plan which the State determines is not needed for such purpose may be used, as approved by the Commissioner, by such State to supplement the amount available under section 303(e)(1) to cover part of the cost of the adminis-

tration of area plans. Approval by the Commissioner for the use of such funds in this manner will be in the form of approval of the State plan each fiscal year.

§ 903.109 Use of area planning monies on a statewide basis.

Any State which has designated a single planning and service area pursuant to § 903.57(f), may elect to pay part of the costs of the administration of State and area plans either out of sums allotted under this part or out of sums made available for administration of area plans pursuant to § 903.123, but shall not pay such costs out of sums allotted under both such sections.

§ 903.110 Allotments to the State for planning, coordination, administration, and evaluation of State plans.

Federal funds appropriated under section 306 of the Act for any fiscal year shall be allotted among the States in the following manner:

(a) From the sums appropriated for any fiscal year under section 303 for carrying out the purposes of this subpart, each State shall be allotted an amount which bears the same ratio to such sum as the population aged sixty or over in all States, except that:

(1) No State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which the determination is made, or $160,000, whichever is greater, and

(2) Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each be allotted not less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made, or $50,000 whichever is greater. For the purpose of the exception contained in clause (1) of this paragraph, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) The number of persons aged sixty or over in any State and in all States shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

§ 903.111 Reallotment of funds for planning, coordination, administration, and evaluation of State plans.

The amount of any State's allotment under § 903.110 for any fiscal year which the Commissioner determines will not be required for that year shall be reallotted, from time to time and on such dates during such year as the Commissioner may fix, to other States in proportion to the original allotments to such States under § 903.110 of this subpart for that year, but such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Commissioner estimates such State needs and will be able to use for such year; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Such allotments shall be made on the basis of the State plan so approved, after taking into consideration the population aged sixty or over. Any amount reallotted to a State under this subsection during a year shall be deemed part of its allotment under § 903.110 for that year.

§ 903.112 Reduction in allotment amounts.

A State's allotment under section 303 for a fiscal year shall be reduced by the percentage (if any) by which its expenditures for such year from State sources under its State plan approved under section 305 are less than its expenditues from such sources for the preceding fiscal year.

Subpart J—Authorization and Allotments for Area Planning and Social Services Programs

§ 903.122 Authorizations.

Amounts appropriated as authorized may be used to make grants to each State with a State plan approved under section 305 of the Act (except as provided in section 307 of the Act) for paying part of the cost incurred during the fiscal year for which such sums are appropriated for the purposes of:

(a) The development and administration of area plans by area agencies on aging:

(b) The development of comprehensive and coordinated systems for the delivery of social services under area plans; and

(c) Activities not under area plans.

§ 903.123 Allotments for area agencies and social services.

(a) From the sums appropriated for a fiscal year each State shall be allotted an amount which bears the same ratio to such sum as the population aged sixty or over in such State bears to the population aged sixty or over in all States, except that:

(1) No State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which the determination is made;

(2) Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each be allotted no less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made; and

(3) No State shall be allotted an amount less than that State received for the fiscal year ending June 30, 1973. For the purpose of the exception contained in clause (1) above, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) The number of persons aged sixty or over in any State and in all States shall be determined by the Commissioner on the basis of the most recent and satisfactory data available to him.

§ 903.124 Limitations on awards.

(a) From a State's allotment for a fiscal year under section 303 of the Act, such amount as the State agency determines, but not more than 15 percent thereof, shall be available to pay part of the costs of the development and administration of area plans;

(b) For the fiscal year beginning July 1, 1974 and for each fiscal year thereafter, not more than 20 percent of a State's allotment under section 303 of the Act, may be used to pay part of the costs of activities and services in areas not under an approved area plan developed by an area agency and approved by the State agency.

§ 903.125 Reallotment of funds for area agencies and social services.

Whenever the Commissioner determines that any amount allotted to a State for a fiscal year under § 903.123 of this subpart will not be used by such State to carry out the purpose for which the allotment was made, he shall make such amount available for carrying out such purpose to one or more other States to the extent he determines such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for fiscal year pursuant to the preceding sentence shall, for purposes of this part, be regarded as part of such State's allotment (as determined under the preceding provisions of this section) for such year.

Subpart K—General

§ 903.135 Public funds as part of the non-Federal share.

For fiscal year 1975, and for each fiscal year thereafter, not less than 25 percent of the non-Federal share of the total expenditures under the State plan shall be met from funds from State or local public sources.

§ 903.136 Payments.

Payments of grants or contracts under this part may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine.

§ 903.137 Audits.

All fiscal transactions by the State agency, any other agency (if any) administering part of the plan, and any project grantee under title III of the Act, are subject to audit by the Department to determine whether expenditures have been made in accordance with the Act and this part.

§ 903.138 Maintenance of effort.

(a) A State's allotment under section 303 of the Act for a fiscal year shall be reduced by the percentage (if any) by which its expenditures for such year from State sources under its State plan approved under section 305 of the Act are less than its expenditures from such sources for the preceding fiscal year.

(b) The State plan shall provide reasonable assurance by the State agency that there will be expended by each recipient of an award under this part, for the purposes for which payments are made for activities under this part, for the year for which such payments are made and from funds from non-Federal resources, an amount not less than the amount expended for such purposes from such funds during the previous year.

§ 903.139 Confidentiality.

(a) The State plan shall provide that the State agency will take steps to insure that no information about, or obtained from, an individual, and in possession of an agency providing services to such individual under the plan, shall be disclosed in a form identifiable with the individual without the individual's informed consent.

(b) The State plan shall provide that lists of older persons compiled pursuant to § 903.2 (g)(2) shall be used solely for the purpose of providing social services, and only with the informed consent of each individual on such list.

§ 903.140 Opportunity for hearing.

(a) The State plan shall provide that any area agency on aging whose request for approval of an area plan is denied, will be afforded an opportunity for a hearing before the State agency.

(b) The State plan shall provide that any project applicant in areas not covered by an area plan, whose application for approval is denied, will be afforded an opportunity for hearing before the State agency.

§ 903.141 State licensure requirements.

The State plan shall provide that where the State or local public jurisdictions require licensure for the provision of social services, agencies providing such services under this part shall be licensed, or shall meet the requirements for licensure.

§ 903.142 Fees for social services

(a) The State plan shall provide that agencies providing social services under this part shall provide older persons receiving such services the opportunity to pay all or part of the costs of the social services provided. Where such services are provided under an area plan, the area agency shall consult with the advisory council to the area agency regarding the proposed fees to be charged.

(b) The State plan shall provide that each individual recipient shall determine for himself what he is able to contribute toward the cost of the social service. No older person shall be denied a social service because of his failure to pay all or part of the cost of such service.

(c) The State plan shall provide that the methods of receiving payments from individuals shall be handled in such a manner so as not to differentiate among individuals' payments publicly.

§ 903.143 Continuation of support for existing activities.

(a) The State agency is authorized, with the prior approval of the Commissioner, to

continue Federal support for community project activities which meet the requirements of the Act, but which do not meet all of the requirements of this part, if such projects had been approved and funded prior to the effective date of these regulations.

(b) Such Federal financial assistance shall be available for not more than one year following the effective date of these regulations.

(c) A State agency request to continue such assistance shall be in writing, and shall set forth the reasons for which the State agency makes such a request, including:

(1) A showing that failure to continue support for the project would result in serious harm to the persons served, or to the effort for aging in the area of the project; and

(2) A showing that the State agency and community project have exhausted all efforts to obtain continuing financial assistance from other sources.

§ 903.144 Requests for postponement.

(a) In cases where a State agency has determined that it is unable to meet the requirements prescribed under this part, because such requirements in implementation of the title III program will place undue hardship on older persons, it may request the Commissioner to approve, for a specified period of time, not to exceed 120 days, a postponement of such requirements. This provision does not apply to the requirements of this part mandated by statute.

(b) The State agency shall submit a request for a postponement in writing to the Commissioner. The request shall state why the State agency is unable to meet the requirement, and therefore has need for a postponement; the effect of not granting a postponement on the implementation of the title III program; and what steps the State agency will take (and the time required), to meet the requirements for which postponement is requested.

(c) The Commissioner shall approve the postponement if he finds that it is needed to prevent undue hardships on older persons and that there is reasonable expectation that the State agency will be able to meet the requirements within the postponement period.

[FR 73-18646 Filed 8-31-73; 8:45 am]

ADMINISTRATION'S HOUSING PROGRAM

Mr. HASKELL. Mr. President, on September 19, 1973, President Nixon presented the administration's housing program to the American public. He has since that time sent to Congress legislation which implements that housing message.

In the September 19 message, there was a small section entitled "Improving Rural Housing." It is an extremely short piece and I would like to read it to you in its entirety.

The problems of providing good housing in our rural areas are especially challenging, not only because the proportion of substandard housing is greater in rural areas but also because these areas often lack the resources to foster greater economic development—and better housing. Of course, many of our housing programs and proposals are designed to assist all families, urban and rural alike. But there is also a special need to address in a special way the rural housing challenge.

Our recent housing study concludes that the basic housing problem in many rural areas is that our major financial institutions are not represented in these areas and that credit is therefore inadequate. The Farmers Home Administration has done a great deal to help change this picture—but further efforts are needed. At my direction, the Department of Agriculture and the Department of Housing and Urban Development will seek additional ways of correcting this situation and increasing credit availability in rural areas.

In my Community Development Message last March 8th, I emphasized that "in pursuing a policy of balanced development for our community life, we must always keep the needs of rural America clearly in sight." I mentioned then my continuing support for a revenue sharing approach for rural development, acknowledging that the Rural Development Act fell short of what I preferred in this regard. I went on to indicate my intention, after fully evaluating the effectiveness of this act, to seek whatever additional legislation may be needed. I repeat that pledge today.

Now while the administration talks about the good work of the Farmers Home Administration and the need to develop additional efforts—and I agree with them—what has the administration been doing? They have ordered staff reductions which will average 10.3 percent nationally. This seems ironic when FmHA loan activity is at a peak level and some 44.4 percent of the section 502 homeownership loans using interest credit. Since 1960, FmHA has increased its housing activity by 804 percent while the staff has increased by only some 67 percent. The proposed staff cuts can only serve to slow up a fine rural housing program and expose it to the evils that beset urban programs from inadequate staffing.

The Congress legislated the Rural Development Act of 1972. The implementation of this act will be the responsibility of the Farmers Home Administration. This then presents an already understaffed agency with a new set of programs to administer. How can a staff cut at this time even be considered?

As part of this "economy" effort the administration is proposing to substitute fee inspectors and fee appraisers for the work normally done by Farmers Home Administration staff. I would remind you that many of the scandals in the various HUD programs were directly attributable to the use of such contracted help. The 15th report of the House Committee on Governmental Operations entitled "Defaults on FHA-Insured Programs—Detroit, Mich.," tells the story very clearly. A major factor in preventing such scandals in FmHA programs has been the fact that there has been a FmHA employee with ongoing responsibility available to perform the needed services.

Further, on August 8, 1973, Gen. Frank B. Elliott, Farmers Home Administration Administrator, issued a Bulletin No. 4707 (002) to all FmHA State Directors. This was titled "Objectives and Constraints". I am enclosing this document as part of the record. In the statement of "Objectives", General Elliott lists eight priorities which are:

First, increasing supplies of agricultural commodities to meet growing domestic and export demands;

Second, assuring adequate farm income and strengthening the family farm;

Third, increasing agricultural exports;

Fourth, improving agricultural productivity;

Fifth, eliminating poverty-caused hunger and malnutrition;

Sixth, accelerating the development of rural communities;

Seventh, assuring adequate supplies of timber within environmental constraints; and

Eighth, achieving equal opportunity.

Now I am sure that most would agree that the eight listed objectives are generally desirable, though this administration has had some strange ideas about preserving the family farm. The disturbing part of this list of objectives is that housing is not included.

This is strange indeed when you consider that housing represented 58 percent of the total dollar obligations of FmHA in fiscal year 1972. Housing has grown steadily in importance in FmHA activity so that it is today the largest part of the FmHA program. The attached statistics will give you a perspective on the growth of housing as a percentage of the FmHA total program effort.

Fiscal year	Total obligations	Housing obligations	Percentage
1969	$1,431,925,647	$512,089,854	35
1970	1,639,748,570	793,834,671	48
1971	2,414,315,915	1,399,097,122	57
1972	2,783,805,921	1,618,776,715	58
1973	3,754,945,003	1,863,309,283	49

The drop in fiscal 1973 can be attributed to the administration's housing moratorium.

The statistics I have presented not only establish the growing importance of housing as part of the FmHA budget, they show that we, the Congress, have recognized the housing problems in rural areas by authorizing and appropriating increasing amounts of money. This year has been no exception. The agriculture appropriation bill contains significant increases for FmHA housing programs.

While the administration has talked about rural housing problems, the Congress has acted. What is apparently now occurring is that the intent of Congress is being negated by bureaucratic restructuring of priorities.

If rural America is to survive, it will be necessary for housing to be high on any list of priorities. I am concerned that the Farmers Home Administration is being subjected to inordinately high staff cuts. I am concerned that housing is being downgraded by this administration. I ask that you join me in demanding that housing be restored to its rightful position of importance.

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

Mr. NELSON. Mr. President, the Joint Committee on Internal Revenue Taxation has prepared an excellent summary of the landmark pension legislation passed by the Senate on September 19. This summary is particularly helpful because it compares proposed changes with present law regarding pensions. As could be imagined, there is great demand for this summary and I have been informed by the staff of the Senate Finance Committee that the demand is quickly exceeding the supply. To meet

the demand for this summary, therefore, I ask unaimous consent that an excerpt from the committee print be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF H.R. 4200

I. REVENUE EFFECT

There are several different kinds of revenue effects which can be expected to arise from H.R. 4200, the Retirement Income Security for Employees Act, as passed by the Senate. These are summarized in table 1. First, three provisions designed to equalize the tax treatment of pensions have an impact on tax deductions. These are the provisions raising the maximum deductible amount that the self-employed can set aside annually for their retirement, making provision for a retirement savings deduction for those not now covered under any retirement provisions, and a provision which limits the maximum retirement benefit and the maximum deductible contribution on behalf of corporate employees.

Tax revenues are also affected by the modification of the tax treatment of lump-sum distributions.

A third category of revenue effect as a result of the imposition of two new taxes. One of these is the audit fee tax, designed to pay for the cost of the administration of pension plans by the Internal Revenue Service, and the second is the premium tax to provide necessary revenue for plan termination insurance. However, since both of these taxes are deductible for income tax purposes, the revenue gain which would otherwise occur is decreased to some extent.

Finally, a fourth category of revenue effect from the bill arises not because of any change in tax deductions as such, but rather because increased amounts are expected to be set aside for vesting and funding. The bill imposes additional requirements in the areas of vesting and funding which must be met if the present favorable treatment for pensions is to continue to be available. It is expected that these new requirements will result in employers making larger contributions to retirement plans, resulting in larger income tax deductions.

TABLE 1.—*Estimated annual revenue effect of the Retirement Income Security for Employees Act as passed by the Senate—at 1973 levels of income and employment*

[Millions]

I. Provisions designed to equalize tax treatment under pension plans:	
Increase in maximum annual deductible contribution by the self-employed under H.R. 10 plans to the greater of $750 (but not in excess of earned income) or 15 percent of earned income (up to $7,500)[1]	—$175
Allowing individuals not covered by pension plans to deduct annually up to the greater of $1,000 (but not in excess of earned income) or 15 percent of earned income (up to $1,500) for contributions to personal retirement plans, except that where employers also contribute the overall ceiling is $1,000 (longrun effect)[1]	—355
Limiting to $100,000 the maximum annual compensation for purposes of calculating the deductible contribution on behalf of corporate employees and limiting to 75 percent of the first $100,000 of compensation the maximum annual retirement benefit[2]	+40
Total, provisions designed to equalize tax treatment under pension plans	—$490
II. Revised tax treatment of lump-sum distributions from qualified plans (long-run effect)[3]	+35
III. Revenue effect of new taxes:	
Audit fee tax of $1 a year for each employee covered by plan[4] to finance IRS administration of provisions relating to pension plans and exempt organizations)	+30
Tax to finance plan termination insurance ($1 per plan participant)[5]	+30
Gross revenue collections	+60
Revenue loss due to tax deductions taken by employers:	
For audit fee tax[4]	—14.4
For tax to finance plan termination insurance[5]	—14.4
Total offset of new taxes against income tax collections	—28.8
Net revenue effect of new taxes	+31.2
IV. Revenue effect of minimum vesting provision:[6]	
Case 1: Assuming that the additional employer contributions to pension plans resulting from the minimum vesting requirement constitute a substitute for cash wages	—130
Case 2: Assuming that the additional employer contributions to pension plans resulting from the minimum vesting requirement constitute an addition to cash wages	—265
Case 3: Assuming that benefit levels of pension plans are adjusted downward to absorb the additional employer contributions to pension plans resulting from the minimum vesting requirement	0

Provisions designed to equalize tax treatment of retirement plans.—It is estimated that the provision increasing the maximum annual deductible pension contribution by self-employed persons on their own behalf to the greater of $750 (but not in excess of earned income) or 15 percent of earned income (up to $7,500) will result in an annual revenue loss of $175 million. The provision allowing individuals not covered by pension plans to deduct annually up to the greater of $1,000 (but not in excess of earned income) or 15 percent of earned income (up to $1,500) for contributions to personal retirement plans is expected to involve a revenue loss amounting to $225 million for 1974 and rising to $355 million for 1977 (at 1973 income levels). On the other hand, limiting to $100,000 the maximum annual compensation for purposes of calculating the deductible contribution on behalf of corporate employees and limiting to 75 percent of the first $100,000 of compensation the maximum annual retirement benefit is expected to increase revenue by $40 million a year at 1973 income levels. Altogether, when fully effective, these three provisions involve an estimated annual net revenue loss of $490 million.

Tax treatment of lump-sum distributions.—The revised tax treatment of lump-sum distributions from qualified plans (which provides for taxing that part of lump-sum distributions which is attributable to 1974 and later years as ordinary income under a separate tax rate schedule) is expected to result in relatively small increases in revenue over the next few years since the bulk of the lump-sum distributions in such years will be attributable to pre-1974 years. However, after a transition period, this provision can be expected to result in annual revenue gains amounting to $35 million a year based on 1973 levels of income.

New taxes and their effect on income tax deductions.—An audit fee tax of $1 a year for each employee covered by a qualified pension, profit-sharing, bond purchase, or stock bonus plan is expected to produce an estimated $30 million of revenue annually. The proceeds of this tax are allocated by the legislation for financing the Internal Revenue Service administration of provisions relating to pension plans and exempt organizations.

The second new tax is imposed on employers with qualified plans, except money purchase, stock bonus, and profit-sharing plans, and is to be used to finance plan termination insurance ($1 per plan participant, except that where employers elect to have no liability for losses a higher rate will be set by the trustees of the Guaranty Corporation). This tax, which is effective for plan years and taxable years beginning after 1973, is expected to raise an estimated $30 million annually.

However, there is an offset to the revenue gain expected from the two new taxes. Employers can take income tax deductions for the new taxes which, of course, will have the effect of reducing the net cost of these taxes to them. It is estimated that an annual revenue loss of $14.4 million will be incurred for 1974, and later years, as a result of deductions taken for payments of the audit fee tax; similarly it is estimated that revenue will be reduced $14.4 million for 1974, and for later years, as a result of deductions taken for the taxes required to be paid to finance plan termination insurance.

These deductions against income tax reduce the revenue from the new taxes from $60 million to about $31 million.

Revenue effect of minimum vesting and funding provisions.—The new minimum vesting standard, which generally becomes effective for plan years beginning after 1975, will also involve an indirect loss of revenue, ranging from zero to an estimated $265 million a year (at 1973 income levels).

The minimum vesting requirement involves little or no revenue loss to the extent that the benefit levels of plans are adjusted to absorb the increased employer costs resulting from the requirement. This is because, in that event, the requirement would have no effect on the deductions taken for contributions to plans or on the taxable income of covered employees. If the additional amounts required to be contributed to pension plans as a result of the vesting standard are a substitute for cash wages, rather than a net addition to cash wages, the annual revenue loss is estimated at $130 million. This could occur, for example, if the additional employer payments into the pension plan are taken into consideration in setting future wage increases. In this event, the revenue loss results from the fact that the covered employees are permitted to postpone payment of tax on the employer contributions involved, instead of being required to pay tax currently, as would be the case had they received an equivalent amount of wages. Some part of this postponed $130 million of taxes presumably will be recovered in the future in tax payments on the benefits paid out by the plan.

The upper range of the estimate, $265 million, represents the revenue loss if it is assumed that the additional employer payments into the pension plans required by the new vesting standard constitute an addition to the cash wages that will be paid in any event. In this case employers will have larger total wage bills (for the sum of cash wages and wage supplements) and hence will take larger tax deductions, giving rise to a $265 million revenue loss.

Footnotes at end of article.

It appears that realistically there is likely to be a combination of the three effects suggested above. However, it appears probable that the annual revenue loss will be in the vicinity of $130 million, the mid-point of the range.

No revenue estimate is given for the increased funding requirements under the bill. Data are not available which would make a reliable estimate of this type possible. However, it is believed that the minimum funding requirements will have a relatively modest revenue effect.

II. PARTICIPATION AND COVERAGE

(Secs. 201 and 261 of the Senate bill and secs. 401 and 410 of the Code)

1. Plan participation—Age and service requirements

Present Law

The Internal Revenue Code does not generally require a qualified employer pension, profit sharing, stock bonus, annuity, or bond purchase plan to adopt any specific age or service conditions for participation in the plan.[7]

Existing administrative practice allows plans to exclude employees who (1) have not yet attained a designated age or (2) have not yet been employed for a designated number of years, so long as the effect is not discriminatory in favor of employees who are officers, shareholders, supervisors, or highly compensated employees. Also, under administrative practice, a plan may exclude employees who are within a certain number of years of normal retirement age (for example, 5 years or less) when they would otherwise become eligible, if the effect is not discriminatory.

On the other hand, in the case of a plan benefiting owner-employees,[8] the plan must provide that no employee with 3 or more years of service may be excluded (sec. 401 (d)(3)).

The Senate bill (H.R. 4200)

The Senate bill provides that a plan which is qualified under the Code is not to require, as a condition of participation, more than one year of service, or an age greater than 30 (whichever occurs later).[9] It was felt that this rule will significantly increase coverage under private pension plans, without imposing an undue cost on employers. In addition, the bill contains a "look back" rule, which provides that once an employee becomes eligible to participate in a pension plan, his years of service with the employer (on and after the effective date of the plan) before becoming a participant, up to a maximum of 5 years, are to be credited toward his required years for minimum vesting (sec. 221(a) of the bill). Additional preparticipation service, beyond 5 years, is to be credited to the employee for any years for which (although the employee technically may not have been a participant) the employee contributed to the plan or the employer contributed on the employee's behalf. The bill does not provide any authority to exclude from the plan those employees hired within any specified number of years of normal retirement age.

For purposes of these rules, an employee is considered to have performed a year of service if he was employed for more than 5 months during the year, for at least 80 hours each month.[10] The "year" of service may be a calendar plan, or fiscal year, whichever is applied on a consistent basis under the plan.

Service with a predecessor of the employer is to be counted for purposes of the eligibility requirements to the extent provided in Treasury regulations. In the case of a multiemployer plan, service with any employer who was a member of the plan when the service was performed is to be counted toward an individual's participation requirement (see sec. 705 of the bill).

The provisions of present law with respect to coverage under an owner-employee (H.R. 10) plan are not changed by the Senate bill. Present law already requires relatively early participation (after 3 years of service) and 100-percent immediate vesting in the case of owner-employee plans. It was concluded that the retention of these provisions of present law was needed to protect employees in such cases.

Generally, these provisions apply to plan years beginning after the date of enactment. However, to allow time for amendment, in the case of a plan already in existence on the date of enactment, the provisions apply to plan years beginning after December 31, 1975 (or, if later, plan years beginning after the expiration of a preexisting collective bargaining agreement or after December 31, 1980, whichever is earlier).

2. Plans where a collective bargaining unit is involved; other antidiscrimination provisions

Present law

Under present law (sec. 401(a)(3)), a qualified retirement plan must cover either (1) a specified percentage of all employees (generally 70 percent of all employees, or 80 percent of those eligible to benefit under the plan if at least 70 percent of all employees are eligible) [11] or (2) such employees as qualify under a classification which is found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated employees. (A plan is not *per se* discriminatory for purposes of these rules merely because it is limited to salaried or clerical employees.)

Also, under present law, either the contributions or the benefits provided under a qualified plan must not discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated employees.

The Senate bill (H.R. 4200)

The Senate bill provides that collective bargaining employees may be excluded for purposes of applying the coverage test of the tax laws where there is evidence that retirement benefits have been the subject of good faith bargaining between the union employees and the employer in the negotiations relating to the most recent contract. Thus, if pension plan coverage had been discussed with the representtives of the union employees and no pension coverage was provided, either because the union employees were covered under a union plan (which might or might not offer comparable benefits to those provided under the employer plan), or because the employee representatives opted for higher salaries, or other benefits, in lieu of pension plan coverage, or for some other valid reason, then it would be permissible to exclude those union employees from the plan, or provide them with a lesser or different level of benefits without prejudice to future coverage if the subject is raised and agreed to in subsequent negotiations.

In addition, with respect to the coverage and antidiscrimination requirements, the bills provide for the exclusion of those employees who are nonresident aliens with no United States income from the employment in question. Also, for purposes of these requirements, the bills provide that employees of all corporations who are members of a "controlled group of corporations" (within the meaning of sec. 1563(a)) are to be treated as members of the same corporation (to prevent avoidance of the coverage and antidiscrimination requirements through the establishment of a management company or otherwise through the use of 2 or more corporations).

III. VESTING

(Secs. 221 and 261 of the Senate bill and secs. 401, 411, 413, 4973, and 6690 of the Code)

Present law

Plans which qualify under the Internal Revenue Code are now required to provide vested (i.e., nonforfeitable) rights to participating employees when they attain the normal or stated retirement age. Employees must also be granted vested rights if the plan terminates or the employer discontinues his contributions.

However, qualified employer plans are generally not required to provide vested rights to participating employees before normal retirement age unless this is considered to be necessary—in view of the likely pattern of employee turnover—to prevent discrimination against the rank and file employees in favor of officers, shareholders, supervisors, and highly paid employees. In other words, preretirement vesting is required only where its absence might cause discrimination in favor of officers, etc., who could be expected to remain with the firm long enough to retire and qualify for benefits, while the rank and file employees would continually be separated from the firm and lose their benefits.

Under an owner-employee plan,[12] the rights of all employees must vest in full as soon as they become participants (sec. 401 (d)(2)(A)).

The Senate Bill (H.R. 4200)

The Senate bill provides that a qualified retirement plan (whether trusteed or insured) would be required to give each participant vested rights to at least 25 percent of his accrued benefit from employer contributions after 5 years of service, plus 5 percentage points a year for each of the next 5 years of service and 10 percentage points a year for each year of service thereafter. This means that there must be 100 percent vesting after 15 years of service. (Also, under the bill, each participant would have to be fully and immediately vested in his accrued benefit derived from his own contributions.) Also, under a "look back" provision, once an employee becomes eligible to participate in a pension plan, his years of service with an employer before becoming a participant, up to a maximum of 5 years, are to be credited toward his required years for minimum vesting (if the pension plan was in existence during those years). Thus, an employee who began his service at age 25, and became a participant at age 30, would be 100 percent vested in his accrued benefits at age 40, after 15 years of service.

Generally, the vesting requirements of the bill apply to all accrued benefits, including those which accrued before the effective date of the provision, in order to afford protection to older employees who will already have the bulk of their working years (and benefits accrued during their lifetimes) behind them on the date when the act becomes effective. Years of service prior to the effective date are also to be counted for purposes of determining the extent to which the employee is entitled to vesting.

To allow some flexibility in the general vesting rule, the Senate bill provides that any plan which, on the date of enactment, provides for 100 percent vesting of employer contributions by the end of the tenth year of the employee's service with the employer under the plan may continue to use this vesting schedule. Also, a class year plan may meet the vesting requirements under the bill if the plan provides for 100 percent vesting of the employer contributions within 5 years after the end of the plan year for which the contributions were made.

The term "year of service" for purposes of these rules is to be defined under regulations

Footnotes at end of article.

prescribed by the Department of Treasury (after consultation with the Department of Labor) for years ending prior to January 1, 1982. After that time "year of service" is to be defined as any year where the employee has more than 5 months of service with at least 80 hours of work each month.

Under the Senate bill, no rights to accrued benefits, once vested, can be assigned or alienated under a qualified plan, and such rights cannot be forfeited (except that benefits attributable to employer contributions may be forfeited in the event of death, or if the employee withdraws his own mandatory contributions to the plan).

To help enforce the vesting requirements, the bill also provides for the imposition of an excise tax on the employer in cases where the employer is not complying with the vesting requirements in practice, even though the plan contains a vesting schedule which is consistent with the requirements of the bill. Initially, the tax would equal 5 percent of the accumulated vesting deficiency and could go to 100 percent of this amount if the offense were not corrected. Also, the Secretary of the Treasury is authorized to bring actions for equitable relief to restrain plans from failing to comply with the vesting requirements in practice (sec. 262 of the bill).

In addition, the bill contains a provision which would authorize highly mobile employees, such as engineers, to trade off high benefits which might be available under one pension plan of their employer for the right to participate in another plan with lower benefits but very rapid vesting. Also, under the bill, the Secretary of Labor is authorized to develop recommendations for modifications of Federal procurement regulations to insure the highly mobile professional, scientific, technical and other personnel in occupations employed under Federal contracts will be protected against forfeitures of their retirement benefits.

Generally, these provisions are to apply to plan years beginning after the date of enactment. In the case of a plan already in existence, to allow time for amendment of the plan, the provisions will apply in plan years beginning after December 31, 1975. However, if the Secretary of Labor should find that implementation of the vesting requirements will impose "substantial economic hardship" on the plan, he will certify this fact to the Secretary of Treasury and the effective date may be postponed for a period of up to 6 years as recommended by the Secretary of Labor. The provisions will apply to Government plans in plan years beginning after December 31, 1980.

IV. FUNDING

(Sec. 241 of the Senate bill and secs. 4971 and 4972 of the Code)

Present law

Under present tax law, contributions to a qualified pension plan must be sufficient to pay the liabilities created currently (i.e., the normal pension costs) plus the interest due on unfunded accrued pension liabilities (past service costs) (regs. § 1.401–6(c)(2)(ii)).[13] This is to keep the amount of unfunded pension liabilities from growing larger, but does not require any contributions to be made to amortize the principal amount of the unfunded liabilities.

Pension plan costs[14] generally are estimates and are based on actuarial calculations. Consequently, all actuarial methods, factors, and assumptions used must, taken together, be reasonable and appropriate in the individual employer's situation (Regs. § 1.404(a)–3(b)). When applying for a determination letter from the Internal Revenue Service that a plan is qualified, the actuarial methods, factors, and assumptions used generally must be reported to the Service, along with other information to permit verification of the reasonableness of the actuarial methods used. Changes in actuarial assumptions and methods must be reported annually to the Service.

The value of plan assets also affects the amount of contributions. Under administrative rulings, assets may be valued by using any valuation basis if it is consistently followed and results in costs that are reasonable.

Actual experience may turn out to be different from anticipated experience, resulting in experience loss or experience gain. Depending on the circumstances, the contributions needed to make up experience losses may be deducted currently or may be added to past service costs and deducted only on an amortized basis.[15] Similarly, depending on the circumstances, experience gains may reduce the plan cost currently or reduce costs under one of the spreading methods used to determine the amounts deductible.[16]

If an employer does not make the minimum required contributions to a qualified plan, under administrative practice the deficiency may be added to unfunded past service costs. However, the plan also may be considered terminated, and immediate vesting of the employees' rights to the extent funded, may be required.

The Senate bill (H.R. 4200)

H.R. 4200 would establish new minimum funding requirements for qualified pension, profit-sharing, and stock bonus plans designed to give assurance that these plans will accumulate sufficient assets within a reasonable time to pay benefits to covered employees when they retire. These rules are to apply to any pension, profit-sharing, or stock bonus plan which, after December 31, 1975, has qualified (or has been determined to qualify by the Internal Revenue Service) under sec. 404(a)(2) or sec. 401(a) of the Code. These minimum funding requirements are to continue to apply to such plans and trusts even though they later lose their qualification.

Generally, under these requirements the minimum amount that an employer must annually pay under a defined benefit pension plan includes the normal cost of the plan (as under current law) for currently accruing liabilities, plus amortization of past service costs, experience losses, etc. The minimum amortization payments required by the bill are calculated on a level payment basis—including interest and principal—over various stated periods of time and take into account the accrued liabilities whether or not vested. Generally, initial past service costs (and past service costs established by substantial plan amendments), both vested and unvested, must be amortized over no more than 30 years, and experience losses generally must be amortized over no more than 15 years. (Decreases in cost from substantial plan amendments also generally are to be amortized over 30 years, and experience gains are to be amortized over 15 years.) In calculating experience gains and losses, values of fund assets may be determined on a current basis or, if used consistently, on the basis of a moving average over not more than 5 years.

If an employer would otherwise incur substantial business hardship for a plan year, the Internal Revenue Service may waive that year's required payment of normal costs, and amounts needed to amortize past service costs and experience losses; the amount waived must be amortized over no more than 10 years, and no more than 5 waivers may be granted for any 10 consecutive years.

For money purchase pension, profit-sharing, and stock bonus plans, the minimum amount that an employer must annually contribute to the plan is the amount that must be contributed for the year under the plan formula (or other system used by the plan to determine the contribution level). For purposes of this rule, a collectively bargained plan which provides an agreed level of benefits and a specified level of contributions during the contract period is not to be considered a money purchase (or other type of defined contribution) plan. This type of plan is subject to the funding provisions of the bill, and contributions must be made which are adequate to fund the agreed benefit on the basis required under the bill.[17]

The Senate bill provides essentially the same rules for multiemployer plans as for other plans, except that 40 years is given to amortize past service costs and the initial unfunded liability, and any such 40-year period may be extended by the Secretary of Labor for up to an additional 10 years in cases where he determines that otherwise there would be substantial hardship for 10 percent or more of the contributing employers involved.

Because of the importance of actuarial determinations, the Senate bill requires the enrollment of actuaries before they may practice as such before the Internal Revenue Service, and requires periodic reports by actuaries.

The funding rules established by the bill are in addition to the present rules which provide the maximum deduction limits for contributions to a plan. However, in any event a contribution that is required by the minimum funding rules is deductible currently.

The bill would impose an excise tax on the employer if he fails to fund the plan at the minimum required level (but only if a waiver has not been obtained). The tax initially is to be 5 percent of the accumulated funding deficiency at the end of the plan year. The 5 percent tax is to be imposed for each plan year in which the funding deficiency has not been corrected. Additionally, in any case in which the 5 percent tax is imposed and the accumulated funding deficiency is not corrected within the correction period allowed after notice by the Internal Revenue Service, a 100 percent tax is imposed on the accumulated funding deficiency. In accord with present law respecting the excise taxes with regard to private foundations, neither the 5 percent nor the 100 percent taxes are to be deductible.

The funding provisions are to apply to plan years beginning after the date of enactment, for plans established after that date. These provisions are to go into effect for plan years beginning after December 31, 1975, for plans in existence on the date of enactment, however in cases of substantial economic hardship (as determined and certified by the Secretary of Labor) this may be extended to years beginning after 1981.

V. OTHER PROVISIONS ASSOCIATED WITH VESTING AND FUNDING

(Secs. 261, 262, 281, and 282 of the Senate bill and secs. 401 and 404 of the Code)

1. Right to elect a survivor annuity

Under present law, there is no requirement that a qualified retirement plan must offer the option of a survivor annuity. This can result in a hardship where an individual primarily dependent on his pension as a source of retirement income is unable to make adequate provision for his spouse's retirement years, should he predecease her.

To deal with this situation, the Senate bill requires that a joint and survivor annuity must be offered with respect to any benefit under a qualified retirement plan which is payable as an annuity. The benefit is to be paid as a joint and survivor annuity (with the survivor annuity being not less than half the annuity payable to the participant), unless the participant elects not to receive it in this form, within 2 years of normal retirement age, after receiving a written explanation concerning the terms of the annuity. The survivor annuity must be at

Footnotes at end of article.

least half of the amount payable to the participant during the joint lives of the participant and his spouse.

This provision generally applies to plan years beginning after the date of enactment. However, in the case of a plan in existence on the date of enactment, the provision applies to plan years beginning after December 31, 1975.

2. Prohibition against maintaining nonqualified plans

Present law

Generally, as an employer maintains a funded plan which does not meet the requirements for qualification under the Internal Revenue Code, no deduction is allowed for contributions to the plan by the employer until the rights of the employees on whose behalf the contributions are made are no longer subject to a substantial risk of forfeiture or are actually paid. At that time, a deduction generally is allowed the employer, but the employee then must take the contribution into his income. Also the earnings on these contributions are not tax exempt.

Unfunded plans are the most common type of nonqualified plans and are typically found in a small business where the employer simply continues a part of the employee's salary after retirement. Unfunded plans are normally referred to as "pay as you go" plans, because they are not funded and the employer pays benefits out to his retired employees on a "pay as you go" basis. They receive no special tax benefits. Payments generally are deductible when made.

In comparison with the nonqualified plan, under the qualified plan the employer may deduct contributions to the plan when they are made, the earnings on the contributions are tax exempt, and the employees generally do not have to take the contributions into income until benefits are actually distributed to them. Thus, while there are substantial tax advantages to maintaining a qualified pension plan under present law, the maintenance of a nonqualified plan is not prohibited.

The Senate bill (H.R. 4200)

The Senate bill contains a provision which would prohibit any employer (in interstate commerce) from establishing a retirement plan (other than a profit-sharing plan) which does not meet the qualification requirements of the Internal Revenue Code. The Secretary of Treasury is to enforce this prohibition by obtaining an injunction against the continued maintenance of such nonqualified plans. In addition, no deduction will be allowed for a contribution by an employer under any such plan, even if the employee is required to take the amount of the contribution into income. Certain exceptions are provided in the case of plans maintained by governmental units, churches, fraternal societies, plans maintained to comply with workman's compensation laws, plans maintained outside the United States for noncitizens, and deferred compensation arrangements. In general, the bill distinguishes between pay as you go pension plans, which would be prohibited, and deferred compensation arrangements for officers and 5-percent shareholders, which would not. Generally, a plan could be maintained as a deferred compensation arrangement if it (1) was not in writing, (2) provided a benefit which is required to be paid in full within 5 years after it accrues, (3) is solely for officers or employees who are 5 percent stockholders in the corporation, or (4) does not provide a determinable retirement benefit.

Generally, these provisions would be effective for taxable years beginning after December 31, 1975.

3. Protection of pension rights under government plans

Plans of the Federal Government, and State and local governments, are not subject to the funding requirements of the bill because the Senate believed that taxing power of a governmental unit should generally be adequate to insure that funds will be available to pay the pensions which have been promised by governmental units. However, in some cases, questions have been raised, in view of the size of the future pension payment commitments, as to whether this may represent too heavy a future tax burden. In view of this, the Secretary of the Treasury is authorized and directed to make a study of the funding of government plans, which takes account of the minimum funding standards under the bill, and the taxing power of the governmental unit, and make recommendations as to whether it would be advisable to require such plans to comply with the funding requirements applicable to private pension plans, or some other funding standard, as recommended by the Secretary. The Secretary is to file his report with the Ways and Means Committee on the Senate Finance Committee by December 31, 1976.

4. Protection of the pension rights of highly mobile employees through use of the Federal procurement regulations

Many employees, such as engineers, who are employed in industries engaged to a substantial extent in the performance of Federal contracts, have an unusually high rate of mobility which is imposed to a considerable extent as a result of terminations or modifications of Federal contracts, grants, or procurement policies. As a result of this unusual mobility, these employees are particularly susceptible to the loss of their pension rights due to changes in their employment status before they can become vested.

To meet this situation, the Senate bill authorizes the Secretary of Labor to develop, in consultation with professional societies, business organizations, and other Federal agencies, recommendations for modifications of Federal procurement regulations to ensure, to the maximum possible extent, that professional, scientific, technical and other personnel employed under Federal contracts shall be protected against loss of their pensions resulting from job transfers or loss of employment. Such recommendations are to be published in the Federal Register within six months after enactment and are to be adopted by each Federal department and agency unless the head of such department or agency has substantial grounds for determining that the recommendations should not be applied in the case of his department.

VI. PORTABILITY

(Secs. through 310 of H.R. 4200 and secs. 402 and 403 of the Code)

Present law

Under present administrative practice, when an employee changes jobs an amount representing his vested benefits in his former employer's qualified retirement plan may, in certain circumstances, be transferred to the retirement plan of his new employer without the employee being taxed on the transfer. For this to be done, both his former and new employers must agree to the transfer, the transfer must be possible under the terms of both the plans and trusts involved, and the Internal Revenue Service's administrative requirements as to the method of transfer must be met. However, transfers of employee interests between qualified plans upon changes in employment do not appear to be usual.

The Senate bill (H.R. 4200)

The Senate bill includes several provisions that deal with portability. First, the bill establishes a voluntary central portability fund for the use of employees who leave an employer with vested retirement plan benefits. Second, the bill allows an employee to receive a complete distribution from his former employer's qualified plan and recontribute this amount within 60 days of receipt to the qualified plan of a new employer, or to the central portability fund or an individual retirement account, without being taxed on the distribution. Third, the bill provides that the Social Security Administration is to keep records of plans which an employee leaves with vested retirement benefits so that, upon retirement, he will know whom to consult to obtain his retirement benefits. These features of the bill are discussed below.

The bill establishes a voluntary central portability fund to enable an employee who changes jobs to consolidate all of his vested retirement benefits under one program (sec. 301 et seq. of the bill). Employers with tax-qualified plans may register (and withdraw registration) with the central fund on a voluntary basis. When an employee leaves an employer who is registered with the central fund, he may direct the employer's qualified plan to pay the value of his entire vested benefits to the central fund. The central fund is to establish an account for each employee on whose behalf it receives funds. The central fund will invest its assets and its income will be allocated to the participants' accounts. Funds may be invested in U.S. government obligations or interest-bearing accounts (or certificates of deposit) of banks, savings and loan associations, and credit unions which are members of a Federal insurance system (*e.g.*, Federal Deposit Insurance Corporation).

This income will not be taxed until it is distributed to the participants or their beneficiaries, and transfers between the central fund and qualified plans will be tax-free.

On a participant's retirement (no earlier than age 59½ and no later than age 70½) the central fund will pay him the value of his account or, at his request, will distribute an annuity contract to him. If a participant is disabled, payment may be made at that time, or if he dies prior to retirement or disability payment will be made to his beneficiaries. Alternatively, if a participant is hired by an employer who is a member of the central fund, the participant may direct (with this employer's concurrence) the central fund to transfer the value of his account to the new employer's qualified plan, to purchase actuarially equivalent retirement benefits in this plan. This transfer would be tax-free.

The central fund is to be operated by the Pension Benefit Guaranty Corporation (the Corporation is also in charge of the insurance program, as indicated below). Its administrative expenses in carrying on the portability program are to be provided for by appropriations. The Corporation is to establish the rules which govern the fund's operation, including its relations with individual participants and employers.

The bill also provides that an employee may receive, tax-free, a complete distribution of his interest from a qualified retirement plan if he reinvests (within 60 days after receipt) the full amount of the assets received in another qualified plan, in an individual retirement account (described subsequently), or in the central portability fund (sec. 309 of the bill). However, amounts equal to the employee's own voluntary nondeductible contributions to the plan need not be reinvested. This tax-free roll-over is available only with respect to complete distributions from a plan that occur within 12 months after termination of employment.

Employees who frequently change employment may have difficult problems in locating their former employers and the re-

tirement plans in which they have vested benefits. To deal with this problem, the bill provides that each retirement plan must file an annual statement regarding individuals who have terminated employment and have a right to a deferred vested benefit in the plan (sec. 151 et seq. of the bill) and must also provide each such individual with a certificate of his rights. The Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits and is to provide this information to plan participants and beneficiaries on request and also upon their application for Social Security benefits, whether or not by request.

The provisions regarding the central portability fund and the tax-free roll-over are effective upon enactment of the bill. The Social Security registration provisions are to be effective for plan years ending after 1973.

VII. PLAN TERMINATION INSURANCE

(Secs. 401 through 491 of the Senate bill and secs. 162, 401, and 4981 of the Code)

The purpose of plan termination insurance is to provide a guarantee that participants will receive their full vested benefits (at least up to some specified income level) upon the termination of a plan. With the strengthening of funding requirements, the losses of vested benefits from the termination of a plan should significantly decrease. Nevertheless, since even the new funding requirements do not provide for the immediated funding of all unfunded vested liabilities and since the market value of plan assets can vary widely from year to year, the new funding rules give no guarantee that the termination of a plan may not result in the loss of a participant's benefits. These terminations may occur because of a closing or sale of a business, a merger, or because an employer decides to stop funding a plan in order to cut costs.

Present law

Present law does not require pension, profit-sharing, etc., plans to insure their liabilities.

The Senate bill (H.R. 4200)

A governmental corporation called the Pension Benefit Guaranty Corporation is established within the Department of Labor to provide plan termination insurance through administration of the Pension Benefit Guaranty Fund (Sec. 401 *et seq.* of the bill). The Corporation is to be directed by a board of directors consisting of the Secretaries of Labor, of the Treasury, and of Commerce, with the Secretary of Labor as chairman of the board.

The insurance program would be basically funded through premiums (imposed as taxes to lessen collection costs) imposed upon employers at an initial flat rate of $1 per plan participant. For plan years ending after 1976, however, the premium rate would be set by the Corporation according to the cost experience of the program. Because of the lesser possibility of termination in cases of multiemployer plans, a separate premium rate schedule could then be used for participants in multiemployer plans. These subsequent premium rates must be approved by Congress.

In addition to the amounts paid through the premium taxes, up to $100 million may be borrowed by the Corporation from the Secretary of the Treasury to avoid unexpected financial difficulties.

In order to be "qualified" for tax benefits in the sense of the Internal Revenue Code, defined benefit plans must provide plan termination insurance coverage for their participants through payment of the (excise tax) premiums. Defined contribution plans, such as money purchase, stock bonus, and profit-sharing plans would be excluded from the program because their benefits are defined in terms of amounts of employer contributions, and not in terms of promised, insurable, defined benefits to be paid to participants. Plans for governmental employees also are excluded because the power to tax is considered an adequate substitute for the insurance. In addition, plans of tax-exempt churches (or organizations or conventions of such churches) are exempted. However, these churches may elect to have their plans covered, and a church plan is not exempt from the coverage if it is only for employees of an unrelated trade or business, or if the plan is a multiemployer plan and one of the employers in the plan is not a church. Finally, plans for employees of tax-exempt fraternal societies are excluded if no contributions to the plan are made by the employer.

Coverage of a plan participant is limited to the lesser of 50 percent of the participant's average monthly gross income during his highest-paid five consecutive year period as a plan participant or $750 monthly (adjusted for changes in the Social Security contributions and benefits base). This coverage limitation includes any distributions from the terminating plan. All vested benefits that were created (whether resulting from the creation of a new pension plan or from the amendment of an existing plan) at least three years prior to the plan termination are to be insured. (This period is five years for plans in which employers elect to avoid liability for insurance losses by paying higher premiums, as discussed infra.) Whether the benefits were accrued or became vested before, or after, the enactment of the bill would be irrelevant. Coverage includes both retirement benefits and ancillary benefits (such as death or disability benefits) vested under one or several plans, but the amount that may be paid to any participant from the Fund, regardless of the number of plans in which the employee participated, cannot exceed the $750 per month limitation (adjusted to reflect changes in the Social Security contributions and benefits base).

Benefits of self-employed persons are also covered by the Fund, but their insurance payments are to be reduced by their proportionate share of any funding deficiency at the time the plan terminates.

In order to discourage the unrealistic creation of employee benefits, and the shifting of liabilities to the Corporation by employers who have the means to fund those liabilities, employers are liable to the extent of 30 percent of their net worth for the Corporation's payments upon terminations of their plans, but employers may elect to avoid this liability by paying an additional premium in an amount to be determined, from time to time, by the Corporation. By paying this additional amount for five years, employers would escape liability for subsequent terminations of their plans, if they do not remain in the same general line of business or become parties to reorganizations during the three years following the terminations.

If an employer ceases to exist by reason only of a change in identity, form, or place of organization, or in instances of liquidations or reorganizations, the successor corporation would remain liable for the Guaranty Corporation's loss.

In order to prevent possible abuses of the insurance system, the bill provides a mandatory system of allocation of plan assets applicable in cases of insured terminations. This is accomplished by setting aside first all voluntary contributions by employees, then allocating to participants all mandatory contributions (contributions required by the plan or required to obtain employer contribution benefits), then allocating to participants the amounts necessary to continue benefits that had been paid already for at least three years prior to the termination of the plan, but at the level that existed three years prior to the termination. Finally, any remaining plan assets would be allocated to participants to the extent of their other guaranteed benefits.

To avoid abuse of the insurance program by paying benefits in anticipation of a plan termination, certain large lump-sum distributions made within three years prior to termination and periodic payments that began within that time could be partially recaptured by the Corporation, except that no recapture could be made for benefits paid on account of disability or after the death of the participant and this rule in individual hardship cases.

Special provisions are made, in the case of multiemployer plans, for employers who withdraw from operation of the plans, where these employers have been contributing 10 percent or more of the plan's contributions. These employers could be required to pay into escrow their share of any potential employer liability, or to post a bond, upon their withdrawal from the plan. If the plan terminated within five years the payment or the bond (to the extent needed) would be turned over to the insurance Corporation, otherwise it would be returned to the employer. Other employers who have withdrawn can also be required, if feasible, to contribute their share of any loss if the termination occurs within five years of their withdrawal.

Alternatively, the Corporation could allocate the funds of a multiemployer plan into two or more funds and treat as a terminated plan those funds allocated to workers no longer covered by the plan, whenever it determines that employer withdrawals have endangered the rights of the employee-participants. The Corporation could waive both of these possibilities if it is satisfied that the members of the multiemployer group have entered into reciprocal indemnification agreements that insure that liabilities will be paid in the event of plan failure.

VIII. REPORTING AND DISCLOSURE

(Secs. 501 through 507 of the Senate bill)

Present law; reporting to government agencies

Every employer who maintains a funded retirement plan must file returns annually with the Internal Revenue Service, regardless of whether the plan is qualified or whether a deduction is claimed for the current year (regs. § 1.404(a)-2(a)). The employer's return generally must include information on the type of plan, plan coverage, participation requirements, vesting, benefits, funding, and actuarial methods and assumptions. Employer returns also must include a statement of all plan assets and liabilities and a statement of receipts and disbursements, including benefits paid.

A return disclosing whether the trust engaged in transactions which may have been "prohibited," (and a statement describing the transactions) must be filed annually with the Internal Revenue Service by the trustee of a qualified retirement trust. (Prohibited transactions include self-dealings between the trust and interested parties, and are described in the section on Fiduciary Standards.)

The Welfare and Pension Plans Disclosure Act (29 U.S.C. § 301 *et. seq.*) also provides for reporting of welfare and retirement plan transactions. Under this Act, most private employers (except certain tax-exempt organizations) engaged in interstate commerce or in an industry or activity affecting commerce who have welfare or retirement plans covering more than 25 participants must file a description of the plan with the Secretary of Labor when the plan is established or amended (29 U.S.C. §§ 303, 305). This report describes the plan coverage, plan administrators, plan benefits, and includes basic plan documents.

Further, if a covered plan includes at least

100 participants, an annual report must be filed with the Labor Department providing information on plan participants, funding, benefits, actuarial assumptions and methods, assets and liabilities, receipts and disbursements, and transactions between the plan and interest parties. The financial data required by the Labor Department in its annual report is more detailed than that required by the Internal Revenue Service; therefore, the annual report filed with the Labor Department is accepted by the Service as satisfying its financial reporting requirement.

Present law: Disclosure to employees

Under Treasury regulations, employees must be informed of the establishment of a qualified retirement plan and its basic provisions (regs. § 1.401–1(a)(2)). This may be done by furnishing each employee with a copy of the plan, but where this is not feasible substitute methods may be used. Satisfactory substitutes must describe the essential features of the plan, and may be in the form of a booklet given to the employees or a notice posted on the company's bulletin board. Substitutes must state that the complete plan may be inspected at a designated place and times on the company's premises.

Under the Welfare and Pension Plans Disclosure Act, the plan description and annual reports filed with the Labor Department must be available for examination by participants and beneficiaries in the principal office of the plan. Additionally, upon written request, a copy of the plan description and summaries of the annual reports must be mailed to participants and beneficiaries (29 U.S.C. § 307).

The Senate bill (H.R. 4200)

The Welfare and Pension Plans Disclosure Act is amended by the bill to require that additional information be provided in the plan descriptions and annual reports filed with the Labor Department (secs. 502 and 503 of the bill). Furthermore, annual reports generally would be required for private funded employee benefit plans of any size maintained by an employer or employee organization affecting interstate commerce and coverage would be extended to most tax-exempt organizations (secs. 502 and 503 of the bill). Annual reports also would include the opinion of an independent auditor based on an annual audit (sec. 502 of the bill).

However, under the bill the Department of Labor could provide exemptions from these reporting requirements. It is anticipated that this authority to grant exemptions would be used on a relatively broad basis in the case of small plans. For example, it is anticipated that they might well be exempted from the filing requirements but nevertheless be required to have the same type of information generally available to their employees and also available in the case of an audit by Labor Department personnel. In addition, even where exemption is not granted, the Department of Labor is authorized to prescribe simplified reporting requirements for small plans.

Annual reports would include additional information of all investments, and include separate detailed schedules for transactions involving securities, other investment assets, and certain loans and leases (sec. 502 of the bill). Additionally, detailed reporting would be required for all transactions involving interested parties. Detailed actuarial information also would be required, in order to allow evaluation of the funding of the plan.

In addition to current requirements on disclosure to employees, plan administrators would have to furnish (or make available) to each new participant a summary of the plan's important provisions, including an explanation of plan benefits and the circumstances which would disqualify a person from receiving benefits (sec. 503 of the bill). Every three years a revised summary of the plan's provisions would be furnished (or made available) to participants. (Plan descriptions would be required to be written in a manner calculated to be understood by the average participant.) Participants also would be entitled to obtain copies of all the underlying plan documents. When a participant terminates service with a vested pension right, he would be given a certificate setting forth the benefits to which he is entitled (sec. 151 of the bill). Any participant or beneficiary may also request and receive a statement of benefit rights and benefit credits accrued.

In addition, the Internal Revenue Code would be amended to provide that applications for qualification of employee benefit plans (except for plans covering less than 26 persons) and annual returns filed with regard to these plans would be available to the public (sec. 706(k) of the bill).

The disclosure and reporting provisions are to be effective January 1, 1974.

IX. FIDUCIARY STANDARDS

(Secs. 511 through 522 of the Senate bill and sec. 4974 of the Code)

Present law

A retirement plan trust may be qualified under the Internal Revenue Code only if it is impossible under the government instrument for trust funds to be used for any purpose other than the exclusive benefit of the employees or their beneficiaries (sec. 401(a)(2)). In addition, a retirement plan trust will not be exempt from taxation if it engages in any of the specifically defined "prohibited transactions" (sec. 503).

Under administrative rulings, an investment generally meets the "exclusive benefit" requirement if it meets the following standards: the cost of the investment does not exceed fair market value, a fair return commensurate with the prevailing rate is provided, sufficient liquidity is maintained to permit distributions, and the safeguards and diversity that a prudent investor would adhere to are present. (IRS Publication 778 (February 1972).)

"Prohibited transactions" include the lending of funds to certain interested persons without receipt of adequate security and a reasonable rate of interest. Other prohibited transactions with disqualified persons include payment of excessive salaries, providing the trust's services on a preferential basis, susbtantial purchases or sales of property for other than adequate consideration, and engaging in any other transaction which results in a substantial diversion of trust assets.[18] If the trust engages in any prohibited transaction, it will lose its tax-exempt status for at least one year.

The Senate bill (H.R. 4200)

Both the Welfare and Pension Plans Disclosure Act and the Internal Revenue Code are to be amended to provide new standards of conduct for fiduciaries of employee benefit plans (secs. 511 and 522 of the bill). The Secretary of Labor is to have primary responsibility for administering the general fiduciary standards (such as the "prudent man" rule described below) and for administering the investment standards governing these plans.

The Secretary of Labor and the Internal Revenue Service both would administer the fiduciary standards that prohibit certain specific transactions ("prohibited transaction"). The Secretary of Labor would have primary responsibility to administer the prohibited transaction provisions with regard to fiduciaries, and the Service would have primary responsibility with regard to parties in interest.

The Secretary of Labor would administer the fiduciary provisions by bringing civil actions to surcharge a fiduciary (and civil actions could also be brought by participants and beneficiaries). The Service would impose an excise tax on parties in interest who participated in a prohibited transaction. This excise tax would replace the prohibited transaction provisions now in the Internal Revenue Code.

The fiduciary standards provided under the bill are outlined below, The fiduciary standards of the bill generally would supersede State standards of fiduciary conduct (see. 699 of the bill).

A fiduciary would be required to act as a "prudent man acting in a like capacity and familiar with such matters * * * in the conduct of an enterprise of a like character and with like aims" (sec. 511 of the bill). This "prudent man" rule would govern investing and other conduct such as custody of assets, protecting plan assets from loss or damage, etc. In addition, fiduciaries would be required to act in accordance with plan documents and for the exclusive benefit of participants and beneficiaries.

Investments by fiduciaries of plan assets would be governed by the prudent man rule and also, in the case of securities of the employer, by specific rules. Pension plans could have no more than 7 percent of plan assets in employer securities. Profit-sharing, stock bonus, thrift and savings, and similar plans would not be subject to this limitation if the plan documents so provided. Also, leasebacks of real property (and related personal property) to employers would be treated the same as holding employer securities (sec. 511 of the bill). Plans would be allowed ten years to divest themselves of excess securities (and leases) now held. In addition, without the approval of the Secretary of Labor a plan generally could not invest in assets outside the jurisdiction of U.S. district courts (sec. 511 of the bill). All the provisions discussed up to this point would be enforced by the Department of Labor, through civil actions.

Certain additional transactions involving plan assets and parties in interest would be specifically prohibited, under both the civil action and tax provisions. These include leases, purchases and sales,[19] extension of credit and furnishing of goods and services between plans and parties in interest. Prohibited transactions also would include use of plan assets by or for the benefit of parties in interest, dealings with plan assets in the interests of fiduciaries or parties in interest, and receipt by fiduciaries or parties in interest of consideration from other parties in connection with transactions involving plans. Additionally, fiduciaries would be prohibited from representing or acting for other parties with regard to the plan. Generally, the prohibition of these transactions would in the case of fiduciaries be enforced by the Department of Labor (and by participants and beneficiaries) by civil actions. The prohibition of these transactions insofar as parties in interest are concerned is to be enforced by the Internal Revenue Service by the imposition of excise taxes.

Exemptions could be provided from the prohibited transactions. The Secretary of Labor and Secretary of Treasury jointly could exempt classes of transactions or individual transactions from these prohibitions. Any such exemption would be after published notice to interested parties (and the opportunity to intervene), and could only be granted on joint findings that the exception is administratively feasible, is in the interests of all plans involved, and protects the rights of all participants and beneficiaries of these plans.

The bill also exempts specific transactions, generally allowing non-discriminatory loans by plans to participants if the loans are adequately secured and at a reasonable interest rate, and allowing plans to pay reasonable

Footnotes at end of article.

compensation to fiduciaries for services to the plan. Additionally, it would not be a prohibited transaction to pay reasonable compensation to parties in interest for office space or for other services necessary to operate the plan, nor would it be prohibited for an individual to serve as an officer, employee, etc., of a party in interest. The bill also allows receipt by fiduciaries or parties in interest of benefits as participants or beneficiaries in a plan. These exceptions from the prohibited transaction rules would apply equally to the civil action and tax provisions.

To prevent undue hardship, transition rules are provided for situations where plans are now engaging in activities which do not violate current law but would be prohibited under the bill. Ten-year transition periods would be available for the lease or joint use of property and for loans between a plan and party in interest under an existing contract. Additionally, where property is now under lease or joint use and qualifies for the ten-year transition rule, it could be sold at arm's-length terms to a party in interest.

Persons convicted of specified crimes would be prohibited from serving employee benefit plans for five years after conviction or end of imprisonment (unless the U.S. Board of Parole waives the prohibition). Violation of this provision would be a crime subject to a $10,000 penalty and one year imprisonment. Removal of trustees would be through the Department of Labor and enforcement of the criminal penalties would be through the Department of Justice.

In the case of the provisions to be administered by civil actions brought by the Secretary of Labor (or participants and beneficiaries), fiduciaries (and certain parties in interest) who violate the fiduciary standards would be liable to the plan for its losses or for the profits they made as a result of the breach of fiduciary duty in which they participated. Joint fiduciaries generally would have the duty to prevent a breach by other fiduciaries, or could avoid liability for surcharge by appropriate objection and notice to the Secretary of Labor. Exculpatory agreements also would be prohibited.

Parties in interest who participate in taxable prohibited transactions would be subject to a 5 percent excise tax on the amount involved in a transaction for each taxable year (or part of a year) that the transaction was not corrected. Additionally, if the transaction was not timely corrected after notice, a party in interest who participated in it would be subject to a 100 percent excise tax on the amount involved. These taxes generally follow the format of the excise tax on self-dealing with private foundations, enacted as part of the Tax Reform Act of 1969.

These taxes would be nondeductible and payment would not relieve parties in interest from their duty to the plan of correcting the transaction.

Generally, all employee benefit plans established by employers or employee organizations engaged in or affecting interstate commerce would be subject to the Welfare and Pension Plans Disclosure Act. However, the Welfare and Pension Plans Disclosure Act would not apply to government plans, workmen's compensation or unemployment compensation or disability insurance plans, certain religious organization plans, and plans maintained outside the U.S. primarily for the benefit of employees who are not citizens of the U.S. (sec. 502 of the bill). Generally, all tax-qualified plans would be subject to the excise tax on prohibited transactions (sec. 522 of the bill). However, government plans and certain church plans would not be subject to the excise tax.

The prohibited transaction provisions are to go into effect on January 1, 1975. The other fiduciary standard rules are to go into effect January 1, 1974 (sec. 512 and 522 of the bill).

X. ENFORCEMENT

(Secs. 101, 102, 601, 641, and 691 through 699B of the Senate bill and secs. 4975, 7476, 7477, and 7802 of the Code)

Present law

Plans which meet the requirements of the Internal Revenue Code (e.g., exclusively for benefit of employees, nondiscriminatory in regard to coverage and benefits, limit on contributions for self-employed persons under H.R. 10 plans) receive special tax treatment to foster their growth. It is not necessary, in order to receive this special tax treatment, that a prior determination be obtained from the Internal Revenue Service. However, to assist employers in their development of plans or plan amendments, the Internal Revenue Service issues determination letters that proposed plans or amendments qualify for the special tax treatment. As a practical matter, since taxpayers generally wish to be assured in advance that their plans or amendments will qualify, they obtain prior determinations from the Internal Revenue Service. Such a determination is with respect to the qualification of the plan (sec. 401 of the code) and tax-exempt status of the related trust (sec. 501 of the code).

Under the Internal Revenue Service's published procedures, this determination generally takes the form of a determination letter from a district director. The district director may request technical advice from the national office on issues arising from a request for a determination letter. Also, the applicant may request national office consideration of the matter if the district director does not act within 30 days from notice of intent to make such a request, or acts adversely.

Standards are set forth under which the national office is to determine whether it will entertain a request for consideration of a case. One situation where a request will be entertained is where the contemplated district office action is in conflict with a determination made in a similar case in the same or another district. The procedure provides for a conference in the national office, if it is requested by the applicant. In addition, determination letters issued by the district director are subject to post review procedure in the national office.

The Internal Revenue Service, besides granting prior determinations, also administers the tax provisions of the Internal Revenue Code relating to the continued qualification of pension and profit-sharing plans. If a plan does not comply with the requirements of the Internal Revenue Code, these special tax benefits are lost. Thus, to a considerable extent, the provisions of the Code in this area are self-enforcing (i.e., those in charge of a plan have an interest in seeing to it that the plan continues to comply with the antidiscrimination requirements, that the plan does not engage in prohibited self-dealing transactions, and that it otherwise acts in such a manner to preserve the complex of tax benefits to both the employer and the participants and their beneficiaries).

In addition, the Department of Labor administers the Welfare and Pension Plan Disclosure Act of 1958 (P.L. 85–832, as amended by P.L. 87–420), discussed above, under Reporting and Disclosure.

The Senate bill (H.R. 4200)

The bill is designed to provide additional opportunities for redress in case of disagreement with a decision of the Internal Revenue Service on retirement plan matters. Both employees and employers will be allowed to appeal determination letters issued by the Internal Revenue Service to the United States Tax Court after exhausting their remedies under the Internal Revenue Service's administrative procedures. Employees as well as employers are to be allowed to participate in the Service's administrative proceedings. If either the employer or the employee exercises his right of appeal and requests the Tax Court to issue a declaratory judgment, the other party is to have the right to intervene in the proceedings.

All interested parties to the controversy are to have an opportunity to participate in the administrative determination of the matter and to have an opportunity to contest the Internal Revenue Service's determination of the matter.

A second enforcement procedure under the bill requires an arbitration procedure to be provided in each employee benefit plan, for settlement of claims under the plans. The Department of Labor will prescribe regulations for the type of arbitration provisions which are to be included in the plans.

The bill establishes within the Internal Revenue Service a new office, headed by an Assistant Commissioner, to be known as the Office of Employee Plans and Exempt Organizations. This office is to have the supervision and direction of the basic activities of the Internal Revenue Service in connection with pension, etc., plans (governed by secs. 401 through 414 of the code) and tax exempt organizations (exempt from tax under sec. 501(a) of the code).

As discussed above (in Fiduciary Standards), the Secretary of Labor is to have primary responsibility in administering standards of conduct with respect to fiduciaries by bringing civil actions to enjoin or remedy a breach of conduct. The bill also provides that plan participants and beneficiaries may bring civil actions to redress breaches of fiduciary duties. The Internal Revenue Service is to have primary responsibility for enforcing restraints on specified prohibited transactions with respect to parties in interest, through an excise tax. Further, the bill provides for an excise tax on violations of the funding standards and on violations of the vesting standards.

The bill also provides for the imposition of a $1 audit-fee-excise tax on the employer for each plan participant in a qualified employee plan to provide for Internal Revenue Service costs of administering the retirement plan provisions. For purposes of administration and collection of this tax, the employment tax provisions of the tax law are to be applicable. However, this tax is to be deductible as a trade or business expense. The tax is with respect to participants of plans which are qualified under the tax laws and does not apply to agencies or instrumentalities of the United States, a State, or political subdivision.

The bill, in general, preempts State laws that "relate to the subject matter regulated by this Act or the Welfare and Pension Plans Disclosure Act * * *." However, general State regulatory (dealing with insurance, banking) and criminal laws would continue to apply.

The bill makes it illegal to discriminate against any participant or beneficiary for exercising any right to which he is entitled under the bill.

XI. EMPLOYEE SAVINGS FOR RETIREMENT

(Secs. 701 and 706 of the Senate bill and secs. 72, 219, 408, 409 and 4960 of the Code)

Present law

Generally, an employee is not allowed a deduction for amounts which he contributes from his own funds to a retirement plan. There is no provision for an employee to establish his own retirement plan with tax-free dollars. Also, while an employer's qualified plan may allow employees to contribute their own funds to the plan; [20] no deduction is allowed for these contributions (except to the extent that tax excludable contributions

Footnotes at end of article.

made in connection with salary reduction plans, described below, may be viewed as employee contributions). However, the income earned on employee contributions to an employer's qualified plan is not taxed until it is distributed.[21]

In the case of a salary reduction plan, however, in the past employees have been permitted to exclude from income amounts contributed by their employers to a pension or profit-sharing plan, even where the source of these amounts is the employees' agreement to take salary reductions or forgo salary increases. If the plan met certain nondiscrimination requirements, the Internal Revenue Service in the past had taken the position in a few private rulings that, under certain circumstances, the amount of the salary reduction would be treated as an employer contribution to a qualified pension plan, not taxable to the employee (until benefits were received from the plan). The maximum amount that could be so treated generally was 6 percent of compensation.[22]

On December 6, 1972, the Service issued proposed regulations (37 Fed Reg. 25938) which would change this result in the case of qualified pension plans by providing that amounts contributed by an employer to such a plan in return for a reduction in the employee's total compensation, or in lieu of an increase in such compensation, will be considered to have been contributed by the employee and consequently will be taxable income to the employee.[23] Public hearings have been held on these proposed regulations, but regulations in final form have not yet been issued.

The Senate bill (H.R. 4200)

In general.—Under the Senate bill, any individual who was not covered during a year as an active participant in a qualified retirement plan, or a government plan (whether or not qualified), or a section 403(b) annuity plan,[24] is to be permitted a deduction of $1,000 a year from earned income, or (if greater) 15 percent of earned income up to $1,500, for contributions to a personal retirement account. The bill provides that the deduction in this case is to be from gross income, and as a result can be taken even by those taxpayers who also take the standard deduction. Earnings on these contributions would also be tax free (until actually distributed to the employee as benefits from the account).

In the case of a married couple, each spouse may establish his or her separate retirement savings account and the $1,000 (or 15 percent $1,500) limitation is to be applied separately to the earned income of each spouse. For this purpose, earned income is to be determined without regard to State community property laws.

Under the bill, the employee can establish hs own retirement savings account, or the retirement savings can be made through the medium of contributions by an employer (either in the form of additional compensation provided by the employer or a salary reduction plan) if there is no qualified, government, or section 403(b) plan in which the employee in question is an active participant.

Where individual retirement accounts are set up by the employer, the aggregate tax excludable contributions and tax deductible contributions by the employee (which are to be accounted for separately in the records of the account) are not to exceed $1,000 per year.[25] Of course, all benefits under the salary reduction plan are to be immediately vested since the contributions, in effect, either represent compensation to the employee or come from his own funds.

Requirements for an individual retirement account.—If an individual wishes to establish an individual retirement account, the trustee of the account would have to maintain, under the provisions of a written governing instrument, a separate accounting of the individual's contributions, the earnings on them, and the distributions made either to the individual involved or to his beneficiaries. The balance in the account could, for example, be invested in insurance annuity contracts, in a common trust fund managed by a bank, in a savings account with a savings and loan institution or a credit union, or in stock of a mutual fund. However, in any case, the funds must be held by a bank or other person who establishes to the satisfaction of the Service that the manner in which it will hold the balance in the account is consistent with the intention of the new provision. The funds might be held in a trust, a custodial account, an annuity contract, or any similar arrangement approved by the Secretary of the Treasury.

The bill also contains a number of other provisions designed to ensure that the accounts will be used for retirement savings, many of which are similar to requirements which are already in the law with respect to H.R. 10 plans.

For example, the written governing instrument is to provide that no contributions in excess of the deductible limit can be made to the plan. Any excess contributions inadvertently made would have to be refunded to the individual with interest within 6 months after notice of the excess contribution was sent by the Internal Revenue Service. If the excess contributions were not repaid, the account would be disqualified for that year and all succeeding taxable years. In this case, the individual would also be required to take into income the assets of the account (valued as of the first day of the taxable year in which the account became disqualified), reduced by any contributions in the account for the current year (for which deductions are denied).

In addition to the rules on excess contributions, the written instrument is also required to provide that no distributions can be made to the individual prior to age 59½, except in the event of death or disability. On the other hand, under the bill, the plan is required to begin distributions not later than the year during which the individual attains the age of 70½, and distributions then have to be made at least on a ratable basis over the remaining lifetime (or period of life expectancy) of the individual, or of the individual and his spouse. After age 70½, an excise tax of 10 percent a year is imposed on the proportion of the individual's account that represents the amount that should have been (but was not) distributed. Also, under the bill, no tax deductible contributions could be made to the account during or after the taxable year during which the individual attains the age of 70½.

If the individual establishing the account dies before his entire interest in the account has been distributed to him, the governing instrument is generally to require that the undistributed assets be distributed, or be applied to the purchase of an annuity for his beneficiaries, within 5 years after his death. However, this rule does not apply if distributions began prior to his death, and the account was to be completely distributed over a period not exceeding the life expectancy of the individual and his spouse (measured as of the time when distributions from the account began).

In addition, if the assets of the account are invested in an insurance contract, the governing instrument must provide that any refunds of premiums are to be held by the insurance company and applied toward the payment of future premiums or the purchase of additional benefits within the current taxable year or the next succeeding year.

Premature distributions.—Premature distributions frustrate the intention of saving for retirement, and the bill, to prevent this from happening, imposes a penalty tax. If a premature distribution from the account is made before the individual attains the age of 59½, the distribution is subjected to a penalty tax of 30 percent of the amount of the taxable distribution.[26] This is in addition to any other income taxes payable on this distribution, and would not be offset by any tax credits. Also, this tax would not be treated as reducing the individual's tax liability under the minimum tax provisions (sec. 56).

The penalty tax is not to apply in the event of distribution due to death or disability.

To permit flexibility with respect to the investment of an individual retirement account, the bill provides that money or property may be distributed from an individual retirement account, without payment of tax, if the same amount is reinvested by the individual within 60 days in another qualifying individual retirement account.

Taxation of beneficiaries.—Generally, the proceeds of an individual retirement account are to be taxable to the individual when distributed. Since the contributions to the account will be made with tax free dollars, the employee's basis in the account will be zero.

The amounts distributed to the individual are not to be eligible for capital gains treatment, and the special averaging rules applicable to lump sum distributions (under sec. 72) are not to be available. However, the individual would be permitted to use the general averaging rules (sec. 1301).

If any individual borrows money, pledging his interest in the retirement account as security, the portion pledged as security is to be treated as a distribution from the retirement account to the individual. Any contribution to an individual retirement account, or any income of the account, applied to the purchase of current life insurance protection under any retirement income, endowment, or other life insurance contract also will constitute income to the individual.

For purposes of the estate and gift taxes the amounts in individual retirement accounts are not to be excluded from tax (secs. 2039(c) and 2517).

Other rules.—Under present law, if an asset of an individual is transferred pursuant to a divorce settlement, the individual is deemed to realize gain on the difference between his basis in the asset and its fair market value at the time of the transfer (if the asset has appreciated). Under the bill, if an individual retirement account is transferred to the individual's spouse pursuant to a divorce decree, or settlement agreement, this transfer is not to be taxable under the bill.

Qualified retirement bonds.—In addition to the various types of investment described above in which an individual retirement account can be placed, the bill also provides that these amounts may be invested annually in retirement bonds to be issued by the Government. The bonds are to be issued under the Second Liberty Bond Act and provide for the accumulation of interest until the time of redemption. In conformity with the general provisions for individual retirement accounts, the bill provides that the bonds generally can be cashed only after the individual has reached the age of 59½ years, or if he becomes disabled or dies before that age.[27]

Consistent with the general rules for individual retirement accounts, the bill provides that the bonds are to cease to bear interest when the individual reaches age 70½. In addition, during that year the individual is also required to take any of these bonds he is still holding into income, even if he does not cash them in.

Also the bill provides that bonds are to cease to bear interest not later than five years after the death of the individual in whose name the bonds have been issued.

Footnotes at end of article.

The bonds are to be issued in the name of the individual who purchases them for his retirement and are not to be transferable, under any circumstances, except to his executor in the event of his death (or to a trustee for his benefit in the event he became incompetent to manage his own affairs). For example, the bonds could not be pledged for the payment of debts, and could not be assigned to a trustee in bankruptcy. Also, the bonds could not be awarded to the individual's spouse as the result of a divorce settlement.

When the bonds are redeemed, the full proceeds of the bonds, including any interest earned on them, is to be treated as ordinary income to the individual, whose basis in the bonds would be zero. However, if the individual chose to do so, he could treat this income under the general averaging provisions of the tax law (sec. 1301 et seq.).

Salary reduction and cash or deferred profit-sharing plans.—As discussed above, until recently, the Internal Revenue Service had taken the position that amounts contributed to a qualified retirement plan on a salary-reduction basis could, under certain conditions be considered as tax excludable employer contributions to the plan. Under the bill, this treatment is continued with respect to contributions to a qualified pension or profit-sharing plan made prior to January 1, 1974. Thereafter, as is already true under present law in the case of employee contributions under the Federal Civil Service Retirement Plan or similar government plans, contributions which are really employee contributions (whether required to be made or made at the individual option of the employee in return for a reduction in his compensation, or in lieu of an increase in such compensation) are to be treated as such and will no longer be excludable from income by the employee. The only modification in this rule is that where an individual is not covered by a qualified plan, a government plan, or a section 403(b) annuity plan, employer contributions of up to $1,000 per annum can be made to an individual retirement account under a salary reduction arrangement. Income earned on amounts contributed under a salary reduction plan prior to 1974 would for the future remain tax exempt as also would the earnings of these amounts.

Section 403(b) annuity plans.—Under present law, the proceeds of a section 403(b) annuity plan, for the benefit of teachers or employees of tax-exempt organizations, may be invested only in insurance contracts. The Senate bill provides that the assets of these accounts may also be invested in mutual funds, under appropriate custodial restrictions.

Effective date.—These provisions will apply with respect to taxable years beginning after December 31, 1973.

XII. LIMITATION ON CONTRIBUTIONS

(Secs. 702, 704, and 706 of the Senate Bill and Secs. 72, 401, 404, 412, 414, and 1379 of the Code)

Present law

Under present law, different rules are provided for employer and employee contributions in the case of plans for self-employed individuals (H.R. 10 plans), plans of "regular" corporations, and plans of electing small business corporations (subchapter S).[28] These are described below.

H.R. 10 plans.—The amount of deductible contributions to an H.R. 10 plan on behalf of a self-employed person cannot exceed the lesser of 10 percent of his earned income[29] or $2,500 (sec. 404(e)). In addition, nondeductible contributions may be made in certain cases, but these contributions on behalf of owner-employees may not exceed the lesser of 10 percent of earned income or $2,500. Allowable voluntary contributions by employees of self-employed individuals must be at least proportionate to allowable voluntary contribution for self-employed (sec. 401(e)(1)(B)(ii)).

"Regular" corporate plans.—In the case of a "regular" corporate plan there are no limitations on how much may be contributed by the employer. There are, however, limitations on the amount of the contribution that is deductible. Different limitations apply to profit-sharing and stock bonus plans and to pension plans.

In the case of profit-sharing or stock bonus plans, the amount of the contribution that is allowable as a deduction is not to exceed in the aggregate 15 percent of compensation to employees covered under the plan. Contributions in excess of the 15-percent limitation may be carried over to future years. In addition, within certain limits, to the extent that an employer does not make the full 15-percent contribution in one year he may increase the amount of his deductible contribution in a future year.

In the case of pension plans, the amount of the contribution that is deductible is not to exceed 5 percent of the compensation to employees covered under the plan, plus the amount of the contribution in excess of 5 percent of compensation to the extent necessary to fund normal pension costs and remaining past service costs of all employees under the plan as a level amount or as a level percent of compensation. In the alternative, the taxpayer may compute the limit his deduction to his normal cost for the plan on his deductible contributions by limiting plus 10 percent of the past service cost of the plan (sec. 404(a)). In practice, these limitations have very little effect in limiting contributions to regular corporate pension plans.

Where an employer contributes to two or more retirement plans which are governed by different limits on deductions (pension, profit-sharing or stock bonus, or employee annuities), the total amount annually deductible under the plans cannot be more than 25 percent of compensation otherwise earned by the plan beneficiaries. If any excess is contributed, it may be deducted in the following year; the maximum deduction in the following year (for carryover and current contributions together) is 30 percent of compensation. A carryover is available for additional excess contributions which are deductible in the succeeding taxable years in order of time.

Subchapter S plans.—The limitations on the deductibility of contributions to a subchapter S corporation plan are the same as those in "regular" corporate plans. However, a shareholder-employee (an employee who owns more than 5 percent of the outstanding stock of such a corporation) must include in his gross income the amount by which the deductible contributions paid on his behalf exceed the lesser of 10 percent of his compensation or $2,500 (sec. 1379(b)).

Professional corporations.—Generally, lawyers, doctors, accountants and certain other professional groups in the past have been unable to carry on their professions through the form of corporations because of the personal nature of their responsibility or liability for the work performed for a client or patient. Consequently, their contributions to retirement plans were limited by the rules governing self-employed persons. In recent years, however, all States have adopted special incorporation laws which provide for what are generally known as "professional corporations." These have been used increasingly by groups of professional persons primarily to obtain the more favorable tax treatment for pensions generally available to corporate employees. The Treasury Department, in the so-called Kintner regulations, held that professional corporations were not taxable as corporations. A number of court cases, however, have overturned the regulations and the Service has now acquiesced and generally recognizes these professional corporations as corporations for income tax purposes.

The Senate bill (H.R. 4200)

H.R. 10 plans.—The Senate bill increases the maximum deductible contribution on behalf of self-employed persons to the lesser of $7,500 or 15 percent of earned income. (A similar, although not identical, rule is applied in the case of defined benefit pension plans.) However, no more than the first $100,000 of earned income may be taken into account in applying the percentage limits. The $100,000 ceiling on the earned income rate base means that a self-employed person with more than $100,000 income will have to contribute at a rate of at least 7½ percent on behalf of his employees if he wishes to take the full $7,500 deduction on his own behalf (in order to comply with the antidiscrimination requirements.)[30] The Senate bill also contains a minimum as to the amount self-employed individuals may set aside each year as a deductible contribution to a pension plan even though it exceeds the otherwise applicable percentage limitation. Each year a self-employed individual may set aside as a deductible contribution up to $750 out of his earned income even though this exceeds 50 percent of his earned income.

Also, the Senate bill contains a formula which would allow the self-employed, in effect, to translate the 15 percent-$7,500 limitation on contributions, to which they would otherwise be subject, into limitations on benefits which they could receive under a defined benefit plan.

Under the formula, the basic benefit for the employee (in terms of a straight life annuity commencing at the later of age 65 or 5 years from the time the participant's current period of participation began, with no ancillary benefits) is not to exceed the amount of the employee's compensation which is covered under the plan (up to a maximum of $50,000)[31] times the percentage shown on the following table.

Age at start of current period of participation:	Percentage
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

The percentages in early years are higher to reflect the fact that contributions made during these time periods earn interest for a longer period prior to retirement than contributions made in later years.

To illustrate how this formula would work assume that a self-employed person enters a defined benefit plan at age 30, and participates in the plan for 5 years, with income covered under the plan of $20,000 per annum. At age 35, he leaves the plan, but at age 50, he again becomes a participant. For the first 5 years his covered income is $30,000 per year, then $40,000 for the next 5 years, and finally $50,000 for the last five years prior to his retirement.

The benefit would be computed as follows:

Age	Compensation per year	Rate	Benefit earned per year	Total benefit
30 to 35	$20,000	6.5	$1,300	$6,500
50 to 55	30,000	3.0	900	4,500
55 to 60	40,000	3.0	1,200	6,000
60 to 65	50,000	3.0	1,500	7,500
Total				24,500

Footnotes at end of article.

Thus, the maximum benefit which could be paid to that individual under that plan in the form of a single life annuity commencing at age 65 with no ancillary benefits would be $24,500 per year.

In addition, the Senate bill contains a provision generally limiting the annual benefits which can be paid out under defined benefit plans to 100 percent of the participant's average compensation from the employer during his highest 3 consecutive years of earnings adjusted for changes in the cost of living.

Another provision of the Senate bill would allow self-employed individuals, in effect, to pool their contribution limitations. In effect, a plan could provide that the senior partners in a law firm could accrue more than their share of retirement benefits, if the more junior partners accrued less than their share, the benefits do not result in prohibited discrimination, and the overall contribution limits were met. In such a case, however, the 75 percent-$100,000 limit on corporate plan benefits (described below) would also apply.

Contributions by self-employed persons (and other cash basis taxpayers) would be deductible, under the Senate bill, if they were made at any time up to the point when the Federal income tax return for the year in question is due (whereas, under present law, the contributions must be made by the end of the taxable year). Also, the Senate bill would permit owner-employees to withdraw their voluntary contribution to a self-employed plan prior to retirement, without penalty, whereas, under present law, this may not be done by owner-employees (although it may be done by other participants).

Corporate plans.—The Senate bill imposes limitations on the contributions which may be made or the benefits which may be paid under qualified corporate plans for all employees.

Under the Senate provisions, in the case of a defined benefit plan, no deduction is allowable for contributions in excess of those necessary to fund (from employer contributions and the earnings therefrom), a basic benefit in the form of a straight-life annuity commencing at age 65 (with no ancillary benefits), in excess of 75 percent of the participant's average high-three year compensation from the employer, not in excess of the first $100,000 per year. In other words, the basic pension benefit from employer contributions cannot exceed $75,000 per year. (To the extent that employee contributions are made the $75,000 limit could be exceeded.) This benefit would have to be funded over at least, a 10-year period and in the case of employees who participated in the plan for less than 10 years, the maximum permissible benefit would be scaled down proportionately.

In the case of a defined contribution plan (a money purchase pension, profitsharing, or stock bonus plan), the corporation would be permitted to make deductible contributions sufficient to fund for the employee a pension on this same 75 percent of average high-three year pay basis. For example, if an exemployee had an average high three years salary of $50,000, this figure would be multiplied by 75 percent ($37,500) to determine the maximum amount of pension the employee would be entitled to receive. The amount of contributions needed to fund this size pension would then be computed. First, the amount of the pension would be multiplied by a conversion factor of 10 (in the case of a basic benefit commencing at age 65) to determine the total funding which will be needed to provide the pension at age 65 ($375,000). Second, from this amount ($375,000) will be subtracted any amounts already contributed by the employer on behalf of the employee (together with the past earnings on these contributions and the assumed interest which will be earned in future years on these contributions before the employee's retirement). The difference between these two amounts is called the "unfunded limitation balance" and (subject to certain other limitations imposed under present law) the employer may deduct contributions which, together with 6-percent earnings on these contributions, will be sufficient to build up to a $375,000 balance by the time the employee reaches normal retirement age.

If the corporation has both a defined benefit plan and a defined contribution plan, the maximum benefit payable under the defined benefit plan would have to be reduced in proportion to the amount of the benefit which was funded through the defined contribution plan.

Subchapter S corporations.—Under present law (sec. 1379 of the Code), as described above, shareholder employees of subchapter S corporations are subject to contribution limitations which are very similar to the limitations imposed on self-employed individuals. Under the Senate bill, these provisions would be repealed, and subchapter S corporations would be subject to the same limitations as other corporations.

Money purchase plans.—The Senate bill contains a provision that tax excludable contributions to a money purchase plan cannot exceed 20 percent of the employee's compensation. Any additional contributions on behalf of the employee must be included in income by him.

Any amount included in gross income under this provision would be considered as part of the employee's investment in the contract for purposes of computing the taxable amount of a distribution from the plan of the employee. However, these contributions would be considered to be made by the employer for purposes of qualification of the plan. If the employee's rights under the plan should terminate before tax excludable payments under the plan equaled the amounts included in gross income under this provision, a tax deduction would be allowed equal to the unrecovered contributions.

Custodial accounts.—Under present law, a custodial account may be treated as a qualified trust, but only if the custodian is a bank, and the investments are made solely in annuity, endowment, or life insurance contracts (and certain other conditions are met) (sec. 401(f)). The Senate bill would allow the custodian of the account to be someone other than a bank; however, the custodian would have to establish, to the satisfaction of the Internal Revenue Service, that it would manage the assets of the account in a manner consistent with the intention of the tax law. Also, the Senate bill would provide that someone other than the trustee or custodian, including the employer, can have authority to control the investments of the plan account, either by directing the investment policy of the plan, or by exercising a veto power.

Effective date.—Generally, these provisions will take effect in years beginning after December 31, 1973.

XIII. LUMP-SUM DISTRIBUTIONS

(Sec. 703 of the Senate bill and secs. 72, 402, and 403 of the Code)

Present law

Retirement benefits generally are taxed under the annuity rules (sec. 72) as ordinary income when the amounts are distributed, to the extent they do not represent a recovery of the amounts contributed by the employee. However, an exception to this general rule under the law in effect before the Tax Reform Act of 1969 provided that if an employee's total accrued benefits were distributed or paid from a qualified plan within one taxable year on account of death or other separation from service (or death after separation from service), the taxable portion of the payment was treated as a long-term capital gain, rather than as ordinary income.

The capital gains treatment accorded these lump-sum distributions allowed employees to receive substantial amounts of deferred compensation at more favorable tax rates than other compensation received currently. The more significant benefits under this treatment apparently accrued to taxpayers with adjusted gross incomes in excess of $50,000, particularly in view of the fact that a number of lump-sum distributions of over $80,000 have been made.

To correct this problem, the Tax Reform Act of 1969 provided that part of a lump-sum distribution received from a qualified employee's trust within one taxable year on account of death or other separation from service (or death after separation from service) is to be given ordinary income treatment, instead of the capital gains treatment it had been given under prior law. The ordinary income treatment applies to the taxable portion of the distribution (i.e., the total distribution less the employee's contribution) which exceeds the sum of (a) the benefits accrued during plan years beginning before 1970, and (b) the portion of the benefits accrued thereafter which does not consist of employer contributions (sec. 402 (a)(5) and 403(a)(c)).

The 1969 Act provided a special limitation in the form of a seven-year "forward" averaging formula which applies to the portion of the lump-sum distribution treated as ordinary income. An employee (or beneficiary) is eligible for the special 7-year forward averaging provision if the distribution is made on account of death or other separation from service (or death after separation from service) [2] and, in the case of receipt by an employee, if he has been a participant in the plan for 5 or more taxable years before the taxable year in which the distribution is made.

The Senate bill (H.R. 4200)

The Senate bill substitutes for the computational procedure provided under the 1969 Act a new procedure designed to simplify the calculations required to determine the tax while preserving revenues at at least as high a level as they would be under the proposed regulations.

Under the Senate bill the portion of the distribution attributable to post-1973 value, in excess of the employee's own contributions, is to be taxed as ordinary income, but the tax is to be determined separately from any other income which he may have and is to be eligible for 15-year averaging. The portion of the contribution attributable to pre-1974 value is to receive capital gains treatment and is to be included with the taxpayer's other income in determining his tax liability for the year of the distribution.

In computing the ordinary income element on the post-1973 value, a special minimum distribution allowance is to be provided to give assurance that the tax on relatively small lump-sum distributions will not be appreciably more than under present law. This allowance is half of the distribution up to $20,000. Above that level, it is phased out on a $1.00 for $5.00 basis with the result that it is entirely eliminated for distributions of $70,000 or more.

In determining the proportion of a distribution attributable to pre-1974 value (and, therefore, eligible for capital gains treatment) and the portion attributable to post-1973 treatment (and therefore treated as ordinary income but with 15-year averaging), the bill provides that the allocation is to be made on the basis of the amount of time in which the employee was covered by the plan before 1974 and after 1973.

In order to treat all distributees the same, all computations of tax on the 15-year averaging ordinary income portion are to be made

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Footnotes at end of article.

on the basis of the tax schedule for unmarried individuals.[23] For this purpose, community property laws are to be ignored, and as a result, a distributee in a community property State is to compute his tax on the basis of the entire amount of the distribution.

The bill provides that where the distributee accrued part of the value of his lump-sum distribution as a regular corporate employee and part as a self-employed individual, the 5-year averaging available for self-employed individuals is to be used for the entire distribution if the number of years while he was covered as a self-employed individual exceeds 50 percent of the total time he was a participant in the plan. Otherwise, the 15-year averaging rule is to apply to the entire amount.

To protect against possible tax avoidance possibilities the bill provides that distributions made during the previous five years are to be included in the 15-year averaging computation for purposes of determining the tax on the last distribution. When the total tax is determined, however, the amount of tax liability on any earlier distributions is to be subtracted and the tax on the final distribution is to be the remainder. All distributions made within the prior five years to the same distributee are to be subject to this 5-year lookback rule.[24]

The computation of the ordinary income element in the lump-sum distribution is to take into account any annuity purchased for the distributee in the year of distribution (or in the prior five years where the lookback provision applies). The value included for purposes of the annuity is its cash surrender value. Although the value of the annuity is included for purposes of determining the tax on the remainder, its value is not taxed as a part of the lump-sum distribution.

No changes are made with respect to the basic tax treatment of distributions of employer securities.

FOOTNOTES

[1] Effective for taxable years beginning after 1973.

[2] Effective for plan years beginning after 1973 for plans adopted after July 24, 1973, and effective for plan years beginning after 1975 for plans in existence on July 24, 1973.

[3] Takes effect Jan. 1, 1974.

[4] Effective for calendar years beginning after 1973.

[5] Effective for plan years and taxable years beginning after 1973; where employers elect to have no liability for losses a higher rate will be set by the trustees of the Guaranty Corporation.

[6] The minimum vesting provision is effective for plan years beginning after 1975 for plans in existence on the date of enactment; for plans adopted after the date of enactment the vesting requirement applies to plan years beginning after the enactment date. NOTE.—There will be some revenue loss from funding but data are not available to determine the extent of this loss.

[7] As described below (2. Plans Where a Collective Bargaining Unit is involved: Other Antidiscrimination Provisions), a qualified plan must meet certain standards. Several of the alternative standards require certain percentages of employees, or of eligible employees, to be covered by the plan, but in such cases the employer is permitted to exclude employees who fail to meet the plan's service requirements, not exceeding five years of service. If the coverage standards are met, conditions other than age or service conditions may still be imposed, except in the case of owner-employee plans. The Senate bill would not change this rule.

[8] An owner-employee is a sole proprietor or a partner with a greater than 10-percent interest in capital or profits (see 403(c)(3)).

[9] This rule applies whether or not the plan is a trusted plan. That is, a plan funded through purchase of annuities from an insurance company is subject to these rules; as is a plan with investments managed by a trustee.

[10] This test of service is to be applied with regard to the actual employment of that employee. In this respect, it differs from similar definitions under present law (secs. 401(a)(3)(A) and 401(d)(3)), which determine employment service on the basis of the employee's "customary employment".

[11] In applying these numerical tests under present law, there are excluded employees who have been employed not more than a minimum period prescribed by the plan (up to 5 years), part time employees (customary employment for not more than 20 hours in any one week), and seasonal employees (those whose customary employment is for not more than 5 months in any calendar year).

[12] An owner-employee is a sole proprietor or a partner with a greater than 10-percent interest in capital or profits (sec. 401(c)(3)).

[13] The minimum funding requirement of present law applies only to pension and not to profit-sharing or stock bonus plans.

[14] In determining costs, an employer must take into account factors such as the basis on which benefits are computed, expected mortality, interest, employee turnover, and changes in compensation levels.

[15] Under the "10 percent" deduction limit (sec. 404(a)(1)(C) of the Code), if the deficiency occurs using the same assumptions as previously, the additional contributions may be deducted currently. If the deficit results from a loss in asset values or revaluation of liabilities using more conservative assumptions the deficit may be added to past service cost. Rev. Rul. 57–550, 1957–2 C.B. 266.

[16] See Rev. Rul. 59–153, 1959–1 C.B. 89, discussing a pension plan using the "entry age normal method," where adjustment for gains is generally made by deducting the amount of gains arising in any year from the next year's deductible limit under sec. 404(a)(1)(C). See also Rev. Rul. 65–310, 1965–2, C.B. 145, discussing a plan using the "frozen initial liability method," where adjustments for gains are spread automatically as a part of current and future normal costs.

[17] The only exception might be an instance where employers, in the aggregate, had no substantial voice in the determination of the levels and forms of benefits.

[18] More stringent rules govern trusts benefiting owner-employees who control the business (sec. 503(g) of the Code).

[19] Transfer of mortgaged property in some cases would be treated as a sale or exchange.

[20] Generally, if the plan allows it, employees may make voluntary contributions to a qualified retirement plan of up to 10 percent of compensation. I.R.S. Publication 778, p. 14 (Feb. 1972).

[21] At one time, Congress took the position that a contribution to an H.R. 10 plan on behalf of a self-employed person was made half by the employer and half by the self-employed person: no deduction was allowed for half of the contribution (the half regarded as "contributed by" the self-employed person). This limitation (sec. 404(a)(10)) was repealed for taxable years after December 31, 1967.

[22] In the case of employees of tax-exempt charitable, educational, religious, etc., organizations and employees of public educational institutions, a specific statutory provision provides for employer contributions of up to 20 percent of compensation, times years of service, reduced by amounts previously contributed by the employer for annuity contracts on a tax excluded basis to the employee (sec. 403(b)). The regulations under the statute allow the employer contributions to be made under these salary reduction plans. Antidiscrimination provisions that apply generally to qualified plans do not apply to those tax sheltered annuities. The Senate bill does not affect the tax treatment of these contributions.

[23] The proposed regulations would not affect the tax treatment of contributions to certain qualified profit sharing plans, where the contributed amounts are distributable only after a period of deferment: however it was indicated that there would be reconsideration of the rulings permitting exclusion of such profit sharing contributions. (Rev. Rul. 56–497, 1956–2 C.B. 284: Rev. Rul. 63–180, 1963–2 D.B. 189: Rev. Rul. 68–89, 1968–1 C.B. 402.)

[24] If contributions were made on behalf of an individual under a plan during the taxable year, he would generally be considered an active participant for that year.

[25] Any amount deductible or excludable under these provisions is not to be considered to be part of the employee's investment in the contract for purposes of computing the taxable part of the distribution, since all of the contributions would be made, in effect, with tax-free dollars. If contributions in excess of these limits are made, the employer is not to receive a deduction for the excess contribution, and all excess would have to be repaid to the employer.

[26] The distribution would not, however, be subject to the penalty provided under section 72(m)(5) for premature distributions to owner-employees.

[27] Such a bond could be redeemed within 12 months after issuance, but no interest is payable if it is redeemed in that period.

[28] All the types of plans must, in addition to the rules described below, meet the general reasonable compensation tests (sec. 162). The statute does not specify limitations on the benefits which may be paid under a qualified pension plan. However, in Rev. Rul. 72–3, 1972–1 CB, 105, the Internal Revenue Service ruled that pension benefits from a qualified pension plan are intended as a substitute for compensation, and that in general a plan which provides benefits in excess of an employee's compensation is therefore not qualified.

[29] "Earned income" is generally defined as being equivalent to "net earnings from self-employment"—the kind of income that may be subject to self-employment taxes in lieu of FICA taxes (secs. 401(c)(2) and 1402).

[30] The limitations on nondeductible contributions on behalf of owner-employees in a self-employed plan is not increased, however.

[31] For purposes of the antidiscrimination rules, the maximum amount of compensation which is to be taken into account is $100,000.

[32] Self-employed taxpayers, on the other hand, continue to be eligible for their special 5-year forward averaging only on lump-sum distributions received on account of death, disability as defined in sec. 72(m)(7) of the Code, or if received after age 59½ and, in the case of receipt by an employee, after at least 5 years of participation.

[33] Distributees in computing the tax on their other income (including the capital gain element of the distribution) may use any appropriate tax schedule. They may also use, when appropriate, the regular 5-year averaging method for the tax on this other income.

[34] For this purpose, the five years is to be measured from the time the distribution is reported to the insurance Corporation for purposes of the plan termination insurance provisions described above.

ORDER FOR VOTE ON THE VETO OVERRIDE OF S. 1317, USIA AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, with regard to consideration of the Presidential veto message on S. 1317, that on the debate

with respect to the vote which will occur on overriding the President's veto message there be a time limitation of 1 hour and 45 minutes, the time to be equally divided between the distinguished Senator from Arkansas (Mr. FULBRIGHT) and the distinguished minority leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I ask unanimous consent that the time for debate on the override of the Presidential veto begin running on Tuesday next at the hour of 2:45 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the overriding of the President's veto of S. 1317 occur at the hour of 4:30 p.m. on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate go into executive session to consider treaties on the Executive Calendar, Nos. 18 through 21, with the understanding that there will be no votes on these treaties today.

The PRESIDING OFFICER. Without objection, it is so ordered.

PATENT COOPERATION TREATY AND ANNEXED REGULATIONS—EXECUTIVE S (92D CONG., 2D SESS.

The Senate, as in Committee of the Whole, proceeded to consider Executive S (92d Cong., 2d sess.), the Patent Cooperation Treaty, done at Washington on June 19, 1970, together with the regulations under the Patent Cooperation Treaty annexed thereto, which was read the second time, as follows:

PATENT COOPERATION TREATY

The Contracting States,

Desiring to make a contribution to the progress of science and technology,

Desiring to perfect the legal protection of inventions,

Desiring to simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries,

Desiring to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions,

Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology.

Convinced that cooperation among nations will greatly facilitate the attainment of these aims,

Have concluded the present Treaty.

INTRODUCTORY PROVISIONS

Article 1—Establishment of a Union

(1) The States party to this Treaty (hereinafter called "the Contracting States") constitute a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services. The Union shall be known as the International Patent Cooperation Union.

(2) No provision of this Treaty shall be interpreted as diminishing the rights under the Paris Convention for the Protection of Industrial Property of any national or resident of any country party to that Convention.

Article 2—Definitions

For the purposes of this Treaty and the Regulations and unless expressly stated otherwise:

(i) "application" means an application for the protection of an invention; references to an "application" shall be construed as references to applications for patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition;

(ii) references to a "patent" shall be construed as references to patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition;

(iii) "national patent" means a patent granted by a national authority;

(iv) "regional patent" means a patent granted by a national or an intergovernmental authority having the power to grant patents effective in more than one State;

(v) "regional application" means an application for a regional patent;

(vi) references to a "national application" shall be construed as references to applications for national patents and regional patents, other than applications filed under this Treaty;

(vii) "international application" means an application filed under this Treaty;

(viii) references to an "application" shall be construed as references to international applications and national applications;

(ix) references to a "patent" shall be construed as references to national patents and regional patents;

(x) references to "national law" shall be construed as references to the national law of a Contracting State or, where a regional application or a regional patent is involved, to the treaty providing for the filing of regional applications or the granting of regional patents;

(xi) "priority date," for the purposes of computing time limits, means:

(a) where the international application contains a priority claim under Article 8, the filing date of the application whose priority is so claimed;

(b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;

(c) where the international application does not contain any priority claim under Article 8, the international filing date of such application;

(xii) "national Office" means the government authority of a Contracting State entrusted with the granting of patents; references to a "national Office" shall be construed as referring also to any intergovernmental authority which several States have entrusted with the task of granting regional patents, provided that at least one of those States is a Contracting State, and provided that the said States have authorized that authority to assume the obligations and exercise the powers which this Treaty and the Regulations provide for in respect of national Offices.

(xiii) "designated Office" means the national Office of or acting for the State designated by the applicant under Chapter I of this Treaty;

(xiv) "elected Office" means the national Office of or acting for the State elected by the applicant under Chapter II of this Treaty;

(xv) "receiving Office" means the national Office or the intergovernmental organization with which the international application has been filed;

(xvi) "Union" means the International Patent Cooperation Union;

(xvii) "Assembly" means the assembly of the Union;

(xviii) "Organization" means the World Intellectual Property Organization;

(xix) "International Bureau" means the International Bureau of the Organization and, as long as it subsists, the United International Bureau for the Protection of Intellectual Property (BIRPI);

(xx) "Director General" means the Director General of the Organization and, as long as BIRPI subsists, the Director of BIRPI.

CHAPTER I: INTERNATIONAL APPLICATION AND INTERNATIONAL SEARCH

Article 3—The International Application

(1) Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.

(2) An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.

(3) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.

(4) The international application shall:

(i) be in a prescribed language;

(ii) comply with the prescribed physical requirements;

(iii) comply with the prescribed requirement of unity of invention.

(iv) be subject to the payment of the prescribed fees.

Article 4—The Request

(1) The request shall contain:

(i) a petition to the effect that the international application be processed according to this Treaty;

(ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application ("designated States"); if for any designated State a regional patent is available and the applicant wishes to obtain a regional patent rather than a national patent, the request shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty; if, under the national law of the designated State, the designation of that State has the effect of an application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent;

(iii) the name of and other prescribed data concerning the applicant and the agent (if any);

(iv) the title of the invention;

(v) the name of and other prescribed data concerning the inventor where the national law of at least one of the designated States requires that these indications be furnished at the time of filing a national application. Otherwise, the said indications may be furnished either in the request or in separate notices addressed to each designated Office whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application.

(2) Every designation shall be subject to

the payment of the prescribed fee within the prescribed time limit.

(3) Unless the applicant asks for any of the other kinds of protection referred to in Article 43, designation shall mean that the desired protection consists of the grant of a patent by or for the designated State. For the purposes of this paragraph, Article 2(ii) shall not apply.

(4) Failure to indicate in the request the name and other prescribed data concerning the inventor shall have no consequence in any designated State whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application. Failure to furnish the said indications in a separate notice shall have no consequence in any designated State whose national law does not require the furnishing of the said indications.

Article 5—The Description

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Article 6—The Claims

The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

Article 7—The Drawings

(1) Subject to the provisions of paragraph (2)(ii), drawings shall be required when they are necessary for the understanding of the invention.

(2) Where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings:

(i) the applicant may include such drawings in the international application when filed,

(ii) any designated Office may require that the applicant file such drawings with it within the prescribed time limit.

Article 8—Claiming Priority

(1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property.

(2) (a) Subject to the provisions of subparagraph (b), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property.

(b) The international application for which the priority of one or more earlier applications filed in or for a Contracting State is claimed may contain the designation of that State. Where, in the international application, the priority of one or more national applications filed in or for a designated State is claimed, or where the priority of an international application having designated only one State is claimed, the conditions for, and the effect of, the priority claim in that State shall be governed by the national law of that State.

Article 9—The Applicant

(1) Any resident or national of a Contracting State may file an international application.

(2) The Assembly may decide to allow the residents and the nationals of any country party to the Paris Convention for the Protection of Industrial Property which is not party to this Treaty to file international applications.

(3) The concepts of residence and nationality, and the application of those concepts in cases where there are several applicants or where the applicants are not the same for all the designated States, are defined in the Regulations.

Article 10—The Receiving Office

The international application shall be filed with the prescribed receiving Office, which will check and process it as provided in this Treaty and the Regulations.

Article 11—Filing Date and Effects of the International Application

(1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:

(i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office,

(ii) the international application is in the prescribed language,

(iii) the international application contains at least the following elements:

(a) an indication that it is intended as an international application,

(b) the designation of at least one Contracting State,

(c) the name of the applicant, as prescribed,

(d) a part which on the face of it appears to be a description,

(e) a part which on the face of it appears to be a claim or claims.

(2) (a) If the receiving Office finds that the international application did not, at the time of receipt, fulfill the requirements listed in paragraph (1), it shall, as provided in the Regulations, invite the applicant to file the required correction.

(b) If the applicant complies with the invitation, as provided in the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction.

(3) Subject to Article 64(d), any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) and accorded an international filing date shall have the effect of a regular national application in each designated State as of the international filing date, which date shall be considered to be the actual filing date in each designated State.

(4) Any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) shall be equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of Industrial Property.

Article 12—Transmittal of the International Application to the International Bureau and the International Searching Authority

(1) One copy of the international application shall be kept by the receiving Office ("home copy"), one copy ("record copy") shall be transmitted to the International Bureau, and another copy ("search copy") shall be transmitted to the competent International Searching Authority referred to in Article 16, as provided in the Regulations.

(2) The record copy shall be considered the true copy of the international application.

(3) The international application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit.

Article 13—Availability of Copy of the International Application to Designated Offices

(1) Any designated Office may ask the International Bureau to transmit to it a copy of the international application prior to the communication provided for in Article 20, and the International Bureau shall transmit such copy to the designated Office as soon as possible after the expiration of one year from the priority date.

(2) (a) The applicant may, at any time, transmit a copy of his international application to any designated Office.

(b) The applicant may, at any time, ask the International Bureau to transmit a copy of his international application to any designated Office, and the International Bureau shall transmit such copy to the designated Office as soon as possible.

(c) Any national Office may notify the International Bureau that it does not wish to receive copies as provided for in subparagraph (b), in which case that subparagraph shall not be applicable in respect of that Office.

Article 14—Certain Defects in the International Application

(1) (a) The receiving Office shall check whether the international application contains any of the following defects, that is to say:

(i) it is not signed as provided in the Regulations;

(ii) it does not contain the prescribed indications concerning the applicant;

(iii) it does not contain a title;

(iv) it does not contain an abstract;

(v) it does not comply to the extent provided in the Regulations with the prescribed physical requirements.

(b) If the receiving Office finds any of the said defects, it shall invite the applicant to correct the international application within the prescribed time limit, failing which that application shall be considered withdrawn and the receiving Office shall so declare.

(2) If the international application refers to drawings which, in fact, are not included in that application, the receiving Office shall notify the applicant accordingly and he may furnish them within the prescribed time limit and, if he does, the international filing date shall be the date on which the drawings are received by the receiving Office. Otherwise, any reference to the said drawings shall be considered non-existent.

(3) (a) If the receiving Office finds that, within the prescribed time limits, the fees prescribed under Article 3(4)(iv) have not been paid, or no fee prescribed under Article 4(2) has been paid in respect of any of the designated States, the international application shall be considered withdrawn and the receiving Office shall so declare.

(b) If the receiving Office finds that the fee prescribed under Article 4(2) has been paid in respect of one or more (but less than all) designated States within the prescribed time limit, the designation of those States in respect of which it has not been paid within the prescribed time limit shall be considered withdrawn and the receiving Office shall so declare.

(4) If, after having accorded an international filing date to the international application, the receiving Office finds, within the prescribed time limit, that any of the requirements listed in items (i) to (iii) of Article 11(1) was not complied with at that date, the said application shall be considered withdrawn and the receiving Office shall so declare.

Article 15—The International Search

(1) Each international application shall be the subject of international search.

(2) The objective of the international search is to discover relevant prior art.

(3) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any).

(4) The International Searching Authority referred to in Article 16 shall endeavor to discover as much of the relevant prior art as its facilities permit, and shall, in any case, consult the documentation specified in the Regulations.

(5) (a) If the national law of the Contracting State so permits, the applicant who files a national application with the national Office of or acting for such State may, subject to the conditions provided for in such

law, request that a search similar to an international search ("international-type search") be carried out on such application.

(b) If the national law of the Contracting State so permits, the national Office of or acting for such State may subject any national application filed with it to an international-type search.

(c) The international-type search shall be carried out by the International Searching Authority referred to in Article 16 which would be competent for an international search if the national application were an international application and were filed with the Office referred to in subparagraphs (a) and (b). If the national application is in a language which the International Searching Authority considers it is not equipped to handle, the international-type search shall be carried out on a translation prepared by the applicant in a language prescribed for international applications and which the International Searching Authority has undertaken to accept for international applications. The national application and the translation, when required, shall be presented in the form prescribed for international applications.

Article 16—The International Searching Authority

(1) International search shall be carried out by an International Searching Authority, which may be either a national Office or an intergovernmental organization, such as the International Patent Institute, whose tasks include the establishing of documentary search reports on prior art with respect to inventions which are the subject of applications.

(2) If, pending the establishment of a single International Searching Authority, there are several International Searching Authorities, each receiving Office shall, in accordance with the provisions of the applicable agreement referred to in paragraph (3)(b), specify the International Searching Authority or Authorities competent for the searching or international applications filed with such Office.

(3)(a) International Searching Authorities shall be appointed by the Assembly. Any national Office and any intergovernmental organization satisfying the requirements referred to in subparagraph (c) may be appointed as International Searching Authority.

(b) Appointment shall be conditional on the consent of the national Office or intergovernmental organization to be appointed and the conclusion of an agreement, subject to approval by the Assembly, between such Office or organization and the International Bureau. The agreement shall specify the rights and obligations of the parties, in particular, the formal undertaking by the said Office or organization to apply and observe all the common rules of international search.

(c) The Regulations prescribe the minimum requirements, particularly as to manpower and documentation, which any Office or organization must satisfy before it can be appointed and must continue to satisfy while it remains appointed.

(d) Appointment shall be for a fixed period of time and may be extended for further periods.

(e) Before the Assembly makes a decision on the appointment of any national Office or intergovernmental organization, or on the extension of its appointment, or before it allows any such appointment to lapse, the Assembly shall hear the interested Office or organizaton and seek the advice of the Committee for Technical Cooperation referred to in Article 56 once that Committee has been established.

Article 17—Procedure Before the International Searching Authority

(1) Procedure before the International Searching Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) If the Internatonal Searching Authority considers

(i) that the international application relates to a subject matter which the International Searching Authortiy is not required, under the Regulations, to search, and in the particular case decides not to search, or

(ii) that the description, the claims, or the drawings, fail to comply with the prescribed requirements to such an extent that a meaningful search could not be carried out, the said Authority shall so declare and shall notify the applicant and the International Bureau that no international search report will be established.

(b) If any of the situations referred to in subparagraph (a) is found to exist in connection with certain claims only, the international search report shall so indicate in respect of such claims, whereas, for the other claims, the said report shall be established as provided in Article 18.

(3)(a) If the International Searching Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it shall invite the applicant to pay additional fees. The International Searching Authority shall establish the international search report on those parts of the international application which relate to the invention first mentioned in the claims ("main invention") and, provided the required additional fees have been paid within the prescribed time limit, on those parts of the international application which relate to inventions in respect of which the said fees were paid.

(b) The national law of any designated State may provide that, where the national Office of that State finds the invitation, referred to in subparagraph (a), of the International Searching Authority justified and where the applicant has not paid all additional fees, those parts of the international application which consequently have not been searched shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

Article 18—The International Search Report

(1) The international search report shall be established within the prescribed time limit and in the prescribed form.

(2) The international search report shall, as soon as it has been established, be transmitted by the International Searching Authority to the applicant and the International Bureau.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be translated as provided in the Regulations. The translations shall be prepared by or under the responsibility of the International Bureau.

Article 19—Amendment of the Claims Before the International Bureau

(1) The applicant shall, after having received the international search report, be entitled to one opportunity to amend the claims of the international application by filing amendments with the International Bureau within the prescribed time limit. He may, at the same time, file a brief statement, as provided in the Regulations, explaining the amendments and indicating any impact that such amendments might have on the description and the drawings.

(2) The amendments shall not go beyond the disclosure in the international application as filed.

(3) If the national law of any designated State permits amendments to go beyond the said disclosure, failure to comply with paragraph (2) shall have no consequence in that State.

Article 20—Communication to Designated Offices

(1)(a) The international application, together with the international search report (including any indication referred to in Article 17(2)(b)) or the declaration referred to in Article 17(2)(a), shall be communicated to each designated Office, as provided in the Regulations, unless the designated Office waives such requirement in its entirety or in part.

(b) The communication shall include the translation (as prescribed) of the said report or declaration.

(2) If the claims have been amended by virtue of Article 19(1), the communication shall either contain the full text of the claims both as filed and as amended or shall contain the full text of the claims as filed and specify the amendments, and shall include the statement, if any, referred to in Article 19 (1).

(3) At the request of the designated Office or the applicant, the International Searching Authority shall send to the said Office or the applicant, respectively, copies of the documents cited in the international search report, as provided in the Regulations.

Article 21—International Publication

(1) The International Bureau shall publish international applications.

(2)(a) Subject to the exceptions provided for in subparagraph (b) and in Article 64 (3), the international publication of the international application shall be effected promptly after the expiration of 18 months from the priority date of that application.

(b) The applicant may ask the International Bureau to publish his international application any time before the expiration of the time limit referred to in subpargaraph (a). The International Bureau shall proceed accordingly, as provided in the Regulations.

(3) The international search report on the declaration referred to in Article 17(2)(a) shall be published as prescribed in the Regulations.

(4) The language and form of the international publication and other details are governed by the Regulations.

(5) There shall be no international publication if the international application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.

(6) If the international application contains expressions or drawings which, in the opinion of the International Bureau, are contrary to morality or public order, or if, in its opinion, the international application contains disparaging statements as defined in the Regulations, it may omit such expressions, drawings, and statements, from its publications, indicating the place and number of words or drawings omitted, and furnishing, upon request, individual copies of the passages omitted.

Article 21—Copy, Translation, and Fee, to Designated Offices

(1) The applicant shall furnish a copy of the international application (unless the communication provided for in Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee if any), to each designated Office not later than at the expiration of 20 months from the priority date.

Where the national law of the designated State requires the indication of the name of

and other prescribed data concerning the inventor but allows that these indications be furnished at a time later than that of the filing of a national application, the applicant shall, unless they were contained in the request, furnish the said indications to the national Office of or acting for that State not later than at the expiration of 20 months from the priority date.

(2) Notwithstanding the provisions of paragraph (1), where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be two months from the date of the notification sent to the applicant of the said declaration.

(3) Any national law may, for performing the acts referred to in paragraphs (1) or (2), fix time limits which expire later than the time limit provided for in those paragraphs.

Article 23—Delaying of National Procedure

(1) No designated Office shall process or examine the international application prior to the expiration of the applicable time limit under Article 22.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may, on the express request of the applicant, process or examine the international application at any time.

Article 24—Possible Loss of Effect in Designated States

(1) Subject, in case (ii) below, to the provisions of Article 25, the effect of the internatitonal application provided for in Article 11(3) shall cease in any designated States with the same consequences as the withdrawal of any national application in that State:

(i) if the applicant withdraws his international application or the designation of that State;

(ii) if the international application is considered withdrawn by virtue of Articles 12(3), 14(1)(b), 14(3)(a), or 14(4), or if the designation of that State is considered withdrawn by virtue of Artcile 14(3)(b);

(iii) if the applicant fails to perform the acts referred to in Article 22 within the applicable time limit.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may maintain the effect provided for in Article 11(3) even where such effect is not required to be maintained by virtue of Article 25(2).

Article 25—Review By Designated Offices

(1) (a) Where the receiving Office has refused to accord an international filing date or has declared that the international application is considered withdrawn, or where the International Bureau has made a finding under Article 12(3), the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to any of the designated Offices named by the applicant.

(b) Where the receiving Office has declared that the designation of any given State is considered withdrawn, the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to the national Office of such State.

(c) The request under subparagraphs (a) or (b) shall be presented within the prescribed time limit.

(2)(a) Subject to the provisions of subparagraph (b), each designated Office shall, provided that the national fee (if any) has been paid and the appropriate translation (as prescribed) has been furnished within the prescribed time limit, decide whether the refusal, declaration, or finding, referred to in paragraph (1) was justified under the provisions of this Treaty and the Regulations, and, if it finds that the refusal or declaration was the result of an error or omission on the part of the receiving Office or that the finding was the result of an error or omission on the part of the International Bureau, it shall, as far as effects in the State of the designated Office are concerned, treat the international application as if such error or omission had not occurred.

(b) Where the record copy has reached the International Bureau after the expiration of time limit prescribed under Article 12(3) on account of any error or omission on the part of the applicant the provisions of subparagraph (a) shall apply only under the circumstances referred to in Article 48(2).

Article 26—Opportunity to Correct Before Designated Offices

No designated Office shall reject an international application on the grounds of noncompliance with the requirements of this Treaty and the Regulations without first giving the applicant the opportunity to correct the said application to the extent and according to the procedure provided by the national law for the same or comparable situations in respect of national applications.

Article 27—National Requirements

(1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in the Treaty and the Regulations.

(2) The provisions of paragraph (1) neither affect the application of the provisions of Article 7(2) nor preclude any national law from requiring, once the processing of the international application has started in the designated Office, the furnishing:

(i) when the applicant is a legal entity, of the name of an officer entitled to represent such legal entity,

(ii) of documents not part of the international application but which constitute proof of allegations or statements made in that application, including the confirmation of the international application by the signature of the applicant when that application, as filed, was signed by his representative or agent.

(3) Where the applicant, for the purposes of any designated State, is not qualified according to the national law of that State to file a national application because he is not the inventor, the international application may be rejected by the designated Office.

(4) Where the national law provides, in respect of the form or contents of national applications, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for by this Treaty and the Regulations in respect of international applications, the national Office, the courts and any other competent organs of or acting for the designated State may apply the former requirements, instead of the latter requirements, to international applications, except where the applicant insists that the requirements provided for by this Treaty and the Regulations be applied to his international application.

(5) Nothing in this Treaty and the Regulations is intended to be construed as prescribing anything that would limit the freedom of each Contracting State to prescribe such substantive conditions of patentability as it desires. In particular, any provision in this Treaty and the Regulations concerning the definition of prior art is exclusively for the purposes of the international procedure and, consequently, any Contracting State is free to apply, when determining the patentability of an invention claimed in an international application, the criteria of its national law in respect of prior art and other conditions of patentability not constituting requirements as to the form and contents of applications.

(6) The national law may require that the applicant furnish evidence in respect of any substantive condition of patentability prescribed by such law.

(7) Any receiving Office or, once the processing of the international application has started in the designated Office, that Office may apply the national law as far as it relates to any requirement that the applicant be represented by an agent having the right to represent applicants before the said Office and/or that the applicant have an address in the designated State for the purpose of receiving notifications.

(8) Nothing in this Treaty and the Regulations is intended to be construed as limiting the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security or to limit, for the protection of the general economic interests of that State, the right of its own residents or nationals to file international applications.

Article 28—Amendment of the Claims, the Description, and the Drawings, Before Designated Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit. No designated Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed unless the national law of the designated State permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the designated State in all respects not provided for in this Treaty and the Regulations.

(4) Where the designated Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 29—Effects of the International Publication

(1) As far as the protection of any rights of the applicant in a designated State is concerned, the effects, in that State, of the international publication of an international application shall, subject to the provisions of paragraphs (2) to (4), be the same as those which the national law of the designated State provides for the compulsory national publication of unexamined national applications as such.

(2) If the language in which the international publication has been effected is different from the language in which publications under the national law are effected in the designated State, the said national law may provide that the effects provided for in paragraph (1) shall be applicable only from such time as:

(i) a translation into the latter language has been published as provided by the national law, or

(ii) a translation into the latter language has been made available to the public, by laying open for public inspection as provided by the national law, or

(iii) a translation into the latter language has been transmitted by the applicant to the actual or prospective unauthorized user of the invention claimed in the international application, or

(iv) both the acts described in (i) and (iii) or both the acts described in (ii) and (iii), have taken place.

(3) The national law of any designated State may provide that, where the international publication has been effected, on the request of the applicant, before the expiration of 18 months from the priority date, the effects provided for in paragraph (1) shall be

applicable only from the expiration of 18 months from the priority date.

(4) The national law of any designated State may provide that the effects provided for in paragraph (1) shall be applicable only from the date on which a copy of the international application as published under Article 21 has been received in the national Office of or acting for such State. The said Office shall publish the date of receipt in its gazette as soon as possible.

Article 30—Confidential Nature of the International Application

(1)(a) Subject to the provisions of subparagraph (b), the International Bureau and the International Searching Authorities shall not allow access by any person or authority to the international application before the international publication of that application, unless requested or authorized by the applicant.

(b) The provisions of subparagraph (a) shall not apply to any transmittal to the competent International Searching Authority, to transmittals provided for under Article 13, and to communications provided for under Article 20.

(2)(a) No national Office shall allow access to the international application by third parties, unless requested or authorized by the applicant, before the earliest of the following dates:

(i) date of the international publication of the international application.

(ii) date of the receipt of the communication of the international application under Article 20,

(iii) date of the receipt of a copy of the international application under Article 22.

(b) The provisions of subparagraph (a) shall not prevent any national Office from informing third parties that it has been designated, or from publishing that fact. Such information or publication may, however, contain only the following data: identification of the receiving Office, name of the applicant, international filing date, international application number, and title of the invention.

(c) The provisions of subparagraph (a) shall not prevent any designated Office from allowing access to the international application for the purposes of the judicial authorities.

(3) The provisions of paragraph (2)(a) shall apply to any receiving Office except as far as transmittals provided for under Article 12(1) are concerned.

(4) For the purposes of this Article, the term "access" covers any means by which third parties may acquire cognizance, including individual communication and general publication, provided, however, that no national Office shall generally publish an international application or its translation before the international publication or, if international publication has not taken place by the expiration of 20 months from the priority date, before the expiration of 20 months from the said priority date.

CHAPTER II: INTERNATIONAL PRELIMINARY EXAMINATION

Article 31—Demand for International Preliminary Examination

(1) On the demand of the applicant, his international application shall be the subject of an international preliminary examination as provided in the following provisions and the Regulations.

(2)(a) Any applicant who is a resident or national, as defined in the Regulations, of a Contracting State bound by Chapter II, and whose international application has been filed with the receiving Office of or acting for such State, may make a demand for international preliminary examination.

(b) The Assembly may decide to allow persons entitled to file international applications to make a demand for international preliminary examination even if they are residents or nationals of a State not party to this Treaty or not bound by Chapter II.

(3) The demand for international preliminary examination shall be made separately from the international application. The demand shall contain the prescribed particulars and shall be in the prescribed language and form.

(4)(a) The demand shall indicate the Contracting State or States in which the applicant intends to use the results of the international preliminary examination ("elected States"). Additional Contracting States may be elected later. Election may relate only to Contracting States bound by Chapter II as Article 4.

(b) Applicants referred to in paragraph (2)(a) may elect any Contracting State bound by Chapter II. Applicants referred to in paragraph (2)(b) may elect only such Contracting States bound by Chapter II as have declared that they are prepared to be elected by such applicants.

(5) The demand shall be subject to the payment of the prescribed fees within the prescribed time limit.

(6)(a) The demand shall be submitted to the competent International Preliminary Examining Authority referred to in Article 32.

(b) Any later election shall be submitted to the International Bureau.

(7) Each elected Office shall be notified of its election.

Article 32—The International Preliminary Examining Authority

(1) International preliminary examination shall be carried out by the International Preliminary Examining Authority.

(2) In the case of demands referred to in Article 31(2)(a), the receiving Office, and, in the case of demands referred to in Article 31(2)(b), the Assembly, shall, in accordance with the applicable agreement between the interested International Preliminary Examining Authority or Authorities and the International Bureau, specify the International Preliminary Examining Authority or Authorities competent for the preliminary examination.

(3) The provisions of Article 16(3) shall apply, *mutatis mutandis*, in respect of International Preliminary Examining Authorities.

Article 33—The International Preliminary Examination

(1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.

(2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.

(3) For the purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step, having regard to the prior art as defined in the Regulations, if it is not, at the prescribed relevant date, obvious to a person skilled in the art.

(4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.

(5) The criteria described above merely serve the purposes of international preliminary examination. Any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed invention is patentable or not.

(6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

Article 34—Procedure Before the International Examining Authority

(1) Procedure before the International Preliminary Examining Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) The applicant shall have a right to communicate orally and in writing with the International Preliminary Examining Authority.

(b) The applicant shall have a right to amend the claims, the description, and the drawings, in the prescribed manner and within the prescribed time limit, before the international preliminary examination report is established. The amendment shall not go beyond the disclosure in the international application as filed.

(c) The applicant shall receive at least one written opinion from the International Preliminary Examining Authority unless such Authority considers that all of the followng conditions are fulfilled:

(i) the invention satisfies the criteria set forth in Article 33(1),

(ii) the international application complies with the requirements of this Treaty and the Regulations in so far as checked by that Authority,

(iii) no observations are intended to be made under Article 35(2), last sentence.

(d) The applicant may respond to the written opinion.

(3)(a) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it may invite the applicant, at his option, to restrict the claims so as to comply with the requirements or to pay additional fees.

(b) The national law of any elected State may provide that, where the applicant chooses to restrict the claims under subparagraph (a), those parts of the international application which, as a consequence of the restriction, are not to be the subject of international preliminary examination shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

(c) If the applicant does not comply with the invitation referred to in subparagraph (a) within the prescribed time limit, the International Preliminary Examining Authorty shall establish an international preliminary report on those parts of the international application which relate to what appears to be the main invention and shall indicate the relevant facts in the said report. The national law of any elected State may provide that, where its national Office finds the invitation of the International Preliminary Examining Authority justified, those parts of the international application which do not relate to the main invention shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to that Office.

(4)(a) If the International Preliminary Examining Authority considers

(i) that the international application relates to a subject matter on which the International Preliminary Examining Authority is not required, under the Regulations, to carry out an international preliminary examination, and in the particular case decides not to carry out such examination, or

(ii) that the description, the claims, or the drawings, are so unclear, or the claims are so inadequately supported by the description, that no meaningful opinion can be formed

on the novelty, inventive step (non-obviousness), or industrial applicability, of the claimed invention,
the said Authority shall not go into the questions referred to in Article 33(1) and shall inform the applicant of this opinion and the reasons therefor.

(b) If any of the situations referred to in subparagraph (a) is found to exist in, or in connection with, certain claims only, the provisions of that subparagraph shall apply only to the said claims.

Article 35—The International Preliminary Examination Report

(1) The international preliminary examination report shall be established within the prescribed time limit and in the prescribed form.

(2) The international preliminary examination report shall not contain any statement on the question whether the claimed invention is or seems to be patentable or unpatentable according to any national law. It shall state, subject to the provisions of paragraph (3), in relation to each claim, whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purposes of the international preliminary examination in Article 33(1) to (4). The statement shall be accompanied by the citation of the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require. The statement shall also be accompanied by such other observations as the Regulations provide for.

(3)(a) If, at the time of establishing the international preliminary examination report, the International Preliminary Examining Authority considers that any of the situations referred to in Article 34(4)(a) exists, that report shall state this opinion and the reasons therefor. It shall not contain any statement as provided in paragraph (2).

(b) If a situation under Article 34(4)(b) is found to exist, the international preliminary examination report shall, in relation to the claims in question, contain the statement as provided in subparagraph (a), whereas, in relation to the other claims, it shall contain the statement as provided in paragraph (2).

Article 36—Transmittal, Translation, and Communication, of the International Preliminary Examination Report

(1) The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.

(2)(a) The international preliminary examination report and its annexes shall be translated into the prescribed languages.

(b) Any translation of the said report shall be prepared by or under the responsibility of the International Bureau, whereas any translation of the said annexes shall be prepared by the applicant.

(3)(a) The international preliminary examination report, together with its translation (as prescribed) and its annexes (in the original language), shall be communicated by the International Bureau to each elected Office.

(b) The prescibed translation of the annexes shall be transmitted within the prescribed time limit by the applicant to the elected Offices.

(4) The provisions of Article 20(3) shall apply, *mutatis mutandis*, to copies of any document which is cited in the international preliminary examination report and which was not cited in the international search report.

Article 37—Withdrawal of Demand or Election

(1) The applicant may withdraw any or all elections.

(2) If the election of all elected States is withdrawn, the demand shall be considered withdrawn.

(3)(a) Any withdrawal shall be notified to the International Bureau.

(b) The elected Offices concerned and the International Preliminary Examining Authority concerned shall be notified accordingly by the International Bureau.

(4)(a) Subject to the provisions of subparagraph (b), withdrawal of the demand or of the election of a Contracting State shall, unless the national law of that State provides otherwise, be considered to be withdrawal of the international application as far as that State is concerned.

(b) Withdrawal of the demand or of the election shall not be considered to be withdrawal of the international application if such withdrawal is effected prior to the expiration of the applicable time limit under Article 22; however, any Contracting State may provide in its national law that the aforesaid shall apply only if its national Office has received, within the said time limit, a copy of the international application, together with a translation (as prescribed), and the national fee.

Article 38—Confidential Nature of the International Preliminary Examination

(1) Neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, allow access within the meaning, and with the proviso, of Article 30(4) to the file of the international preliminary examination by any person or authority at any time, except by the elected Offices once the international preliminary examination report has been established.

(2) Subject to the provisions of paragraph (1) and Articles 36(1) and (3) and 37(3)(b), neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, give information on the issuance or non-issuance of an international preliminary examination report and on the withdrawal or non-withdrawal of the demand or of any election.

Article 39—Copy, Translation, and Fee, to Elected Offices

(1)(a) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 22 shall not apply to such State and the applicant shall furnish a copy of the international application (unless the communication under Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each elected Office not later than at the expiration of 25 months from the priority date.

(b) Any national law may, for performing the acts referred to in subparagraph (a), fix time limits which expire later than the time limit provided for in that subparagraph.

(2) The effect provided for in Article 11(3) shall cease in the elected State with the same consequences as the withdrawal of any national application in that State if the applicant fails to perform the acts referred to in paragraph (1)(a) within the time limit applicable under paragraph (1)(a) or (b).

(3) Any elected Office may maintain the effect provided for in Article 11(3) even where the applicant does not comply with the requirements provided for in paragraph (1)(a) or (b).

Article 40—Delaying of National Examination and Other Processing

(1) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 23 shall not apply to such State and the national Office of or acting for that State shall not proceed, subject to the provisions of paragraph (2), to the examination and other processing of the international application prior to the expiration of the applicable time limit under Article 39.

(2) Notwithstanding the provisions of paragraph (1), any elected Office may, on the express request of the applicant, proceed to the examination and other processing of the international application at any time.

Article 41—Amendment of the Claims, the Description, and the Drawings, Before Elected Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each elected Office within the prescribed time limit. No elected Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired, except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed, unless the national law of the elected State permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the elected State in all respects not provided for in this Treaty and the Regulations.

(4) Where an elected Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 42—Results of National Examination in Elected Offices

No elected Office receiving the international preliminary examination report may require that the applicant furnish copies, or information on the contents, of any papers connected with the examination relating to the same international application in any other elected Office.

CHAPTER III: COMMON PROVISIONS

Article 43—Seeking certain kinds of protection

In respect of any designated or elected State whose law provides for the grant of inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, or utility certificates of addition, the applicant may indicate, as prescribed in the Regulations, that his international application is for the grant, as far as that State is concerned, of an inventor's certificate, a utility certificate, or a utility model, rather than a patent, or that it is for the grant of a patent or certificate of addition, an inventor's certificate of addition, or a utility certificate of addition, and the ensuing effect shall be governed by the applicant's choice. For the purposes of this Article and any Rule thereunder, Article 2(ii) shall not apply.

Article 44—Seeking two kinds of protection

In respect of any designated or elected State whose law permits an application, while being for the grant of a patent or one of the other kinds of protection referred to in Article 43, to be also for the grant of another of the said kinds of protection, the applicant may indicate, as prescribed in the Regulations, the two kinds of protection he is seeking, and the ensuing effect shall be governed by the applicant's indications. For the purposes of this Article, Article 2(ii) shall not apply.

Article 45—Regional patent treaties

(1) Any treaty providing for the grant of regional patents ("regional patent treaty"), and giving to all persons who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents.

(2) The national law of the said designated or elected State may provide that any designation or election of such State in the international application shall have the effect

of an indication of the wish to obtain a regional patent under the regional patent treaty.

Article 46—Incorrect translation of the international application

If, because of an incorrect translation of the international application, the scope of any patent granted on that application exceeds the scope of the international application in its original language, the competent authorities of the Contracting State concerned may accordingly and retroactively limit the scope of the patent, and declare it null and void to the extent that its scope has exceeded the scope of the international application in its original language.

Article 47—Time limits

(1) The details for computing time limits referred to in this Treaty are governed by the Regulations.

(2)(a) All time limits fixed in Chapters I and II of this Treaty may, outside any revision under Article 60, be modified by a decision of the Contracting States.

(b) Such decisions shall be made in the Assembly or through voting by correspondence and must be unanimous.

(c) The details of the procedure are governed by the Regulations.

Article 48—Delay in meeting certain time limits

(1) Where any time limit fixed in this Treaty or the Regulations is not met because of interruption in the mail service or unavoidable loss or delay in the mail, the time limit shall be deemed to be met in the cases and subject to the proof and other conditions prescribed in the Regulations.

(2)(a) Any Contracting State shall, as far as that State is concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit.

(b) Any Contracting State may, as far as that State is concerned, excuse, for reasons other than those referred to in subparagraph (a), any delay in meeting any time limit.

Article 49—Right to practice before international authorities

Any attorney, patent agent, or other person, having the right to practice before the national Office with which the international application was filed, shall be entitled to practice before the International Bureau and the competent International Searching Authority and competent International Preliminary Examining Authority in respect of that application.

CHAPTER IV: TECHNICAL SERVICES

Article 50—Patent information services

(1) The International Bureau may furnish services by providing technical and any other pertinent information available to it on the basis of published documents, primarily patents and published applications (referred to in this Article as "the information services.").

(2) The International Bureau may provide these information services either directly or through one or more International Searching Authorities or other national or international specialized institutions, with which the International Bureau may reach agreement.

(3) The information services shall be operated in a way particularly facilitating the acquisition by Contracting States which are developing countries of technical knowledge and technology, including available published know-how.

(4) The information services shall be available to Governments of Contracting States and their nationals and residents. The Assembly may decide to make these services available also to others.

(5)(a) Any service to Governments of Contracting States shall be furnished at cost, provided that, when the Government is that of a Contracting State which is a developing country, the service shall be furnished below cost if the difference can be covered from profit made on services furnished to others than Governments of Contracting States or from the sources referred to in Article 51(4).

(b) The cost referred to in subparagraph (a) is to be understood as cost over and above costs normally incident to the performance of the services of a national Office or the obligations of an International Searching Authority.

(6) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

(7) The Assembly shall, when it considers it necessary, recommend methods of providing financing supplementary to those referred to in paragraph (5).

Article 51—Technical assistance

(1) The Assembly shall establish a Committee for Technical Assistance (referred to in this Article as "the Committee").

(2)(a) The members of the Committee shall be elected among the Contracting States, with due regard to the representation of developing countries.

(b) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.

(3)(a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries in developing their patent systems individually or on a regional basis.

(b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

(4) The International Bureau shall seek to enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly the United Nations, the agencies of the United Nations, and the Specialized Agencies connected with the United Nations concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.

(5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

Article 52—Relations with other provisions of the treaty

Nothing in this Chapter shall affect the financial provisions contained in any other Chapter of this Treaty. Such provisions are not applicable to the present Chapter or to its implementation.

CHAPTER V: ADMINISTRATIVE PROVISIONS

Article 53—Assembly

(1)(a) The Assembly shall, subject to Article 57(e), consist of the Contracting States.

(b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(2)(a) The Assembly shall:

(i) deal with all matters concerning the maintenances and development of the Union and the implementation of this Treaty;

(ii) perform such tasks as are specifically assigned to it under other provisions of this Treaty;

(iii) give directions to the International Bureau concerning the preparation for revision conferences;

(iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(v) review and approve the reports and activities of the Executive Committee established under paragraph (9), and give instructions to such Committee;

(vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts;

(vii) adopt the financial regulations of the Union;

(viii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;

(ix) determine which States other than Contracting States and, subject to the provisions of paragraph (8), which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) A delegate may represent, and vote in the name of, one State only.

(4) Each Contracting State shall have one vote.

(5)(a) One-half of the Contracting States shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.

(6)(a) Subject to the provisions of Articles 47(2)(b), 58(2)(b), 58(3) and 61(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) In connection with matters of exclusive interest to States bound by Chapter II, any reference to Contracting States in paragraphs (4), (5), and (6), shall be considered as applying only to States bound by Chapter II.

(8) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to the Assembly.

(9) When the number of Contracting States exceeds forty, the Assembly shall establish an Executive Committee. Any reference to the Executive Committee in this Treaty and the Regulations shall be construed as references to such Committee once it has been established.

(10) Until the Executive Committee has been established, the Assembly shall approve, within the limits of the program and triennial budget, the annual programs and budgets prepared by the Director General.

(11)(a) Until the Executive Committee has been established, the Assembly shall meet once in every calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the Coordination Committee of the Organization.

(b) Once the Executive Committee has been established, the Assembly shall meet once only in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(c) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee, or at the request of one-fourth of the Contracting States.

(12) The Assembly shall adopt its own rules of procedure.

Article 54—Executive Committee

(1) When the Assembly has established an Executive Committee, that Committee shall be subject to the provisions set forth hereinafter.

(2) (a) The Executive Committe shall, subject to Article 57(8), consist of States elected by the Assembly from among States members of the Assembly.

(b) The Government of each State member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(3) The number of States members of the Executive Committee shall correspond to one-fourth of the number of States members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution.

(5) (a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected but only up to a maximum of two-thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6) (a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly in respect of the draft program and triennial budget of the Union prepared by the Director General;

(iii) approve, within the limits of the program and triennial budget, the specific yearly budgets and programs prepared by the Director General;

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;

(vi) perform such other functions as are allocated to it under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7) (a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative or at the request of its Chairman or one-fourth of its members.

(8) (a) Each State member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) A delegate may represent, and vote in the name of, one State only.

(9) Contracting States not members of the Executive Committee shall be admitted to its meetings as observers, as well as any intergovernmental organization appointed as International Searching or Preliminary Examining Authority.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 55—International bureau

(1) Administrative tasks concerning the Union shall be performed by the International Bureau.

(2) The International Bureau shall provide the secretariat of the various organs of the Union.

(3) The Director General shall be the chief executive of the Union and shall represent the Union.

(4) The International Bureau shall publish a Gazette and other publications provided for by the Regulations or required by the Assembly.

(5) The Regulations shall specify the services that national Offices shall perform in order to assist the International Bureau and the International Searching and Preliminary Examining Authorities in carrying out their tasks under this Treaty.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee or working group established under this Treaty or the Regulations. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

(7) (a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the revision conferences.

(b) The International Bureau may consult non-governmental organizations concerning preparations for revision conferences.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 56—Committee for Technical Cooperation

(1) The Assembly shall establish a Committee for Technical Cooperation (referred to in this Article as "the Committee").

(2) (a) The Assembly shall determine the composition of the Committee and appoint its members, with due regard to an equitable representation of developing countries.

(b) The International Searching and Preliminary Examining Authorities shall be ex officio members of the Committee. In the case where such an Authority is the national Office of a Contracting State, that State shall not be additionally represented on the Committee.

(c) If the number of Contracting States so allows, the total number of members of the Committee shall be more than double the number of ex officio members.

(d) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of interested organizations to participate in discussions of interest to them.

(3) The aim of the Committee shall be to contribute, by advice and recommendations:

(i) to the constant improvement of the services provided for under this Treaty,

(ii) to the securing, so long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports, and

(iii) on the initiative of the Assembly or the Executive Committee, to the solution of the technical problems specifically involved in the establishment of a single International Searching Authority.

(4) Any Contracting State and any interested international organization may approach the Committee in writing on questions which fall within the competence of the Committee.

(5) The Committee may address its advice and recommendations to the Director General or, through him, to the Assembly, the Executive Committee, all or some of the International Searching and Preliminary Examining Authorities, and all or some of the receiving Offices.

(6) a() In any case, the Director General shall transmit to the Executive Committee the texts of all the advice and recommendations of the Committee. He may comment on such texts.

(b) The Executive Committee may express its views on any advice, recommendation, or other activity of the Committee, and may invite the Committee to study and report on questions falling within its competence. The Executive Committee may submit to the Assembly, with appropriate comments, the advice, recommendations and report of the Committee.

(7) Until the Executive Committee has been established, references in paragraph (6) to the Executive Committee shall be construed as references to the Assembly.

(8) The details of the procedure of the Committee shall be governed by the decisions of the Assembly.

Article 57—Finances

(1) (a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) Subject to the provisions of paragraph (5), the budget of the Union shall be financed from the following sources:

(i) fees and charges due for services rendered by the International Bureau in relation to the Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income.

(4) The amounts of fees and charges due to the International Bureau and the prices of its publications shall be so fixed that they should, under normal circumstances, be sufficient to cover all the expenses of the International Bureau connected with the administration of this Treaty.

(5) (a) Should any financial year close with a deficit, the Contracting States shall, subject to the provisions of subparagraphs (b) and (c), pay contributions to cover such deficit.

(b) The amount of the contribution of each Contracting State shall be decided by the Assembly with due regard to the number of international applications which has emanated from each of them in the relevant year.

(c) If other means of provisionally covering any deficit or any part thereof are secured, the Assembly may decide that such deficit be carried forward and that the Contracting States should not be asked to pay contributions.

(d) If the financial situation of the Union so permits, the Assembly may decide that any

contributions paid under subparagraph (a) be reimbursed to the Contracting States which have paid them.

(e) A Contracting State which has not paid, within two years of the due date as established by the Assembly, its contribution under subparagraph (b) may not exercise its right to vote in any of the organs of the Union. However, any organ of the Union may allow such a State to continue to exercise its right to vote in that organ so long as it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(6) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(7)(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each Contracting State. If the fund becomes insufficient, the Assembly shall arrange to increase it. If part of the fund is no longer needed, it shall be reimbursed.

(b) The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be decided by the Assembly on the basis of principles similar to those provided for under paragraph (5)(b).

(c) The terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(d) Any reimbursement shall be proportionate to the amounts paid by each Contracting State, taking into account the dates at which they were paid.

(8)(a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient such State shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an ex officio seat in the Assembly and on the Executive Committee.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(9) The auditing of the accounts shall be effected by one or more of the Contracting States or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 58—Regulations

(1) The Regulations annexed to this Treaty provide Rules:

(i) concerning matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed,

(ii) concerning any administrative requirements, matters, or procedures,

(iii) concerning any details useful in the implementation of the provisions of this Treaty.

(2)(a) The Assembly may amend the Regulations.

(b) Subject to the provisions of paragraph (3), amendments shall require three-fourths of the votes cast.

(3)(a) The Regulations specify the Rules which may be amended

(i) only by unanimous consent, or

(ii) only if none of the Contracting States whose national Office acts as an International Searching or Preliminary Examining Authority dissents, and, where such Authority is an intergovernmental organization, if the Contracting State member of that organization authorized for that purpose by the other member States within the competent body of such organization does not dissent.

(b) Exclusion, for the future, of any such Rules from the applicable requirement shall require the fulfillment of the conditions referred to in subparagraph (a)(i) or (a)(ii), respectively.

(c) Inclusion, for the future, of any Rule in one or the other of the requirements referred to in subparagraph (a) shall require unanimous consent.

(4) The Regulations provide for the establishment, under the control of the Assembly, of Administrative Instructions by the Director General.

(5) In the case of conflict between the provisions of the Treaty and those of the Regulations, the provisions of the Treaty shall prevail.

CHAPTER VI: DISPUTES

Article 59—Disputes

Subject to Article 64(5), any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

CHAPTER VII: REVISION AND AMENDMENT

Article 60—Revision of the Treaty

(1) This Treaty may be revised from time to time by a special conference of the Contracting States.

(2) The convocation of any revision conference shall be decided by the Assembly.

(3) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to any revision conference.

(4) Article 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be amended either by a revision conference or according to the provisions of Article 61.

Article 61—Amendment of Certain Provisions of the Treaty

(1)(a) Proposals for the amendment of Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be initiated by any State member of the Assembly, by the Executive Committee, or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2)(a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption shall require three-fourths of the votes cast.

(3)(a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States members of the Assembly at the time it adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the States which are members of the Assembly at the time the amendment enters into force, provided that any amendment increasing the financial obligations of the Contracting States shall bind only those States which have notified their acceptance of such amendment.

(c) Any amendment accepted in accordance with the provisions of subparagraph (a) shall bind all States which become members of the Assembly after the date on which the amendment entered into force in accordance with the provisions of subparagraph (a).

CHAPTER VIII: FINAL PROVISIONS

Article 62—Becoming Party to the Treaty

(1) Any State member of the International Union for the Protection of Industrial Property may become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, or

(ii) deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

(3) The provisions of Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply to this Treaty.

(4) Paragraph (3) shall in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Treaty is made applicable by another Contracting State by virtue of the said paragraph.

Article 63—Entry into Force of the Treaty

(1)(a) Subject to the provisions of paragraph (3), this Treaty shall enter into force three months after eight States have deposited their instruments of ratification or accession, provided that at least four of those States each fulfill any of the following conditions:

(i) the number of applications filed in the State has exceeded 40,000 according to the most recent annual statistics published by the International Bureau,

(ii) the nationals or residents of the State have filed at least 1,000 applications in one foreign country according to the most recent annual statistics published by the International Bureau,

(iii) the national Office of the State has received at least 10,000 applications from nationals or residents of foreign countries according to the most recent annual statistics published by the International Bureau.

(b) For the purposes of this paragraph, the term "applications" does not include applications for utility models.

(2) Subject to the provisions of paragraph (3), any State which does not become party to this Treaty upon entry into force under paragraph (1) shall become bound by this Treaty three months after the date on which such State has deposited its instrument of ratification or accession.

(3) The provisions of Chapter II and the corresponding provisions of the Regulations annexed to this Treaty shall become applicable, however, only on the date on which three States each of which fulfill at least one of the three requirements specified in paragraph (1) have become party to this Treaty without declaring, as provided in Article 64(1), that they do not intend to be bound by the provisions of Chapter II. That date shall not, however, be prior to that of the initial entry into force under paragraph (1).

Article 64—Reservations

(1)(a) Any State may declare that it shall not be bound by the provisions of Chapter II.

(b) States making a declaration under subparagraph (a) shall not be bound by the provisions of Chapter II and the corresponding provisions of the Regulations.

(2)(a) Any State not having made a declaration under paragraph (1)(a) may declare that:

(i) it shall not be bound by the provisions of Article 39(1) with respect to the furnishing of a copy of the international

application and a translation thereof (as prescribed),

(ii) the obligation to delay national processing, as provided for under Article 40, shall not prevent publication, by or through its national Office, of the international application or a translation thereof, it being understood, however, that it is not exempted from the limitations provided for in Articles 30 and 38.

(b) States making such a declaration shall be bound accordingly.

(3)(a) Any State may declare that, as far as it is concerned, international publication of international applications is not required.

(b) Where, at the expiration of 18 months from the priority date, the international application contains the designation only of such States as have made declarations under subparagraph (a), the international application shall not be published by virtue of Article 21(2).

(c) Where the provisions of subparagraph (b) apply, the international application shall nevertheless be published by the International Bureau:

(i) at the request of the applicant, as provided in the Regulations,

(ii) when a national application or a patent based on the international application is published by or on behalf of the national Office of any designated State having made a declaration under subparagraph (a), promptly after such publication but not before the expiration of 18 months from the priority date.

(4)(a) Any State whose national law provides for prior art effect of its patents as from a date before publication, but does not equate for prior art purposes the priority date claimed under the Paris Convention for the Protection of Industrial Property to the actual filing date in that State, may declare that the filing outside that State of an international application designating that State is not equated to an actual filing in that State for prior art purposes.

(b) Any State making a declaration under subparagraph (a) shall to that extent not be bound by the provisions of Article 11(3).

(c) Any State making a declaration under subparagraph (a) shall, at the same time, state in writing the date from which, and the conditions under which, the prior art effect of any international application designating that State becomes effective in that State. This statement may be modified at any time by notification addressed to the Director General.

(5) Each State may declare that it does not consider itself bound by Article 59. With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of Article 59 shall not apply.

(6)(a) Any declaration made under this Article shall be made in writing. It may be made at the time of signing this Treaty, at the time of depositing the instrument of ratification or accession, or, except in the case referred to in paragraph (5), at any later time by notification addressed to the Director General. In the case of the said notification, the declaration shall take effect six months after the day on which the Director General has received the notification, and shall not affect international applications filed prior to the expiration of the said six-month period.

(b) Any declaration made under this Article may be withdrawn at any time by notification addressed to the Director General. Such withdrawal shall take effect three months after the day on which the Director General has received the notification and, in the case of the withdrawal of a declaration made under paragraph (3), shall not affect international applications filed prior to the expiration of the said three-month period.

(7) No reservations to this Treaty other than the reservations under paragraphs (1) to (5) are permitted.

Article 65—Gradual Application

(1) If the agreement with any International Searching or Preliminary Examining Authority provides, transitionally, for limits on the number or kind of international applications that such Authority undertakes to process, the Assembly shall adopt the measures necessary for the gradual application of this Treaty and the Regulations in respect of given categories of international applications. This provision shall also apply to requests for an international-type search under Article 15(5).

(2) The Assembly shall fix the dates from which, subject to the provision of paragraph (1), international applications may be filed and demands for international preliminary examination may be submitted. Such dates shall not be later than six months after this Treaty has entered into force according to the provisions of Article 63(1), or after Chapter II has become applicable under Article 63(3), respectively.

Article 66—Denunciation

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) Denunciation shall take effect six months after receipt of the said notification by the Director General. It shall not affect the effects of the international application in the denouncing State if the international application was filed, and, where the denouncing State has been elected, the election was made, prior to the expiration of the said six-month period.

Article 67—Signature and Languages

(1)(a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the German, Japanese, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(2) This Treaty shall remain open for signature at Washington until December 31, 1970.

Article 68—Depositary Functions

(1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations annexed hereto to the Governments of all States party to the Paris Convention for the Protection of Industrial Property and, on request, to the Government of any other State.

(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and the Regulations to the Governments of all Contracting States and, on request, to the Government of any other State.

Article 69—Notifications

The Director General shall notify the Governments of all States party to the Paris Convention for the Protection of Industrial Property of:

(i) signatures under Article 62,

(ii) deposits of instruments of ratification or accession under Article 62,

(iii) the date of entry into force of this Treaty and the date from which Chapter II is applicable in accordance with Article 63(3),

(iv) denunciations received under Article 64(1) to (5),

(v) withdrawals of any declarations made under Article 64(6)(b),

(vi) denunciations received under Article 66, and

(vii) any declarations made under Article 31(4).

In witness whereof, the undersigned, being duly authorized thereto, have signed this Treaty.

Done at Washington, on June 19, 1970.

For Algeria: A. Dahmouche.

For Argentina: Pedro E Real, December 21st, 1970.

For Australia:

For Austria: Hans Georg Rudofsky, Dec. 22nd, 1970.

For Belgium: Walter Loridan, 30 décembre 1970.

For Brazil: Miguel A O de Almeida.

For Bulgaria:

For Cameroon:

For Canada: A. M. Laidlaw.

For the Central African Republic:

For Ceylon:

For Chad:

For the Congo (Brazzaville):

For Cuba:

For Cyprus:

For Czechoslovakia:

For Dahomey:

For Denmark: E. Tuxen.

For the Dominican Republic:

For the Federal Republic of Germany: Rupprecht v Keller, Kurt Haertel.

For Finland: Erkki Tuuli.

For France: Charles Lucet, 31 Décembre 1970.

For Gabon:

For Greece:

For Haiti:

For the Holy See: Mario Peressin.

For Hungary: Under reservation of Art. 59, E. Tasnádi.

For Iceland:

For Indonesia:

For Iran: Dr. A. Aslan Afshar, July 7th, 1970.

For Ireland: M. J. Quinn.

For Israel: Z. Sher, Mayer Gabay.

For Italy: Giorgio Ranzi.

For the Ivory Coast: T. Ahoua, December 3rd, 1970.

For Japan: subject to ratification, B. Yoshino, Y. Aratama.

For Kenya:

For Lebanon:

For Liechtenstein:

For Luxembourg: Jean Wagner, December 30th, 1971.

For Madagascar: Jules A. Razafimbahiny, December 10, 1970.

For Malawi:

For Malta:

For Mauritania:

For Mexico:

For Monaco: Professor Dr. Charles Schertenlieb, le 31 Décembre 1970.

For Morocco:

For the Kingdom of the Netherlands: R B Van Lynden, 31st December 1970.

For New Zealand:

For Niger:

For Nigeria:

For Norway: Leif Nordstrand.

For the Philippines: Suarez.

For Poland:

For Portugal:

For Romania: Corneliu Bogdan, Dec. 28, 1970.

For San Marino:

For Senegal: Cheikh I Fall, Dec. 29, 1970.

For South Africa:

For Spain:

For Sweden: Göran Borggård.

For Switzerland: Dr. Walter Stamm.

For Syria: George J. Tomeh, December 29th, 1970.

For Tanzania:

For Togo: Dr. Ohin, 12.23.70.

For Trinidad and Tobago:

For Tunisia:

For Turkey:

For Uganda:

For the Union of Soviet Socialist Republics: A. Dobrynin, 23/XII 70.
For the United Arab Republic: Moh. Abdel Salam.
For the United Kingdom of Great Britain and Northern Ireland: Edward Armitage, James David Fergusson.
For the United States of America: Eugene M. Braderman, William E. Schuyler, Jr.
For Upper Volta:
For Uruguay:
For the Republic of Viet-Nam:
For Yugoslavia: Prof. Dr. Stojan Pretnar.
For Zambia:

REGULATIONS UNDER THE PATENT COOPERATION TREATY

PART A—INTRODUCTORY RULES

Rule 1—Abbreviated Expressions

1.1 *Meaning of Abbreviated Expressions*

(a) In these Regulations, the word "Treaty" means the Patent Cooperation Treaty.

(b) In these Regulations, the words "Chapter" and "Article" refer to the specified Chapter or Article of the Treaty.

Rule 2—Interpretation of Certain Words

2.1 *"Applicant"*

Whenever the word "applicant" is used, it shall be construed as meaning also the agent or other representative of the applicant, except where the contrary clearly follows from the wording or the nature of the provision, or the context in which the word is used, such as, in particular, where the provision refers to the residence or nationality of the applicant.

2.2 *"Agent"*

Whenever the word "agent" is used, it shall be construed as meaning any person who has the right to practice before international authorities as defined in Article 49 and, unless the contrary clearly follows from the wording or the nature of the provision, or the context in which the word is used, also the common representative referred to in Rule 4.8.

2.3 *"Signature"*

Whenever the word "signature" is used, it shall be understood that, if the national law applied by the receiving Office or the competent International Searching or Preliminary Examining Authority requires the use of a seal instead of a signature, the word, for the purposes of that Office or Authority, shall mean seal.

PART B—RULES CONCERNING CHAPTER I OF THE TREATY

Rule 3—The Request (Form)

3.1 *Printed Form*

The request shall be made on a printed form.

3.2 *Availability of Forms*

Copies of the printed form shall be furnished free of charge to the applicants by the receiving Office, or, if the receiving Office so desires, by the International Bureau.

3.3 *Check List*

(a) The printed form shall contain a list which, when filled in, will show:

(i) the total number of sheets constituting the international application and the number of the sheets of each element of the international application (request, description, claims, drawings, abstract);

(ii) whether or not the international application as filed is accompanied by a power of attorney (i.e., a document appointing an agent or a common representative), a priority document, a receipt for the fees paid or a check for the payment of the fees, an international or an international-type search report, a document in evidence of the fact that the applicant is the successor in title of the inventor, and any other document (to be specified in the check list);

(iii) the number of that figure of the drawings which the applicant suggests should accompany the abstract when the abstract is published on the front page of the pamphlet and in the Gazette; in exceptional cases, the applicant may suggest more than one figure.

(b) The list shall be filled in by the applicant, failing which the receiving Office shall fill it in and make the necessary annotations, except that the number referred to in paragraph (a)(iii) shall not be filled in by the receiving Office.

3.4 *Particulars*

Subject to Rule 3.3, particulars of the printed form shall be prescribed by the Administrative Instructions.

Rule 4—The Request (Contents)

4.1 *Mandatory and Optional Contents; Signature*

(a) The request shall contain:

(i) a petition,

(ii) the title of the invention,

(iii) indications concerning the applicant and the agent, if there is an agent,

(iv) the designation of States,

(v) indications concerning the inventor where the national law of at least one of the designated States requires that the name of the inventor be furnished at the time of filing a national application.

(b) The request shall, where applicable, contain:

(i) a priority claim,

(ii) a reference to any earlier international search or to any earlier international-type search,

(iii) choices of certain kinds of protection,

(iv) an indication that the applicant wishes to obtain a regional patent and the names of the designated States for which he wishes to obtain such a patent,

(v) a reference to a parent application or parent patent.

(c) The request may contain indications concerning the inventor where the national law of none of the designated States requires that the name of the inventor be furnished at the time of filing a national application.

(d) The request shall be signed.

4.2 *The Petition*

The petition shall be to the following effect and shall preferably be worded as follows: "The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty."

4.3 *Title of the Invention*

The title of the invention shall be short (preferably from two to seven words when in English or translated into English) and precise.

4.4 *Names and Addresses*

(a) Names of natural persons shall be indicated by the person's family name and given name(s), the family name being indicated before the given name(s).

(b) Names of legal entities shall be indicated by their full, official designations.

(c) Addresses shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address and, in any case, shall consist of all the relevant administrative units up to, and including, the house number, if any. Where the national law of the designated State does not require the indication of the house number, failure to indicate such number shall have no effect in that State. It is recommended to indicate any telegraphic and teletype address and telephone number.

(d) For each applicant, inventor, or agent, only one address may be indicated.

4.5 *The Applicant*

(a) The request shall indicate the name, address, nationality and residence of the applicant or, if there are several applicants, of each of them.

(b) The applicant's nationality shall be indicated by the name of the State of which he is a national.

(c) The applicant's residence shall be indicated by the name of the State of which he is a resident.

4.6 *The Inventor*

(a) Where Rule 4.1(a)(v) applies, the request shall indicate the name and address of the inventor or, if there are several inventors, of each of them.

(b) If the applicant is the inventor, the request, in lieu of the indication under paragraph (a), shall contain a statement to that effect or shall repeat the applicant's name in the space reserved for indicating the inventor.

(c) The request may, for different designated States, indicate different persons as inventors where, in this respect, the requirements of the national laws of the designated States are not the same. In such a case, the request shall contain a separate statement for each designated State or group of States in which a particular person, or the same person, is to be considered the inventor, or in which particular persons, or the same persons, are to be considered the inventors.

4.7 *The Agent*

If agents are designated, the request shall so indicate, and shall state their names and addresses.

4.8 *Representation of Several Applicants Not Having a Common Agent*

(a) If there is more than one applicant and the request does not refer to an agent representing all the applicants ("a common agent"), the request shall designate one of the applicants who is entitled to file an international application according to Article 9 as their common representative.

(b) If there is more than one applicant and the request does not refer to an agent representing all the applicants and it does not comply with the requirement of designating one of the applicants as provided in paragraph (a), the applicant first named in the request who is entitled to file an international application according to Article 9 shall be considered the common representative.

4.9 *Designation of States*

Contracting States shall be designated in the request by their names.

4.10 *Priority Claim*

(a) The declaration referred to in Article 8(1) shall be made in the request; it shall consist of a statement to the effect that the priority of an earlier application is claimed and shall indicate:

(i) when the earlier application is not a regional or an international application, the country in which it was filed; when the earlier application is a regional or an international application, the country or countries for which it was filed,

(ii) the date on which it was filed,

(iii) the number under which it was filed, and

(iv) when the earlier application is a regional or an international application, the national Office or intergovernmental organization with which it was filed.

(b) If the request does not indicate both

(i) when the earlier application is not a regional or an international application, the country in which it was filed; when the earlier application is a regional or an international application, at least one country for which it was filed, and

(ii) the date on which it was filed, the priority claim shall, for the purposes of the procedure under the Treaty, be considered not to have been made.

(c) If the application number of the earlier application is not indicated in the re-

quest but is furnished by the applicant to the International Bureau prior to the expiration of the 16th month from the priority date, it shall be considered by all designated States to have been furnished in time. If it is furnished after the expiration of that time limit, the International Bureau shall inform the applicant and the designated Offices of the date on which the said number was furnished to it. The International Bureau shall indicate that date in the international publication of the international application, or, if, at the time of the international publication, the said number has not been furnished to it, shall indicate that fact in the international publication.

(d) If the filing date of the earlier application as indicated in the request precedes the international filing date by more than one year, the receiving Office, or, if the receiving Office has failed to do so, the International Bureau, shall invite the applicant to ask either for the cancellation of the declaration made under Article 8(1) or, if the date of the earlier application was indicated errroneously, for the correction of the date so indicated. If the applicant fails to act accordingly within 1 month from the date of the invitation, the declaration made under Article 8(1) shall be cancelled ex officio. The receiving Office effecting the correction or cancellation shall notify the applicant accordingly and, if copies of the international application have already been sent to the International Bureau and the International Searching Authority, that Bureau and that Authority. If the correction or cancellation is effected by the International Bureau, the latter shall notify the applicant and the International Searching Authority accordingly.

(e) Where the priorities of several earlier applications are claimed, the provisions of paragraphs (a) to (d) shall apply to each of them.

4.11 *Reference to Earlier International or International-Type Search*

If an international or international-type search has been requested on an application under Article 15(5), the request may state that fact and identify the application (or its translation, as the case may be) by country, date and number, and the request for the said search by date and, if available, number.

4.12 *Choice of Certain Kinds of Protection*

(a) If the applicant wishes his international application to be treated, in any designated State, as an application not for a patent but for the grant of any of the other kinds of protection specified in Article 43, he shall so indicate in the request. For the purposes of this paragraph, Article 2(ii) shall not apply.

(b) In the case provided for in Article 44, the applicant shall indicate the two kinds of protection sought, or, if one of two kinds of protection is primarily sought, he shall indicate which kind is sought primarily and which kind is sought subsidiarily.

4.13 *Identification of Parent Application or Parent Grant*

If the applicant wishes his international application to be treated, in any designated State, as an application for a patent or certificate of addition, inventor's certificate of addition, or utility certificate of addition, he shall identify the parent application or the parent patent, parent inventor's certificate, or parent utility certificate to which the patent or certificate of addition, inventor's certificate of addition, or utility certificate of addition, if granted, relates. For the purposes of this paragraph, Article 2(ii) shall not apply.

4.14 *Continuation or Continuation in Part*

If the applicant wishes his international application to be treated, in any designated State, as an application for a continuation or a continuation-in-part of an earlier application, he shall so indicate in the request and shall identify the parent application involved.

4.15 *Signature*

The request shall be signed by the applicant.

4.16 *Transliteration or Translation of Certain Words*

(a) Where any name or address is written in characters other than those of the Latin alphabet, the same shall also be indicated in characters of the Latin alphabet either as a mere transliteration or through translation into English. The applicant shall decide which words will be merely transliterated and which words will be so translated.

(b) The name of any country written in characters other than those of the Latin alphabet shall also be indicated in English.

4.17 *No Additional Matter*

(a) The request shall contain no matter other than that specified in Rules 4.1 to 4.16.

(b) If the request contains matter other than that specified in Rule 4.1 to 4.16, the receiving Office shall ex officio delete the additional matter.

Rule 5—The Description

5.1 *Manner of the Description*

(a) The description shall first state the title of the invention as appearing in the request and shall:

(i) specify the technical field to which the invention relates;

(ii) indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention, and, preferably, cite the documents reflecting such art;

(iii) disclose the invention, as claimed, in such terms that the technical problem (even if not expressly stated as such) and its solution can be understood, and state the advantageous effects, if any, of the invention with reference to the background art;

(iv) briefly describe the figures in the drawings, if any;

(v) set forth at least the best mode contemplated by the applicant for carrying out the invention claimed; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any; where the national law of the designated State does not require the description of the best mode but is satisfied with the description of any mode (whether it is the best contemplated or not), failure to describe the best mode contemplated shall have no effect in that State;

(vi) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is capable of exploitation in industry and the way in which it can be made and used, or, if it can only be used, the way in which it can be used; the term "industry" is to be understood in its broadest sense as in the Paris Convention for the Protection of Industrial Property.

(b) The manner and order specified in paragraph (a) shall be followed except when, because of the nature of the invention, a different manner or a different order would result in a better understanding and a more economic presentation.

(c) Subject to the provisions of paragraph (b), each of the parts referred to in paragraph (a) shall preferably be preceded by an appropriate heading as suggested in the Administrative Instructions.

Rule 6—The Claims

6.1 *Number and Numbering of Claims*

(a) The number of the claims shall be reasonable in consideration of the nature of the invention claimed.

(b) If there are several claims, they shall be numbered consecutively in arabic numerals.

(c) The method of numbering in the case of the amendment of claims shall be governed by the Administrative Instructions.

6.2 *References to Other Parts of the International Application*

(a) Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or drawings. In particular, they shall not rely on such references as: "as described in part . . . of the description," or "as illustrated in figure . . . of the drawings."

(b) Where the international application contains drawings, the technical features mentioned in the claims shall preferably be followed by the reference signs relating to such features. When used, the reference signs shall preferably be placed between parentheses. If inclusion of reference signs does not particularly facilitate quicker understanding of a claim, it should not be made. Reference signs may be removed by a designated Office for the purpose of publication by such Office.

6.3 *Manner of Claiming*

(a) The definition of the matter for which protection is sought shall be in terms of the technical features of the invention.

(b) Whenever appropriate, claims shall contain:

(i) a statement indicating those technical features of the invention which are necessary for the definition of the claimed subject matter but which, in combination, are part of the prior art,

(ii) a characterizing portion—preceded by the words "characterized in that," "characterized by," "wherein the improvement comprises," or any other words to the same effect—stating concisely the technical features which, in combination with the features stated under (i), it is desired to protect.

(c) Where the national law of the designated States does not require the manner of claiming provided for in paragraph (b), failure to use that manner of claiming shall have no effect in that State provided the manner of claiming actually used satisfies the national law of that State.

6.4 *Dependent Claims*

(a) Any claim which includes all the features of one or more other claims (claim in dependent form, hereinafter referred to as "dependent claim") shall do so by a reference, if possible at the beginning, to the other claim or claims and shall then state the additional features claimed. Any dependent claim which refers to more than one other claim ("multiple dependent claim") shall refer to such claims in the alternative only. Multiple dependent claims shall not serve as a basis for any other multiple dependent claim.

(b) Any dependent claim shall be construed as including all the limitations contained in the claim to which it refers or, if the dependent claim is a multiple dependent claim, all the limitations contained in the particular claim in relation to which it is considered.

(c) All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most practical way possible.

6.5 *Utility Models*

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rules 6.1 to 6.4, apply in respect of the

matters regulated in those Rules the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least 2 months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.

Rule 7—The Drawings

7.1 *Flow Sheets and Diagrams*

Flow sheets and diagrams are considered drawings.

7.2 *Time Limit*

The time limit referred to in Article 7(2)(ii) shall be reasonable under the circumstances of the case and shall, in no case, be shorter than 2 months from the date of the written invitation requiring the filing of drawings or additional drawings under the said provision.

Rule 8—The Abstract

8.1 *Contents and Form of the Abstract*

(a) The abstract shall consist of the following:

(i) a summary of the disclosure as contained in the description, the claims, and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention;

(ii) where applicable, the chemical formula which, among all the formulae contained in the international application, best characterizes the invention.

(b) The abstract shall be as concise as the disclosure permits (preferably 50 to 150 words if it is in English or when translated into English).

(c) The abstract shall not contain statements on the alleged merits or value of the claimed invention or on its speculative application.

(d) Each main technical feature mentioned in the abstract and illustrated by a drawing in the international application shall be followed by a reference sign, placed between parentheses.

8.2 *Failure To Suggest a Figure To Be Published with the Abstract*

If the applicant fails to make the indication referred to in Rule 3.3(a)(iii), or if the International Searching Authority finds that a figure or figures other than that figure or those figures suggested by the applicant would, among all the figures of all the drawings, better characterize the invention, it shall indicate the figure or figures which it so considers. Publications by the International Bureau shall then use the figure or figures so indicated by the International Searching Authority. Otherwise, the figure or figures suggested by the applicant shall be used in the said publications.

8.3 *Guiding Principles in Drafting*

The abstract shall be so drafted that it can efficiently serve as a scanning tool for purposes of searching in the particular art, especially by assisting the scientist, engineer or researcher in formulating an opinion on whether there is a need for consulting the international application itself.

Rule 9—Expressions, Etc., Not To Be Used

9.1 *Definition*

The international application shall not contain:

(i) expressions or drawings contrary to morality;

(ii) expressions or drawings contrary to public order;

(iii) statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person (mere comparisons with the prior art shall not be considered disparaging *per se*);

(iv) any statement or other matter obviously irrelevant or unnecessary under the circumstances.

9.2 *Noting of Lack of Compliance*

The receiving Office and the International Searching Authority may note lack of compliance with the prescriptions of Rule 9.1 and may suggest to the applicant that he voluntarily correct his international application accordingly. If the lack of compliance was noted by the receiving Office, that Office shall inform the competent International Searching Authority and the International Bureau; if the lack of compliance was noted by the International Searching Authority, that Authority shall inform the receiving Office and the International Bureau.

9.3 *Reference to Article 21(6)*

"Disparaging statements," referred to in Article 21(6), shall have the meaning as defined in Rule 9.1 (iii).

Rule 10—Terminology and Signs

10.1 *Terminology and Signs*

(a) Units of weights and measures shall be expressed in terms of the metric system, or also expressed in such terms if first expressed in terms of a different system.

(b) Temperatures shall be expressed in degrees centigrade, or also expressed in degrees centigrade if first expressed in a different manner.

(c) Density shall be expressed in metric units.

(d) For indications of heat, energy, light, sound, and magnetism, as well as for mathematical formulae and electrical units, the rules of international practice shall be observed; for chemical formulae, the symbols, atomic weights, and molecular formulae, in general use, shall be employed.

(e) In general, only such technical terms, signs and symbols should be used as are generally accepted in the art.

(f) When the international application or its translation is in English or Japanese, the beginning of any decimal fraction shall be marked by a period, whereas, when the international application or its translation is in a language other than English or Japanese, it shall be marked by a coma.

10.2 *Consistency*

The terminology and the signs shall be consistent throughout the international application.

Rule 11—Physical Requirements of the International Application

11.1 *Number of Copies*

(a) Subject to the provisions of paragraph (b), the international application and each of the documents referred to in the check list (Rule 3.3(a)(ii)) shall be filed in one copy.

(b) Any receiving Office may require that the international application and any of the documents referred to in the check list (Rule 3.3(a)(ii)), except the receipt for the fees paid or the check for the payment of the fees, shall be filed in two or three copies. In that case, the receiving Office shall be responsible for verifying the identity of the second and the third copies with the record copy.

11.2 *Fitness for Reproduction*

(a) All elements of the international application (i.e., the request, the description, the claims, the drawings, and the abstract) shall be so presented as to admit of direct reproduction by photography, electrostatic processes, photo offset, and microfilming, in any number of copies.

(b) All sheets shall be free from creases and cracks; they shall not be folded.

(c) Only one side of each sheet shall be used.

(d) Subject to Rule 11.13(j), each sheet shall be used in an upright position (i.e., the short sides at the top and bottom).

11.3 *Material to be Used*

All elements of the international application shall be on paper which shall be flexible, strong, white, smooth, non-shiny, and durable.

11.4 *Separate Sheets, Etc.*

(a) Each element (request, description, claims, drawings, abstract) of the international application shall commence on a new sheet.

(b) All sheets of the international application shall be so connected that they can be easily turned when consulted, and easily separated and joined again if they have been separated for reproduction purposes.

11.5 *Size of Sheets*

The size of the sheets shall be A4 (29.7 cm x 21 cm). However, any receiving Office may accept international applications on sheets of other sizes provided that the record copy, as transmitted to the International Bureau, and, if the competent International Searching Authority so desires, the search copy, shall be of A4 size.

11.6 *Margins*

(a) The minimum margins of the sheets containing the request, the description, the claims, and the abstract, shall be as follows:

top of first sheet, except that of the request: 8 cm
top of other sheets: 2 cm
left side: 2.5 cm
right side: 2 cm
bottom: 2 cm

(b) The recommended maximum, for the margins provided for in paragraph (a), is as follows:

top of first sheet, except that of the request: 9 cm
top of other sheets: 4 cm
left side: 4 cm
right side: 3 cm
bottom: 3 cm

(c) On sheets containing drawings, the surface usable shall not exceed 26.2 cm x 17.0 cm. The sheets shall not contain frames around the usable or used surface. The minimum margins shall be as follows:

top: 2.5 cm
left side: 2.5 cm
right side: 1.5 cm
bottom: 1.0 cm

(d) The margins referred to in paragraphs (a) to (c) apply to A4-size sheets, so that, even if the receiving Office accepts other sizes, the A4-size record copy and, when so required, the A4-size search copy shall leave the aforesaid margins.

(e) The margins of the international application, when submitted, must be completely blank.

11.7 *Numbering of Sheets*

(a) All the sheets contained in the international application shall be numbered in consecutive arabic numerals.

(b) The numbers shall be placed at the top of the sheet, in the middle, but not in the margin.

11.8 *Numbering of Lines*

(a) It is strongly recommended to number every fifth line of each sheet of the description, and of each sheet of claims.

(b) The numbers should appear on the left side, to the right of the margin.

11.9 *Writing of Text Matter*

(a) The request, the description, the claims and the abstract shall be typed or printed.

(b) Only graphic symbols and characters, chemical or mathematical formulae, and certain characters in the Japanese language may, when necessary, be written by hand or drawn.

(c) The typing shall be 1½-spaced.

(d) All text matter shall be in characters the capital letters of which are not less than 0.21 cm high, and shall be in a dark, indeli-

ble color, satisfying the requirements specified in Rule 11.2.

(e) As far as the spacing of the typing and the size of the characters are concerned, paragraphs (c) and (d) shall not apply to texts in the Japanese language.

11.10 *Drawings, Formulae, and Tables, in Text Matter*

(a) The request, the description, the claims and the abstract shall not contain drawings.

(b) The description, the claims and the abstract may contain chemical or mathematical formulae.

(c) The description and the abstract may contain tables; any claim may contain tables only if the subject matter of the claim makes the use of tables desirable.

11.11 *Words in Drawings*

(a) The drawings shall not contain text matter, except a single word or words, when absolutely indispensable, such as "water," "steam," "open," "closed," "section on AB," and, in the case of electric circuits and block schematic or flow sheet diagrams, a few short catch words indispensable for understanding.

(b) Any words used shall be so placed that, if translated, they may be pasted over without interfering with any lines of the drawings.

11.12 *Alterations, Etc.*

Each sheet shall be reasonably free from erasures and shall be free from alterations, overwritings, and interlineations. Non-compliance with this Rule may be authorized, in exceptional cases, if the authenticity of the content is not in question and the requirements for good reproduction are not in jeopardy.

11.13 *Special Requirements for Drawings*

(a) Drawings shall be executed in durable, black or blue, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes without colorings.

(b) Cross-sections shall be indicated by oblique hatching which should not impede the clear reading of the reference signs and leading lines.

(c) The scale of the drawings and the distinctness of their graphical execution shall be such that a photographic reproduction with a linear reduction in size to two-thirds would enable all details to be distinguished without difficulty.

(d) When, in exceptional cases, the scale is given on a drawing, it shall be represented graphically.

(e) All numbers, letters, and reference lines, appearing on the drawings, shall be simple and clear. Brackets, circles or inverted commas shall not be used in association with numbers and letters.

(f) All lines in the drawings shall, ordinarily, be drawn with the aid of drafting instruments.

(g) Each element of each figure shall be in proper proportion to each of the other elements in the figure, except where the use of a different proportion is indispensable for the clarity of the figure.

(h) The height of the numbers and letters shall not be less than 0.32 cm. For the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used.

(i) The same sheet of drawings may contain several figures. Where figures on two or more sheets form in effect a single complete figure, the figures on the several sheets shall be so arranged that the complete figure can be assembled without concealing any part of any of the figures appearing on the various sheets.

(j) The different figures shall be arranged on a sheet or sheets without wasting space, preferably in an upright position, clearly separated from one another.

(k) The different figures shall be numbered in arabic numerals consecutively and independently of the numbering of the sheets.

(l) Reference signs not mentioned in the description shall not appear in the drawings, and vice versa.

(m) The same features, when denoted by reference signs, shall, throughout the international application, be denoted by the same signs.

(n) If the drawings contain a large number of reference signs, it is strongly recommended to attach a separate sheet listing all reference signs and the features denoted by them.

11.14 *Later Documents*

Rules 10, and 11.1 to 11.13, also apply to any document—for example, corrected pages, amended claims—submitted after the filing of the international application.

11.15 *Translations*

No designated Office shall require that the translation of an international application filed with it comply with requirements other than those prescribed for the international application as filed.

Rule 12—Language of the International Application

12.1 *The International Application*

Any international application shall be filed in the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Searching Authority competent for the international searching of that application, provided that, if the agreement specifies several languages, the receiving Office may prescribe among the specified languages that language in which or those languages in one of which the international application must be filed.

12.2 *Changes in the International Application*

Any changes in the international application, such as amendments and corrections, shall be in the same language as the said application (cf. Rule 66.5).

Rule 13—Unity of Invention

13.1 *Requirement*

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

13.2 *Claims of Different Categories*

Rule 13.1 shall be construed as permitting, in particular, either of the following two possibilities:

(i) in addition to an independent claim for a given product, the inclusion in the same international application of one independent claim for one process specially adapted for the manufacture of the said product, and the inclusion in the same international application of one independent claim for one use of the said product, or

(ii) in addition to an independent claim for a given process, the inclusion in the same international application of one independent claim for one apparatus or means specifically designed for carrying out the said process.

13.3 *Claims of One and the Same Category*

Subject to Rule 13.1, it shall be permitted to include in the same international application two or more independent claims of the same category (i.e., product, process, apparatus, or use) which cannot readily be covered by a single generic claim.

13.4 *Dependent Claims*

Subject to Rule 13.1, it shall be permitted to include in the same international application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

13.5 *Utility Models*

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rules 13.1 to 13.4, apply in respect of the matters regulated in those Rules the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least 2 months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.

Rule 14—The Transmittal Fee

14.1 *The Transmittal Fee*

(a) Any receiving Office may require that the applicant pay a fee to it, for its own benefit, for receiving the international application, transmitting copies to the International Bureau and the competent International Searching Authority, and performing all the other tasks which it must perform in connection with the international application in its capacity of receiving Office ("transmittal fee").

(b) The amount and the due date of the transmittal fee, if any, shall be fixed by the receiving Office.

Rule 15—The International Fee

15.1 *Basic Fee and Designation Fee*

Each international application shall be subject to the payment of a fee for the benefit of the International Bureau ("international fee") consisting of

(i) a "basic fee," and

(ii) as many "designation fees" as there are States designated in the international application, provided that, where a regional patent is sought for certain designated States, only one designation fee shall be due for those States.

15.2 *Amounts*

(a) The amount of the basic fee shall be:

(i) if the international application contains no more than 30 sheets: US $45.00 or 194 Swiss francs,

(ii) if the international application contains more than 30 sheets: US $45.00 or 194 Swiss francs plus US $1.00 or 4.30 Swiss francs per sheet in excess of 30 sheets.

(b) The amount of the designation fee shall be:

(i) for each designated State or each group of designated States for which the same regional patent is sought which does not require the furnishing of a copy under Article 13: US $12.00 or 52 Swiss francs,

(ii) for each designated State or each group of designated States for which the same regional patent is sought which requires the furnishing of a copy under Article 13: US $14.00 or 60 Swiss francs.

15.3 *Mode of Payment*

(a) The international fee shall be collected by the receiving Office.

(b) The international fee shall be payable in the currency prescribed by the receiving Office, it being understood that, when transferred by the receiving Office to the International Bureau, it shall be freely convertible into Swiss currency.

15.4 *Time of Payment*

(a) The basic fee shall be due on the date of receipt of the international application. However, any receiving Office may, at its discretion, notify the applicant of any lack of receipt or insufficiency of any amount received, and permit applicants to pay the

basic fee later, without loss of the international filing date, provided that:

(i) permission shall not be given to pay later than 1 month after the date of receipt of the international application;

(ii) permission may not be subject to any extra charge.

(b) The designation fee may be paid on the date of receipt of the international application or on any later date but, at the latest, it must be paid before the expiration of one year from the priority date.

15.5 *Partial Payment*

(a) If the applicant specifies the States to which he wishes any amount paid to be applied as designation fee, the amount shall be applied accordingly to the number of States which are covered by the amount in the order specified by the applicant.

(b) If the applicant does not specify any such wish and if the amount or amounts received by the receiving Office are higher than the basic fee and one designation fee but lower than what is due according to the number of the designated States, any amount in excess of the basic fee and one designation fee shall be treated as designation fees for the States following the State first named in the request and in the order in which the States are designated in the request up to and including that designated State for which the total amount of the designation fee is covered by the amount or amounts received.

(c) The designation fee for the first mentioned State belonging to a group of States for which the same regional patent is sought and which is specified under paragraph (a) or which is reached under paragraph (b) shall, for the purposes of the said paragraphs, be considered as covering also the other States of the said group.

15.6 *Refund*

(a) The international fee shall be refunded to the applicant if the determination under Article 11(1) is negative.

(b) In no other case shall the international fee be refunded.

Rule 16—The Search Fee

16.1 *Right to Ask for a Fee*

(a) Each International Searching Authority may require that the applicant pay a fee ("search fee") for its own benefit for carrying out the international search and for performing all other tasks entrusted to International Searching Authorities by the Treaty and these Regulations.

(b) The search fee shall be collected by the receiving Office. It shall be payable in the currency prescribed by that Office, it being understood that, if that currency is not the same as the curency of the State in which the International Searching Authority is located, the search fee, when transferred by the receiving Office to that Authority, shall be freely convertible into the currency of the said State. As to the time of payment of the search fee Rule 15.4(a) shall apply.

16.2 *Refund*

The search fee shall be refunded to the applicant if the determination under Article 11(1) is negative.

16.3 *Partial Refund*

Where the international application claims the priority of an earlier international application which has been the subject of an international search by the same International Searching Authority, that Authority shall refund the search fee paid in connection with the later international application to the extent and under the conditions provided for in the agreement under Article 16(3)(b), if the international search report on the later international application could wholly or partly be based on the results of the international search effected on the earlier international application.

Rule 17—The Priority Document

17.1 *Obligation to Submit Copy of Earlier National Application*

(a) Where the priority of an earlier national application is claimed under Article 8 in the international application, a copy of the said national application, certified by the authority with which it was filed ("the priority document"), shall, unless already filed with the receiving Office, together with the international application, be submitted by the applicant to the International Bureau not later than 16 months after the priority date or, in the case referred to in Article 23(2), not later than at the time the processing or examination is requested.

(b) If the applicant fails to comply with the requirement under paragraph (a), any designated State may disregard the priority claim.

(c) The International Bureau shall record the date on which it received the priority document and shall notify the applicant and the designated Offices accordingly.

17.2 *Availability of Copies*

(a) The International Bureau shall, at the specific request of the designated Office, promptly but not before the expiration of the time limit fixed in Rule 17.1(a), furnish a copy of the priority document to that Office. No such Office shall ask the applicant himself to furnish it with a copy, except where it requires the furnishing of a copy of the priority document together with a certified translation thereof. The applicant shall not be required to furnish a certified translation to the designated Office before the expiration of the applicable time limit under Article 22.

(b) The International Bureau shall not make copies of the priority document available to the public prior to the international publication of the international application.

(c) Paragraphs (a) and (b) shall apply also to any earlier international application whose priority is claimed in the subsequent international application.

Rule 18—The Applicant

18.1 *Residence*

(a) Subject to the provisions of paragraph (b), the question whether an applicant is a resident of the Contracting State of which he claims to be a resident shall depend on the national law of that State and shall be decided by the receiving Office.

(b) In any case, possession of a real and effective industrial or commercial establishment in a Contracting State shall be considered residence in that State.

18.2 *Nationality*

(a) Subject to the provisions of paragraph (b), the question whether an applicant is a national of the Contracting State of which he claims to be a national shall depend on the national law of that State and shall be decided by the receiving Office.

(b) In any case, a legal entity constituted according to the national law of a Contracting State shall be considered a national of that State.

18.3 *Several Applicants: Same for All Designated States*

If all the applicants are applicants for the purposes of all designated States, the right to file an international application shall exist if at least one of them is entitled to file an international application according to Article 9.

18.4 *Several Applicants: Different for Different Designated States*

(a) The international application may indicate different applicants for the purposes of different designated States, provided that, in respect of each designated State, at least one of the applicants indicated for the purposes of that State is entitled to file an international application according to Article 9.

(b) If the condition referred to in paragraph (a) is not fulfilled in respect of any designated State, the designation of that State shall be considered not to have been made.

(c) The International Bureau shall, from time to time, publish information on the various national laws in respect of the question who is qualified (inventor, successor in title of the inventor, owner of the invention, or other) to file a national application and shall accompany such information by a warning that the effect of the international application in any designated State may depend on whether the person designated in the international application as applicant for the purposes of that State is a person who, under the national law of that State, is qualified to file a national application.

18.5 *Change in the Person or Name of the Applicant*

Any change in the person or name of the applicant shall, on the request of the applicant or the receiving Office, be recorded by the International Bureau, which shall notify the interested International Searching Authority and the designated Office accordingly.

Rule 19—The Competent Receiving Office

19.1 *Where to File*

(a) Subject to the provisions of paragraph (b), the international application shall be filed, at the option of the applicant, with the national Office of or acting for the Contracting State of which the applicant is a resident or with the national Office of or acting for the Contracting State of which the applicant is a national.

(b) Any Contracting State may agree with another Contracting State or any intergovernmental organization that the national Office of the latter State or the intergovernmental organization shall, for all or some purposes, act instead of the national Office of the former State as receiving Office for applicants who are residents or nationals of that former State. Notwithstanding such agreement, the national Office of the former State shall be considered the competent receiving Office for the purposes of Article 15(5).

(c) In connection with any decision made under Article 9(2), the Assembly shall appoint the national Office or the intergovernmental organization which will act as receiving Office for applications of residents or nationals of States specified by the Assembly. Such appointment shall require the previous consent of the said national Office or intergovernmental organization.

19.2 *Several Applicants*

(a) If there are several applicants and they have no common agent, their common representative within the meaning of Rule 4.8 shall, for the purposes of the application of Rule 19.1, be considered the applicant.

(b) If there are several applicants and they have a common agent, the applicant first named in the request who is entitled to file an international application according to Article 9 shall, for the purposes of the application of Rule 19.1, be considered the applicant.

19.3 *Publication of Fact of Delegation of Duties of Receiving Office*

(a) Any agreement referred to in Rule 19.1(b) shall be promptly notified to the International Bureau by the Contracting State which delegates the duties of the receiving Office to the national Office of or acting for another Contracting State or an intergovernmental organization.

(b) The International Bureau shall, promptly upon receipt, publish the notification in the Gazette.

Rule 20—Receipt of the International Application

20.1 *Date and Number*

(a) Upon receipt of papers purporting to be an international application, the receiving

Office shall indelibly mark the date of actual receipt in the space provided for that purpose in the request form of each copy received and one of the numbers assigned by the International Bureau to that Office on each sheet of each copy received.

(b) The place on each sheet where the date or number shall be marked, and other details, shall be specified in the Administrative Instructions.

20.2 *Receipt on Different Days*

(a) In cases where all the sheets pertaining to the same purported international application are not received on the same day by the receiving Office, that Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the papers completing the international application were received, provided that

(i) where no invitation under Article 11 (2) (a) to correct was sent to the applicant, the said papers are received within 30 days from the date on which sheets were first received;

(ii) where an invitation under Article 11 (2) (a) to correct was sent to the applicant, the said papers are received within the applicable time limit under Rule 20.6;

(iii) in the case of Article 14(2), the missing drawings are received within 30 days from the date on which the incomplete papers were filed;

(iv) the absence or later receipt of any sheet containing the abstract or part thereof shall not, in itself, require any correction of the date marked on the request.

(b) Any sheet received on a date later than the date on which sheets were first received shall be marked by the receiving Office with the date on which it was received.

20.3 *Corrected International Application*

In the case refererd to in Article 11(2)(b), the receiving Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the last required correction was received.

20.4 *Determination under Article 11(1)*

(a) Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers comply with the requirements of Article 11(1).

(b) For the purposes of Article 11(1)(iii)(c), it shall be sufficient to indicate the name of the applicant in a way which allows his identity to be established even if the name is misspelled, the given names are not fully indicated, or, in the case of legal entities, the indication of the name is abbreviated or incomplete.

20.5 *Positive Determination*

(a) If the determination under Article 11(1) is positive, the receiving Office shall stamp in the space provided for that purpose in the request form the name of the receiving Office and the words "PCT International Application," or "Demande internationale PCT." If the official language of the receiving Office is neither English nor French, the words "International Application" or "Demande internationale" may be accomplished by a translation of these words in the official language of the receiving Office.

(b) The copy whose request sheet has been so stamped shall be the record copy of the international application.

(c) The receiving Office shall promptly notify the applicant of the international application number and the international filing date.

20.6 *Invitation to Correct*

(a) The invitation to correct under Article 11(2) shall specify the requirement provided for under Article 11(1) which, in the opinion of the receiving Office, has not been fulfilled.

(b) The receiving Office shall promptly mail the invitation to the applicant and shall fix a time limit, reasonable under the circumstances of the case, for filing the correction. The time limit shall not be less than 10 days, and shall not exceed 1 month, from the date of the invitation. If such time limit expires after the expiration of 1 year from the filing date of any application whose priority is claimed, the receiving Office may call this circumstance to the attention of the applicant.

20.7 *Negative Determination*

If the receiving Office does not, within the prescribed time limit, receive a reply to its invitation to correct, or if the correction offered by the applicant still does not fulfill the requirements provided for under Article 11(1), it shall:

(i) promptly notify the applicant that his application is not and will not be treated as an international application and shall indicate the reasons therefor,

(ii) notify the International Bureau that the number it has marked on the papers will not be used as an international application number,

(iii) keep the papers constituting the purported international application and any correspondence relating thereto as provided in Rule 93.1, and

(iv) send a copy of the said papers to the International Bureau where, pursuant to a request by the applicant under Article 25(1), the International Bureau needs such a copy and specially asks for it.

20.8 *Error by the Receiving Office*

If the receiving Office later discovers, or on the basis of the applicant's reply realizes, that it has erred in issuing an invitation to correct since the requirements provided for under Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule 20.5.

20.9 *Certified Copy for the Applicant*

Against payment of a fee, the receiving Office shall furnish to the applicant, on request, certified copies of the international application as filed and of any corrections thereto.

Rule 21—Preparation of Copies

21.1 *Responsibility of the Receiving Office*

(a) Where the international application is required to be filed in one copy, the receiving Office shall be responsible for preparing the home copy and the search copy required under Article 12(1).

(b) Where the international application is required to be filed in two copies, the receiving Office shall be responsible for preparing the home copy.

(c) If the international application is filed in less than the number of copies required under Rule 11.1(b), the receiving Office shall be responsible for the prompt preparation of the number of copies required, and shall have the right to fix a fee for performing that task and to collect such fee from the applicant.

Rule 22—Transmittal of the Record Copy

22.1 *Procedure*

(a) If the determination under Article 11(1) is positive, and unless prescriptions concerning national security prevent the international application from being treated as such, the receiving Office shall transmit the record copy to the International Bureau. Such transmittal shall be effected promptly after receipt of the international application or, if a check to preserve national security must be performed, as soon as the necessary clearance has been obtained. In any case, the receiving Office shall transmit the record copy in time for it to reach the International Bureau by the expiration of the 13th month from the priority date. If the transmittal is effected by mail, the receiving Office shall mail the record copy not later than 5 days prior to the expiration of the 13th month from the priority date.

(b) If the applicant is not in possession of the notification of receipt sent by the International Bureau under Rule 24.2(a) by the expiration of 13 months and 10 days from the priority date, he shall have the right to ask the receiving Office to give him the record copy or, should the receiving Office allege that it has transmitted the record copy to the International Bureau, a certified copy based on the home copy.

(c) The applicant may transmit the copy he has received under paragraph (b) to the International Bureau. Unless the record copy transmitted by the receiving Office has been received by the International Bureau before the receipt by that Bureau of the copy transmitted by the applicant, the latter copy shall be considered the record copy.

22.2 *Alternative Procedure*

(a) Notwithstanding the provisions of Rule 22.1, any receiving Office may provide that the record copy of any international application filed with it shall be transmitted, at the option of the applicant, by the receiving Office or through the applicant. The receiving Office shall inform the International Bureau of the existence of any such provision.

(b) The applicant shall exercise the option through a written notice, which he shall file together with the international application. If he fails to exercise the said option, the applicant shall be considered to have opted for transmittal by the receiving Office.

(c) Where the applicant opts for transmittal by the receiving Office, the procedure shall be the same as that provided for in Rule 22.1.

(d) Where the applicant opts for transmittal through him, he shall indicate in the notice referred to in paragraph (b) whether he wishes to collect the record copy at the receiving Office or wishes the receiving Office to mail the record copy to him. If the applicant expresses the wish to collect the record copy, the receiving Office shall hold that copy at the disposal of the applicant as soon as the clearance referred to in Rule 22.1(a) has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 10 days before the expiration of 13 months from the priority date. If, by the expiration of the time limit for receipt of the record copy by the International Bureau, the applicant has not collected that copy, the receiving Office shall notify the International Bureau accordingly. If the applicant expresses the wish that the receiving Office mail the record copy to him or fails to express the wish to collect the record copy, the receiving Office shall mail that copy to the applicant as soon as the clearance referred to in Rule 22.1(a) has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 15 days before the expiration of 13 months from the priority date.

(e) Where the receiving Office does not hold the record copy at the disposal of the applicant by the date fixed in paragraph (d), or where, after having asked for the record copy to be mailed to him, the applicant has not received that copy at least 10 days before the expiration of 13 months from the priority date, the applicant may transmit a copy of his international application to the International Bureau. This copy ("provisional record copy") shall be replaced by the record copy or, if the record copy has been lost, by a substitute record copy certified by the receiving Office on the basis of the home copy, as soon as practicable and, in any case, before the expiration of 14 months from the priority date.

22.3 *Time Limit under Article 12(3)*

(a) The time limit referred to in Article 12(3) shall be:

(i) where the procedure under Rule 22.1 or Rule 22.2(c) applies, 14 months from the priority date;

(ii) where the procedure under Rule 22.2 (d) applies, 13 months from the priority date, except that, where a provisional record copy is filed under Rule 22.2(e), it shall be 13 months from the priority date for the filing of the provisional record copy, and 14 months from the priority date for the filing of the record copy.

(b) Article 48(1) and Rule 82 shall not apply to the transmittal of the record copy. Article 48(2) remains applicable.

22.4 *Statistics Concerning Non-Compliance with Rules 22.1 and 22.2*

The number of instances in which, according to the knowledge of the International Bureau, any receiving Office has not complied with the requirements of Rules 22.1 and/or 22.2 shall be indicated, once a year, in the Gazette.

22.5 *Documents Filed with the International Application*

For the purposes of the present Rule, the term "record copy" shall include also any document filed with the international application referred to in Rule 3.3(a)(ii). If any document referred to in Rule 3.3(a)(ii) which is indicated in the check list as accompanying the international application is not, in fact, filed at the latest by the time the record copy leaves the receiving Office, that Office shall so note on the check list and the said indication shall be considered as if it had not been made.

Rule 23—Transmittal of the Search Copy

23.1 *Procedure*

(a) The search copy shall be transmitted by the receiving Office to the International Searching Authority at the latest on the same day as the record copy is transmitted to the International Bureau or, under Rule 22.2(d), to the applicant.

(b) If the International Bureau has not received, within 10 days from the receipt of the record copy, information from the International Searching Authority that that Authority is in possession of the search copy, the International Bureau shall promptly transmit a copy of the international application to the International Searching Authority. Unless the International Searching Authority has erred in alleging that it was not in possession of the search copy by the expiration of the 13th month from the priority date, the cost of making a copy for that Authority shall be reimbursed by the receiving Office to the International Bureau.

(c) The number of instances in which, according to the knowledge of the International Bureau, any receiving Office has not complied with the requirement of Rule 23.1(a) shall be indicated, once a year, in the Gazette.

Rule 24—Receipt of the Record Copy by the International Bureau

24.1 *Recording of Date of Receipt of the Record Copy*

The International Bureau shall, upon receipt of the record copy, mark on the request sheet the date of receipt and on all sheets of the international application the stamp of the International Bureau.

24.2 *Notification of Receipt of the Record Copy*

(a) Subject to the provisions of paragraph (b), the International Bureau shall promptly notify the applicant, the receiving Office, the International Searching Authority, and all designated Offices, of the fact and the date of receipt of the record copy. The notification shall identify the international application by its number, the international filing date, the name of the applicant, and the name of the receiving Office, and shall indicate the filing date of any earlier application whose priority is claimed. The notification sent to the applicant shall also contain the list of the designated Offices which have been notified under this paragraph, and shall, in respect of each designated Office, indicate any applicable time limit under Article 22(3).

(b) If the record copy is received after the expiration of the time limit fixed in Rule 22.3, the International Bureau shall promptly notify the applicant, the receiving Office, and the International Searching Authority, accordingly.

Rule 25—Receipt of the search copy by the International Searching Authority

25.1 *Notification of Receipt of the Search Copy*

The International Searching Authority shall promptly notify the International Bureau, the applicant, and—unless the International Searching Authority is the same as the receiving Office—the receiving Office, of the fact and the date of receipt of the search copy.

Rule 26—Checking and correcting certain elements of the international application

26.1 *Time Limit for Check*

(a) The receiving Office shall issue the invitation to correct provided for in Article 14(1)(b) as soon as possible, preferably within 1 month from the receipt of the international application.

(b) If the receiving Office issues an invitation to correct the defect referred to in Article 14(1)(a)(iii) or (iv) (missing title or missing abstract), it shall notify the International Searching Authority accordingly.

26.2 *Time Limit for Correction*

The time limit referred to in Article 14(1)(b) shall be reasonable under the circumstances of the particular case and shall be fixed in each case by the receiving Office. It shall not be less than 1 month and normally not more than 2 months from the date of the invitation to correct.

26.3 *Checking of Physical Requirements under Article 14(1)(a)(v)*

The physical requirements referred to in Rule 11 shall be checked to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication.

26.4 *Procedure*

(a) Any correction offered to the receiving Office may be stated in a letter addressed to that Office if the correction is of such a nature that it can be transferred from the letter to the record copy without adversely affecting the clarity and the direct reproducibility of the sheet on to which the correction is to be transferred; otherwise the applicant shall be required to submit a replacement sheet embodying the correction and the letter accompanying the replacement sheet shall draw attention to the differences between the replaced sheet and the replacement sheet.

(b) The receiving Office shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the Office. It shall keep in its files a copy of the letter containing the correction or, when the correction is contained in a replacement sheet, the replaced sheet, the letter accompanying the replacement sheet, and a copy of the replacement sheet.

(c) The receiving Office shall promptly transmit the letter and any replacement sheet to the International Bureau. The International Bureau shall transfer to the record copy the corrections requested in a letter, together with the indication of the date of its receipt by the receiving Office, and shall insert any replacement sheet in the record copy. The letter and any replaced sheet shall be kept in the files of the International Bureau.

(d) The receiving Office shall promptly transmit a copy of the letter and any replacement sheet to the International Searching Authority.

26.5 *Correction of Certain Elements*

(a) The receiving Office shall decide whether the applicant has submitted the correction within the prescribed time limit. If the correction has been submitted within the prescribed time limit, the receiving Office shall decide whether the international application so corrected is or is not to be considered withdrawn.

(b) The receiving Office shall mark on the papers containing the correction the date on which it received such papers.

26.6 *Missing Drawings*

(a) If, as provided in Article 14(2), the international application refers to drawings which in fact are not included in that application, the receiving Office shall so indicate in the said application.

(b) The date on which the applicant receives the notification provided for in Article 14(2) shall have no effect on the time limit fixed under Rule 20.2(a)(iii).

Rule 27—Lack of payment of fees

27.1 *Fees*

(a) For the purposes of Article 14(3)(a), "fees prescribed under Article 3(4)(iv)" means: the transmittal fee (Rule 14), the basic fee part of the international fee (Rule 15.1(i)), and the search fee (Rule 16).

(b) For the purposes of Article 14(3)(a) and (b), "the fee prescribed under Article 4(2)" means the designation fee part of the international fee (Rule 15.1(ii)).

Rule 28—Defects noted by the International Bureau of the International Searching Authority

28.1 *Note on Certain Defects*

(a) If, in the opinion of the International Bureau or of the International Searching Authority, the international application contains any of the defects referred to in Article 14(1)(a)(i), (ii), or (v), the International Bureau or the International Searching Authority, respectively, shall bring such defects to the attention of the receiving Office.

(b) The receiving Office shall, unless it disagrees with the said opinion, proceed as provided in Article 14(1)(b) and Rule 26.

Rule 29—International applications or designations considered withdrawn under article 14 (1), (3) or (4)

29.1 *Finding by Receiving Office*

(a) If the receiving Office declares, under Article 14(1)(b) and Rule 26.5 (failure to correct certain defects), or under Article 14(3)(a) (failure to pay the prescribed fees under Rule 27.1(a)), or under Article 14(a) (later finding of non-compliance with the requirements listed in items (i) to (iii) of Article 11(1)), that the international application is considered withdrawn:

(i) the receiving Office shall transmit the record copy (unless already transmitted), and any correction offered by the applicant, to the International Bureau;

(ii) the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration, and the International Bureau shall in turn notify the interested designated Offices;

(iii) the receiving Office shall not transmit the search copy as provided in Rule 23, or, if such copy has already been transmitted, it shall notify the International Searching Authority of the said declaration;

(iv) the International Bureau shall not be required to notify the applicant of the receipt of the record copy.

(b) If the receiving Office declares under Article 14(3)(b) (failure to pay the prescribed designation fee under Rule 27.1(b)) that the designation of any given State is considered withdrawn, the receiving Office

shall promptly notify both the applicant and the International Bureau of the said declaration. The International Bureau shall in turn notify the interested national Office.

29.2 *Finding by Designated Office*

Where the effect of the international application ceases in any designated State by virtue of Article 24(1)(iii), or where such effect is maintained in any designated State by virtue of Article 24(2), the competent designated Office shall promptly notify the International Bureau accordingly.

29.3 *Calling Certain Facts to the Attention of the Receiving Office*

If the International Bureau or the International Searching Authority considers that the receiving Office should make a finding under Article 14(4), it shall call the relevant facts to the attention of the receiving Office.

29.4 *Notification of Intent to Make Declaration under Article 14(4)*

Before the receiving Office issues any declaration under Article 14(4), it shall notify the applicant of its intent to issue such declaration and the reasons therefor. The applicant may, if he disagrees with the tentative finding of the receiving Office, submit arguments to that effect within 1 month from the notification.

Rule 30—Time Limit Under Article 14(4)

30.1 *Time Limit*

The time limit referred to in Article 14(4) shall be 6 months from the international filing date.

Rule 31—Copies Required Under Article 13

31.1 *Request for Copies*

(a) Requests under Article 13(1) may relate to all, some kinds of, or individual international applications in which the national Office making the request is designated. Requests for all or some kinds of such international applications must be renewed for each year by means of a notification addressed by that Office before November 30 of the preceding year to the International Bureau.

(b) Requests under Article 13(2)(b) shall be subject to the payment of a fee covering the cost of preparing and mailing the copy.

31.2 *Preparation of Copies*

The preparation of copies required under Article 13 shall be the responsibility of the International Bureau.

Rule 32—Withdrawal of the International Application or of Designations

32.1 *Withdrawals*

(a) The applicant may withdraw the international application prior to the expiration of 20 months from the priority date except as to any designated State in which national processing or examination has already started. He may withdraw the designation of any designated State prior to the date on which processing or examination may start in that State.

(b) Withdrawal of the designation of all designated States shall be treated as withdrawal of the international application.

(c) Withdrawal shall be effected by a signed notice from the applicant to the International Bureau or, if the record copy has not yet been sent to the International Bureau, to the receiving Office. In the case of Rule 4.8(b), the notice shall require the signature of all the applicants.

(d) Where the record copy has already been sent to the International Bureau, the fact of withdrawal, together with the date of receipt of the notice effecting withdrawal, shall be recorded by the International Bureau and promptly notified by it to the receiving Office, the applicant, the designated Offices affected by the withdrawal, and, where the withdrawal concerns the international application and where the international search report or the declaration referred to in Article 17(2)(a) has not yet issued, the International Searching Authority.

Rule 33—Relevant Prior Art for the International Search

33.1 *Relevant Prior Art for the International Search*

(a) For the purposes of Article 15(2), relevant prior art shall consist of everything which has been made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) and which is capable of being of assistance in determining that the claimed invention is or is not new and that it does or does not involve an inventive step (i.e., that it is or is not obvious), provided that the making available to the public occurred prior to the international filing date.

(b) When any written disclosure refers to an oral disclosure, use, exhibition, or other means whereby the contents of the written disclosure were made available to the public, and such making available to the public occurred on a date prior to the international filing date, the international search report shall separately mention that fact and the date on which it occurred if the making available to the public of the written disclosure occurred on a date posterior to the international filing date.

(c) Any published application or any patent whose publication date is later but whose filing data, or, where applicable, claimed priority date, is earlier than the international filing date of the international application searched, and which would constitute relevant prior art for the purposes of Article 15(2) had it been published prior to the international filing date, shall be specially mentioned in the international search report.

33.2 *Fields to be Covered by the International Search*

(a) The international search shall cover all those technical fields, and shall be carried out on the basis of all those search files, which may contain material pertinent to the invention.

(b) Consequently, not only shall the art in which the invention is classifiable be searched but also analogous arts regardless of where classified.

(c) The question what arts are, in any given case, to be regarded as analogous shall be considered in the light of what appears to be the necessary essential function or use of the invention and not only the specific functions expressly indicated in the international application.

(d) The international search shall embrace all subject matter that is generally recognized as equivalent to the subject matter of the claimed invention for all or certain of its features, even though, in its specifics, the invention as described in the international application is different.

33.3 *Orientation of the International Search*

(a) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any) and with particular emphasis on the inventive concept towards which the claims are directed.

(b) In so far as possible and reasonable, the international search shall cover the entire subject matter to which the claims are directed or to which they might reasonably be expected to be directed after they have been amended.

Rule 34—Minimum Documentation

34.1 *Definition*

(a) The definitions contained in Article 2(i) and (ii) shall not apply for the purposes of this Rule.

(b) The documentation referred to in Article 15(4) ("minimum documentation") shall consist of:

(i) the "national patent documents" as specified in paragraph (c),

(ii) the published international (PCT) applications, the published regional applications for patents and inventors' certificates, and the published regional patents and inventors' certificates,

(iii) such other published items of non-patent literature as the International Searching Authorities shall agree upon and which shall be published in a list by the International Bureau when agreed upon for the first time and whenever changed.

(c) Subject to paragraphs (d) and (e), the "national patent documents" shall be the following:

(i) the patents issued in and after 1920 by France, the former *Reichspatentamt* of Germany, Japan, the Soviet Union, Switzerland (in French and German languages only), the United Kingdom, and the United States of America.

(ii) the patents issued by the Federal Republic of Germany,

(iii) the patent applications, if any, published in and after 1920 in the countries referred to in items (i) and (ii),

(iv) the inventors' certificates issued by the Soviet Union,

(v) the utility certificates issued by, and the published applications for utility certificates of, France.

(vi) such patents issued by, and such patent applications published in, any other country after 1920 as are in the English, French, or German language and in which no priority is claimed, provided that the national Office of the interested country sorts out these documents and places them at the disposal of each International Searching Authority.

(d) Where an application is republished once (for example, an *Offenlegungschrift* as an *Auslegeschrift*) or more than once, no International Searching Authority shall be obliged to keep all versions in its documentation; consequently, each such Authority shall be entitled not to keep more than one version. Furthermore, where an application is granted and is issued in the form of a patent or a utility certificate (France), no International Searching Authority shall be obliged to keep both the application and the patent or utility certificate (France) in its documentation; consequently, each such Authority shall be entitled to keep either the application only or the patent or utility certificate (France) only.

(e) Any International Searching Authority whose official language, or one of whose official languages, is not Japanese or Russian is entitled not to include in its documentation those patent documents of Japan and the Soviet Union, respectively, for which no abstracts in the English language are generally available. English abstracts becoming generally available after the date of entry into force of these Regulations shall require the inclusion of the patent documents to which the abstracts refer no later than 6 months after such abstracts become generally available. In case of the interruption of abstracting services in English in technical fields in which English abstracts were formerly generally available, the Assembly shall take appropriate measures to provide for the prompt restoration of such services in the said fields.

(f) For the purposes of this Rule, applications which have only been laid open for public inspection are not considered published applications.

Rule 35—The competent international searching authority

35.1 *When Only One International Searching Authority is Competent*

Each receiving Office shall, in accordance with the terms of the applicable agreement referred to in Article 16(3)(b), inform the International Bureau which International Searching Authority is competent for the searching of the international applications

filed with it, and the International Bureau shall promptly publish such information.

35.2 *When Several International Searching Authorities are Competent*

(a) Any receiving Office may, in accordance with the terms of the applicable agreement referred to in Article 16(3)(b), specify several International Searching Authorities:

(i) by declaring all of them competent for any international application filed with it, and leaving the choice to the applicant, or

(ii) by declaring one or more competent for certain kinds of international applications filed with it, and declaring one or more others competent for other kinds of international applications filed with it, provided that, for those kinds of international applications for which several International Searching Authorities are declared to be competent, the choice shall be left to the applicant.

(b) Any receiving Office availing itself of the faculty provided in paragraph (a) shall promptly inform the International Bureau, and the International Bureau shall promptly publish such information.

Rule 36—Minimum requirements for International Searching Authorities

36.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 16(3)(c) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out searches;

(ii) that Office or organization must have in its possession at least the minimum documentation referred to in Rule 34, properly arranged for search purposes;

(iii) that Office or organization must have a staff which is capable of searching the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated.

Rule 37—Missing or Defective Title

37.1 *Lack of Title*

If the international application does not contain a title and the receiving Office has notified the International Searching Authority that it has invited the applicant to correct such defect, the International Searching Authority shall proceed with the international search unless and until it receives notification that the said application is considered withdrawn.

37.2 *Establishment of Title*

If the international application does not contain a title and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish a title, or if the said Authority finds that the title does not comply with Rule 4.3, it shall itself establish such a title.

Rule 38—Missing Abstract

38.1 *Lack of Abstract*

If the international application does not contain an abstract and the receiving Office has notified the International Searching Authority that it has invited the applicant to correct such defect, the International Searching Authority shall proceed with the international search unless and until it receives notification that the said application is considered withdrawn.

38.2 *Establishment of Abstract*

(a) If the international application does not contain an abstract and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish an abstract, or if the said Authority finds that the abstract does not comply with Rule 8, it shall itself establish an abstract (in the language in which the international application is published). In the latter case, it shall invite the applicant to comment on the abstract established by it within 1 month from the date of the invitation.

(b) The definitive contents of the abstract shall be determined by the International Searching Authority.

Rules 39—Subject Matter Under Article 17(2)(a)(i)

39.1 *Definition*

No International Searching Authority shall be required to search an international application if, and to the extent to which, its subject matter is any of the following:

(i) scientific and mathematical theories,

(ii) plant or animal varieties or essentially biological processes for the production of plants and animals, other than microbiological processes and the products of such processes,

(iii) schemes, rules or methods of doing business, performing purely mental acts or playing games,

(iv) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods,

(v) mere presentations of information,

(vi) computer programs to the extent that the International Searching Authority is not equipped to search prior art concerning such programs.

Rule 40—Lack of Unity of Invention (International Search)

40.1 *Invitation to Pay*

The invitation to pay additional fees provided for in Article 17(3)(a) shall specify the reasons for which the international application is not considered as complying with the requirement of unity of invention and shall indicate the amount to be paid.

40.2 *Additional Fees*

(a) The amount of the additional fee due for searching under Article 17(3)(a) shall be determined by the competent International Searching Authority.

(b) The additional fee due for search under Article 17(3)(a) shall be payable direct to the International Searching Authority.

(c) Any applicant may pay the additional fee under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fee is excessive. Such protest shall be examined by a three-member board or other special instance of the International Searching Authority or any competent higher authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fee. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the designated Offices together with the international search report. The applicant shall submit any translation thereof with the furnishing of the translation of the international application required under Article 22.

(d) The three-member board, special instance or competent higher authority, referred to in paragraph (c), shall not comprise any person who made the decision which is the subject of the protest.

40.3 *Time Limit*

The time limit provided for in Article 17(3)(a) shall be fixed, in each case, according to the circumstances of the case, by the International Searching Authority; it shall not be shorter than 15 or 30 days, respectively, depending on whether the applicant's address is in the same country as or in a different country from that in which the international Searching Authority is located, and it shall not be longer than 45 days, from the date of the invitation.

Rule 41—The International-Type Search

41.1 *Obligation to Use Results; Refund of Fee*

If reference has been made in the request, in the form provided for in Rule 4.11, to an international-type search carried out under the conditions set out in Article 15(5), the International Searching Authority shall, to the extent possible, use the results of the said search in establishing the international search report on the international application. The International Searching Authority shall refund the search fee, to the extent and under the conditions provided for in the agreement under Article 16(3)(b), if the international search report could wholly or partly be based on the results of the international-type search.

Rule 42—Time Limit for International Search

42.1 *Time Limit for International Search*

All agreements concluded with International Searching Authorities shall provide for the same time limit for establishing the international search report or the declaration referred to in Article 17(2)(a). This time limit shall not exceed 3 months from the receipt of the search copy by the International Searching Authority, or 9 months from the priority date, whichever time limit expires later. For a transitional period of 3 years from the entry into force of the Treaty, time limits for the agreement with any International Searching Authority may be individually negotiated, provided that such time limits shall not extend by more than 2 months the time limits referred to in the preceding sentence and in any case shall not go beyond the expiration of the 18th month after the priority date.

Rule 43—The International Search Report

43.1 *Identifications*

The international search report shall identify the International Searching Authority which established it by indicating the name of such Authority, and the international application by indicating the international application number, the name of the applicant, the name of the receiving Office, and the international filing date.

43.2 *Dates*

The international search report shall be dated and shall indicate the date on which the international search was actually completed. It shall also indicate the filing date of any earlier application whose priority is claimed.

43.3 *Classification*

(a) The international search report shall contain the classification of the subject matter at least according to the International Patent Classification.

(b) Such classification shall be effected by the International Searching Authority.

43.4 *Language*

Every international search report and any declaration made under Article 17(2)(a) shall be in the language in which the international application to which it relates is published.

43.5 *Citations*

(a) The international search report shall contain the citations of the documents considered to be relevant.

(b) The method of identifying any cited document shall be regulated by the Administrative Instructions.

(c) Citations of particular relevance shall be specially indicated.

(d) Citations which are not relevant to all the claims shall be cited in relation to the claim or claims to which they are relevant.

(e) If only certain passages of the cited document are relevant or particularly relevant, they shall be identified, for example, by indicating the page, the column, or the lines, where the passage appears.

43.6 *Fields Searched*

(a) The international search report shall list the classification identification of the fields searched. If that identification is effected on the basis of a classification other than the International Patent Classification,

the International Searching Authority shall publish the classification used.

(b) If the international search extended to patents, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, utility certificates of addition, or published applications for any of those kinds of protection, of States, periods, or languages, not included in the minimum documentation as defined in Rule 34, the international search report shall, when practicable, identify the kinds of documents, the States, the periods, and the languages to which it extended. For the purposes of this paragraph, Article 2(ii) shall not apply.

43.7 *Remarks Concerning Unity of Invention*

If the applicant paid additional fees for the international search, the international search report shall so indicate. Furthermore, where the international search was made on the main invention only (Article 17(3)(a)), the international search report shall indicate what parts of the international application were and what parts were not searched.

43.8 *Signature*

The international search report shall be signed by an authorized officer of the International Searching Authority.

43.9 *No Other Matter*

The international search report shall contain no matter other than that enumerated in Rules 33.1(b) and (c), 43.1, 2, 3, 5, 6, 7 and 8, and 44.2(a) and (b), and the indication referred to in Article 17(2)(b). In particular, it shall contain no expressions of opinion, reasoning, arguments, or explanations.

43.10 *Form*

The physical requirements as to the form of the international search report shall be prescribed by the Administrative Instructions.

Rule 44—Transmittal of the International Search Report, Etc.

44.1 *Copies of Report or Declaration*

The International Searching Authority shall, on the same day, transmit one copy of the international search report or the declaration referred to in Article 17(2)(a) to the International Bureau and one copy to the applicant.

44.2 *Title or Abstract*

(a) Subject to paragraphs (b) and (c), the international search report shall either state that the International Searching Authority approves the title and the abstract as submitted by the applicant or be accompanied by the text of the title and/or abstract as established by the International Searching Authority under Rules 37 and 38.

(b) If, at the time the international search is completed, the time limit allowed for the applicant to comment on any suggestion of the International Searching Authority in respect of the abstract has not expired, the international search report shall indicate that it is incomplete as far as the abstract is concerned.

(c) As soon as the time limit referred to in paragraph (b) has expired, the International Searching Authority shall notify the abstract approved or established by it to the International Bureau and to the applicant.

44.3 *Copies of Cited Documents*

(a) The request referred to in Article 20(3) may be presented any time during 7 years from the international filing date of the international application to which the international search report relates.

(b) The International Searching Authority may require that the party (applicant or designated Office) presenting the request pay to it the cost of preparing and mailing the copies. The level of the cost of preparing copies shall be provided for in the agreements referred to in Article 16(3)(b) between the International Searching Authorities and the International Bureau.

(c) Any International Searching Authority not wishing to send copies direct to any designated Office shall send a copy to the International Bureau and the International Bureau shall then proceed as provided in paragraphs (a) and (b).

(d) Any International Searching Authority may perform the obligations referred to in (a) to (c) through another agency responsible to it.

Rule 45—Translation of the International Search Report

45.1 *Languages*

International search reports and declarations referred to in Article 17(2)(a) shall, when not in English, be translated into English.

Rule 46—Amendment of Claims Before the International Bureau

46.1 *Time Limit*

The time limit referred to in Article 19 shall be 2 months from the date of transmittal of the international search report to the International Bureau and to the applicant by the International Searching Authority or, when such transmittal takes place before the expiration of 14 months from the priority date, 3 months from the date of such transmittal.

46.2 *Dating of Amendments*

The date of receipt of any amendment shall be recorded by the International Bureau and shall be indicated by it in any publication or copy issued by it.

46.3 *Language of Amendments*

If the international application has been filed in a language other than the language in which it is published by the International Bureau, any amendment made under Article 19 shall be both in the language in which the international application has been filed and in that in which it is published.

46.4 *Statement*

(a) The statement referred to in Article 19(1) shall be in the language in which the international application is published and shall not exceed 500 words if in the English language or if translated into that language.

(b) The statement shall contain no comments on the international search report or the relevance of the citations contained in that report. The statement may refer to a citation contained in the international search report only in order to indicate that a special amendment of the claims is intended to avoid the document cited.

46.5 *Form of Amendments*

(a) The applicant shall be required to submit a replacement sheet for every sheet of the claims which, on account of an amendment or amendments under Article 19, differs from the sheet originally filed. The letter accompanying the replacement sheets shall draw attention to the differences between the replaced sheets and the replacement sheets. To the extent that any amendment results in the cancellation of an entire sheet, that amendment shall be communicated in a letter.

(b) The International Bureau shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the International Bureau. It shall keep in its files any replaced sheet, the letter accompanying the replacement sheet or sheets, and any letter referred to in the last sentence of paragraph (a).

(c) The International Bureau shall insert any replacement sheet in the record copy and, in the case referred to in the last sentence of paragraph (a), shall indicate the cancellations in the record copy.

Rule 47—Communication to Designated Offices

47.1 *Procedure*

(a) The communication provided for in Article 20 shall be effected by the International Bureau.

(b) Such communication shall be effected promptly after the International Bureau has received amendments from the applicant, or a declaration that the applicant does not wish to make amendments before the International Bureau, or, in any case, when the time limit provided for in Rule 46.1 has expired. Where, under Article 17(2)(a), the International Searching Authority has made a declaration that no international search report will be established, the communication provided for in Article 20 shall be effected, unless the international application is withdrawn, within 1 month from the date on which the International Bureau has been notified of the said declaration by the International Searching Authority; such communication shall be accompanied by an indication of the date of the notification sent to the applicant under Article 17(2)(a).

(c) The International Bureau shall send a notice to the applicant indicating the designated Offices to which the communication has been effected and the date of such communication. Such notice shall be sent on the same day as the communication.

(d) Each designated Office shall, when it so requires, receive the international search reports and the declarations referred to in Article 17(2)(a) also in the translation referred to in Rule 45.1.

(e) Where any designated Office has waived the requirement provided under Article 20, the copies of the documents which otherwise would have been sent to that Office shall, at the request of that Office or the applicant, be sent to the applicant at the time of the notice referred to in paragraph (c).

47.2 *Copies*

(a) The copies required for communication shall be prepared by the International Bureau.

(b) They shall be on sheets of A4 size.

47.3 *Languages*

The international application communicated under Article 20 shall be in the language in which it is published provided that if that language is different from the language in which it was filed it shall, on the request of the designated Office, be communicated in either or both of these languages.

Rule 48—International Publication

48.1 *Form*

(a) The international application shall be published in the form of a pamphlet.

(b) The particulars regarding the form of the pamphlet and the method of reproduction shall be governed by the Administrative Instructions.

48.2 *Contents*

(a) The pamphlet shall contain:

(i) a standardized front page,

(ii) the description,

(iii) the claims,

(iv) the drawings, if any,

(v) subject to paragraph (g), the international search report or the declaration under Article 17(2)(a).

(vi) any statement filed under Article 19(1), unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4.

(b) Subject to paragraph (c), the front page shall include:

(i) data taken from the request sheet and such other data as are prescribed by the Administrative Instructions,

(ii) a figure or figures where the international application contains drawings,

(iii) the abstract; if the abstract is both in English and in another language, the English text shall appear first.

(c) Where a declaration under Article 17 (2) (a) has issued, the front page shall conspicuously refer to that fact and need include neither a drawing nor an abstract.

(d) The figure or figures referred to in paragraph (b) (ii) shall be selected as provided in Rule 8.2. Reproduction of such figure or figures on the front page may be in a reduced form.

(e) If there is not enough room on the front page for the totality of the abstract referred to in paragraph (b) (iii), the said abstract shall appear on the back of the front page. The same shall apply to the translation of the abstract when such transaction is required to be published under Rule 48.3(c).

(f) If the claims have been amended under Article 19, the publication shall contain either the full text of the claims both as filed and as amended or the full text of the claims as filed and specify the amendments. Any statement referred to in Article 19(1) shall be included as well, unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4. The date of receipt of the amended claims by the International Bureau shall be indicated.

(g) If, at the time when publication is due, the international search report is not yet available (for example, because of publication on the request of the applicant as provided in Articles 21(2)(b) and 64(3)(c)(i)), the pamphlet shall contain, in place of the international search report, an indication to the effect that that report was not available and that either the pamphlet (then also including the international search report) will be republished or the international search report (when it becomes available) will be separately published.

(h) If, at the time when publication is due, the time limit for amending the claims under Article 19 has not expired, the pamphlet shall refer to that fact and indicate that, should the claims be amended under Article 19, then, promptly after such amendments, either the pamphlet (containing the claims as amended) will be republished or a statement reflecting all the amendments will be published. In the latter case, at least the front page and the claims shall be republished and, if a statement under Article 19(1) has been filed, that statement shall be published as well, unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4.

(i) The Administrative Instructions shall determine the cases in which the various alternatives referred to in paragraphs (g) and (h) shall apply. Such determination shall depend on the volume and complexity of the amendments and/or the volume of the international application and the cost factors.

48.3 *Language*

(a) If the international application is filed in English, French, German, Japanese, or Russian, that application shall be published in the language in which it was filed.

(b) If the international application is filed in a language other than English, French, German, Japanese, or Russian, that application shall be published in English translation. The translation shall be prepared under the responsibility of the International Searching Authority, which shall be obliged to have it ready in time to permit the communication under Article 20 by the prescribed date, or, if the international publication is due at an earlier date than the said communication, to permit international publication by the prescribed date. Notwithstanding Rule 16.1(a), the International Searching Authority may charge a fee for the translation to the applicant. The International Searching Authority shall give the applicant an opportunity to comment on the draft translation. The International Searching Authority shall fix a time limit reasonable under the circumstances of the case for such comments. If there is no time to take the comments of the applicant into account before the translation is communicated or if there is a difference of opinion between the applicant and the said Authority as to the correct translation, the applicant may send a copy of his comments, or what remains of them, to the International Bureau and each designated Office to which the translation was communicated. The International Bureau shall publish the essence of the comments together with the translation of the International Searching Authority or subsequently to the publication of such translation.

(c) If the international application is published in a language other than English, the international search report, or the declaration referred to in Article 17(2)(a), and the abstract shall be published both in that language and in English. The translations shall be prepared under the responsibility of the International Bureau.

48.4 *Earlier Publication on the Applicant's Request*

(a) Where the applicant asks for publication under Articles 21(2)(b) and 64(3)(c)(i) and the international search report, or the declaration referred to in Article 17(2)(a), is not yet available for publication together with the international application, the International Bureau shall collect a special publication fee whose amount shall be fixed in the Administrative Instructions.

(b) Publication under Articles 21(2)(b) and 64(3)(c)(i) shall be effected by the International Bureau promptly after the applicant has asked for it and, where a special fee is due under paragraph (a), after receipt of such fee.

48.5 *Notification of National Publication*

Where the publication of the international application by the International Bureau is governed by Article 64(3)(c)(ii), the national Office concerned shall, promptly after effecting the national publication referred to in the said provision, notify the International Bureau of the fact of such national publication.

48.6 *Announcing of Certain Facts*

(a) If any notification under Rule 29.1(ii) reaches the International Bureau at a time later than that at which it was able to prevent the international publication of the international application, the International Bureau shall promptly publish a notice in the Gazette reproducing the essence of such notification.

(b) The essence of any notification under Rule 29.2 or 51.4 shall be published in the Gazette and, if the notification reaches the International Bureau before preparations for the publication of the pamphlet have been completed, also in the pamphlet.

(c) If the international application is withdrawn after its international publication, this fact shall be published in the Gazette.

Rule 49—Languages of Translations and Amounts of Fees Under Article 22(1) and (2)

49.1 *Notification*

(a) Any Contracting State requiring the furnishing of a translation or the payment of a national fee, or both, under Article 22, shall notify the International Bureau of:

(i) the languages from which and the language into which it requires translation,

(ii) the amount of the national fee.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) If the requirements under paragraph (a) change later, such changes shall be notified by the Contracting State to the International Bureau and that Bureau shall promptly publish the notification in the Gazette. If the change means that translation is required into a language which, before the change, was not required, such change shall be effective only with respect to international applications filed later than 2 months after the publication of the notification in the Gazette. Otherwise, the effective date of any change shall be determined by the Contracting State.

49.2 *Languages*

The language into which translation may be required must be an official language of the designated Office. If there are several of such languages, no translation may be required if the international application is in one of them. If there are several official languages and a translation must be furnished, the applicant may choose any of those languages. Notwithstanding the foregoing provisions of this paragraph, if there are several official languages but the national law prescribes the use of one such language for foreigners, a translation into that language may be required.

49.3 *Statements under Article 19*

For the purposes of Article 22 and the present Rule, any statement made under Article 19(1) shall be considered part of the international application.

Rule 50—Faculty Under Article 22(3)

50.1 *Exercise of Faculty*

(a) Any Contracting State allowing a time limit expiring later than the time limits provided for in Article 22(1) or (2) shall notify the International Bureau of the time limits so fixed.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) Notifications concerning the shortening of the previously fixed time limit be effective in relation to international applications filed after the expiration of 3 months computed from the date on which the notification was published by the International Bureau.

(d) Notification concerning the lengthening of the previously fixed time limit shall become effective upon publication by the International Bureau in the Gazette in respect of international applications pending at the time or filed after the date of such publication, or, if the Contracting State effecting the notification fixes some later date, as from the latter date.

Rule 51—Review by Designated Offices

51.1 *Time Limit for Presenting the Request to Send Copies*

The time limit referred to in Article 25 (1)(c) shall be 2 months computed from the date of the notification sent to the applicant under Rules 20.7(i), 24.2(b), 29.1(a)(ii), or 29.1(b).

51.2 *Copy of the Notice*

Where the applicant, after having received a negative determination under Article 11(1), requests the International Bureau, under Article 25(1), to send copies of the file of the purported international application to any of the named Offices he has attempted to designate, he shall attach to his request a copy of the notice referred to in Rule 20.7 (i).

51.3 *Time Limit for Paying National Fee and Furnishing Translation*

The time limit referred to in Article 25 (2)(a) shall expire at the same time as the time limit prescribed in Rule 51.1.

51.4 *Notification to the International Bureau*

Where, under Article 25(2), the competent designated Office decides that the refusal, declaration or finding referred to in Article

25(1) was not justified, it shall promptly notify the International Bureau that it will treat the International application as if the error or omission referred to in Article 25(2) had not occurred.

Rule 52—Amendment of the claims, the description, and the drawings, before designated offices

52.1 *Time Limit*

(a) In any designated State in which processing or examination starts without special request, the applicant shall, if he so wishes, exercise the right under Article 28 within one month from the fulfillment of the requirements under Article 22, provided that, if the communication under Rule 47.1 has not been effected by the expiration of the time limit applicable under Article 22, he shall exercise the said right not later than 4 months after such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

(b) In any designated State in which the national law provides that examination starts only on special request, the time limit within or the time at which the applicant may exercise the right under Article 28 shall be the same as that provided by the national law for the filing of amendments in the case of the examination, on special request, of national applications, provided that such time limit shall not expire prior to, or such time shall not come before the expiration of the time limit applicable under paragraph (a).

PART C—RULES CONCERNING CHAPTER II OF THE TREATY

Rule 53—The Demand

53.1 *Form*

(a) The demand shall be made on a printed form.

(b) Copies of printed forms shall be furnished free of charge by the receiving Offices to the applicants.

(c) The particulars of the forms shall be prescribed by the Administrative Instructions.

(d) The demand shall be submitted in two identical copies.

53.2 *Contents*

(a) The demand shall contain:

(i) a petition,

(ii) indications concerning the applicant and the agent if there is an agent,

(iii) indications concerning the international application to which it relates,

(iv) election of States.

(b) The demand shall be signed.

53.3 *The Petition*

The petition shall be to the following effect and shall preferably be worded as follows: "Demand under Article 31 of the Patent Cooperation Treaty: The undersigned requests that the international application specified below be the subject of international preliminary examination according to the Patent Cooperation Treaty."

53.4 *The Applicant*

As to the indications concerning the applicant, Rules 4.4 and 4.16 shall apply, and Rule 4.5 shall apply *mutatis mutandis*.

53.5 *The Agent*

If an agent is designated, Rules 4.4, 4.7, and 4.16 shall apply, and Rule 4.8 shall apply *mutatis mutandis*.

53.6 *Identification of the International Application*

The international application shall be identified by the name of the receiving Office with which the international application was filed, the name and address of the applicant, the title of the invention, and, where the international filing date and the international application number are known to the applicant, that date and that number.

53.7 *Election of States*

The demand shall name, among the designated States, at least one Contracting State bound by Chapter II of the Treaty as elected State.

53.8 *Signature*

The demand shall be signed by the applicant.

Rule 54—The Applicant entitled to make a Demand

54.1 *Residence and Nationality*

The residence or nationality of the applicant shall, for the purposes of Article 31(2), be determined according to Rules 18.1 and 18.2.

54.2 *Several Applicants: Same for All Elected States*

If all the applicants are applicants for the purposes of all elected States, the right to make a demand under Article 31(2) shall exist if at least one of them is

(i) a resident or national of a Contracting State bound by Chapter II and the international application has been filed as provided in Article 31(2)(a), or

(ii) a person entitled to make a demand under Article 31(2)(b) and the international application has been filed as provided in the decision of the Assembly.

54.3 *Several Applicants: Different for Different Elected States*

(a) For the purposes of different elected States, different applicants may be indicated, provided that, in respect of each elected State, at least one of the applicants indicated for the purposes of that State is

(i) a resident or national of a Contracting State bound by Chapter II and the international application has been filed as provided in Article 31(2)(a), or,

(ii) a person entitled to make a demand under Article 31(2)(b) and the international application has been filed as provided in the decision of the Assembly.

(b) If the requirement under paragraph (a) is not fulfilled in respect of any elected State, the election of that State shall be considered not to have been made.

54.4 *Change in the Person or Name of the Applicant*

Any change in the person or name of the applicant shall, on the request of the applicant or the receiving Office, be recorded by the International Bureau, which shall notify the interested International Preliminary Examining Authority and the elected Offices accordingly.

Rules 55—Languages (International Preliminary Examination)

55.1 *The Demand*

The demand shall be in the language of the international application or, when a translation is required under Rule 55.2, in the language of that translation.

55.2 *The International Application*

(a) If the competent International Preliminary Examining Authority is not part of the same national Office or intergovernmental organization as the competent International Searching Authority, and if the international application is in a language other than the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Preliminary Examining Authority competent for the international preliminary examination, the latter may require that the applicant submit a translation of that application.

(b) The translation shall be submitted not later than the later of the following two dates:

(i) the date on which the time limit under Rule 46.1 expires,

(ii) the date on which the demand is submitted.

(c) The translation shall contain a statement that, to the best of the applicant's knowledge, it is complete and faithful. This statement shall be signed by the applicant.

(d) If the provisions of paragraph (b) and (c) are not complied with, the International Preliminary Examining Authority shall invite the applicant to comply with them within 1 month from the date of the invitation. If the applicant fails to do so, the demand shall be considered as if it had not been submitted and the International Preliminary Examining Authority shall notify the applicant and the International Bureau accordingly.

Rule 56—Later Elections

56.1 *Election Submitted Later Than the Demand*

The election of States not named in the demand shall be effected by a notice signed and submitted by the applicant, and shall identify the international application and the demand.

56.2 *Identification of the International Application*

The international application shall be identified as provided in Rule 53.6.

56.3 *Identification of the Demand*

The demand shall be identified by the date on which it was submitted and by the name of the International Preliminary Examining Authority to which it was submitted.

56.4 *Form of Later Elections*

The later election shall preferably be made on a printed form furnished free of charge to applicants. If it is not made on such a form, it shall preferably be worded as follows: "In relation to the international application filed with ------ on ------ under No. ------ by ------ (applicant) (and the demand for international preliminary examination submitted on ------ to ------), the undersigned elects the following additional States(s) under Article 31 of the Patent Cooperation Treaty: ------"

56.5 *Language of Later Elections*

The later election shall be in the language of the demand.

Rule 75—The Handling Fee

57.1 *Requirement to Pay*

Each demand for international preliminary examination shall be subject to the payment of a fee for the benefit of the International Bureau ("handling fee").

57.2 *Amount*

(a) The amount of the handling fee shall be US $14.00 or 60 Swiss francs augmented by as many times the same amount as the number of languages into which the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau.

(b) Where, because of a later election or elections, the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau into one or more additional languages, a supplement to the handling fee shall be payable and shall amount to US $14.00 or 60 Swiss francs for each additional language.

57.3 *Mode and Time of Payment*

(a) Subject to paragraph (b), the handling fee shall be collected by the International Preliminary Examining Authority to which the demand is submitted and shall be due at the time the demand is submitted.

(b) Any supplement to the handling fee under Rule 57.2(b) shall be collected by the International Bureau and shall be due at the time the later election is submitted.

(c) The handling fee shall be payable in the currency prescribed by the International Preliminary Examining Authority to which

the demand is submitted, it being understood that, when transferred by that Authority to the International Bureau, it shall be freely convertible into Swiss currency.

(d) Any supplement to the handling fee shall be payable in Swiss currency.

57.4 *Failure to Pay (Handling Fee)*

(a) Where the handling fee is not paid as required by Rules 57.2(a) and 57.3(a) and (c), the International Preliminary Examining Authority shall invite the applicant to pay the fee within 1 month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the fee, unless, under Rule 60.1(b), a later date is applicable.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the demand shall be considered as if it had not been submitted.

57.5 *Failure to Pay (Supplement to the Handling Fee)*

(a) Where the supplement to the handling fee is not paid as required by Rules 57.2(b) and 57.3(b) and (d), the International Bureau shall invite the applicant to pay the supplement within 1 month from the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the later election shall be considered as if it had been received on the date on which the International Bureau receives the supplement, unless, under Rule 60.2(b), a later date is applicable.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the later election shall be considered as if it had not been submitted.

57.6 *Refund*

In no case shall the handling fee, including any supplement thereto, be refunded.

Rule 58—The Preliminary Examination Fee

58.1 *Right to Ask for a Fee*

(a) Each International Preliminary Examining Authority may require that the applicant pay a fee ("preliminary examination fee") for its own benefit for carrying out the international preliminary examination and for performing all other tasks entrusted to International Preliminary Examining Authorities under the Treaty and these Regulations.

(b) The amount and the due date of the preliminary examination fee, if any, shall be fixed by the International Preliminary Examining Authority, provided that the said due date shall not be earlier than the due date of the handling fee.

(c) The preliminary examination fee shall be payable directly to the International Preliminary Examining Authority. Where that Authority is a national Office, it shall be payable in the currency prescribed by that Office, and where the Authority is an intergovernmental organization, it shall be payable in the currency of the State in which the intergovernmental organization is located or in any other currency which is freely convertible into the currency of the said State.

Rule 59—The Competent International Preliminary Examining Authority

59.1 *Demands under Article 31(2)(a)*

For demands made under Article 31(2)(a), each Contracting State bound by the provisions of Chapter II shall, in accordance with the terms of the applicable agreement referred to in Article 32(2) and (3), inform the International Bureau which International Preliminary Examining Authority is or which International Preliminary Examining Authorities are competent for the international preliminary examination of international applications filed with its national Office, or, in the case provided for in Rule 19.1(b), with the national Office of another State or an intergovernmental organization acting for the former Office, and the International Bureau shall promptly publish such information. Where several International Preliminary Examining Authorities are competent, the provisions of Rule 35.2 shall apply *mutatis mutandis*.

59.2 *Demands under Article 31(2)(b)*

As to demands made under Article 31(2)(b), the Assembly, in specifying the International Preliminary Examining Authority competent for international applications filed with a national Office which is an International Preliminary Examining Authority, shall give preference to that Authority; if the national Office is not an International Preliminary Examining Authority, the Assembly shall give preference to the International Preliminary Examining Authority recommended by that Office.

Rule 60—Certain Defects in the Demand or Elections

60.1 *Defects in the Demand*

(a) If the demand does not comply with the requirements specified in Rules 53 and 55, the International Preliminary Examining Authority shall invite the applicant to correct the defects within 1 month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the correction, or, when the handling fee is received under Rule 57.4(b) at a later date, on that date.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the demand shall be considered as if it had not been submitted.

(d) If the defect is noticed by the International Bureau, it shall bring the defect to the attention of the International Preliminary Examining Authority, which shall then proceed as provided in paragraphs (a) to (c).

60.2 *Defects in Later Elections*

(a) If the later election does not comply with the requirements of Rule 56, the International Bureau shall invite the applicant to correct the defects within 1 month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the later election shall be considered as if it had been received on the date on which the International Bureau receives the correction, or, where the supplement to the handling fee is received under Rule 57.5(b) at a later date, on that date.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the later election shall be considered as if it had not been submitted.

60.3 *Attempted elections*

If the applicant has attempted to elect a State which is not a designated State or which is not bound by Chapter II, the attempted election shall be considered not to have been made, and the International Bureau shall notify the applicant accordingly.

Rule 61—Notification of the demand and elections

61.1 *Notifications to the International Bureau, the Applicant, and the International Preliminary Examining Authority*

(a) The International Preliminary Examining Authority shall indicate on both copies of the demand the date of receipt or, where applicable, the data referred to in Rule 60.1(b). The International Preliminary Examining Authority shall promptly send the original copy to the International Bureau. It shall keep the other copy in its files.

(b) The International Preliminary Examining Authority shall promptly inform the applicant in writing of the date of receipt of the demand. Where the demand has been considered under Rules 57.4(c) or 60.1(c) as if it had not been submitted, the International Preliminary Examining Authority shall notify the applicant accordingly.

(c) The International Bureau shall promptly notify the International Preliminary Examining Authority and the applicant of the receipt, and the date of receipt, of any later election. That date shall be the actual date of receipt by the International Bureau or, where applicable, the date referred to in Rule 60.2(b). Where the later election has been considered under Rules 57.5(c) or 60.2(c) as if it had not been submitted, the International Bureau shall notify the applicant accordingly.

61.2 *Notifications to the elected offices*

(a) The notification provided for in Article 31(7) shall be effected by the International Bureau.

(b) The notification shall indicate the number and filing date of the international application, the name of the applicant, the name of the receiving Office, the filing date of the application whose priority is claimed (where priority is claimed), the date of receipt by the International Preliminary Examining Authority of the demand, and—in the case of later elections—the date of receipt by the International Bureau of the later election.

(c) The notification shall be sent to the elected Office promptly after the expiration of the 18th month from the priority date, or, if the international preliminary examination report is communicated earlier, then, at the same time as the communication of that report. Elections effected after such notification shall be notified promptly after they have been effected.

61.3 *Information for the Applicant*

The International Bureau shall inform the applicant in writing that it has effected the notification referred to in Rule 61.2. At the same time, it shall indicate to him, in respect of each elected State, any applicable time limit under Article 39(1)(b).

Rule 62—Copy for the International Preliminary Examining Authority

62.1 *The International Application*

(a) Where the competent International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the competent International Searching Authority, the same file shall serve the purposes of international search and international preliminary examination.

(b) Where the competent International Searching Authority is not part of the same national Office or intergovernmental organization as the competent International Preliminary Examining Authority, the International Bureau shall, promptly upon receipt of the international search report or, if the demand was received after the international search report, promptly upon receipt of the demand, send a copy of the international application and the international search report to the said Preliminary Examining Authority. In cases where, instead of the international search report, a declaration under Article 17(2)(a) has issued, references in the preceding sentence to the international search report shall be considered references to the said declaration.

62.2 *Amendments*

(a) Any amendment filed under Article 19 shall be promptly transmitted by the International Bureau to the International Preliminary Examining Authority. If, at the time of filing such amendments, a demand for international preliminary examination has already been submitted, the applicant shall, at the same time as he files the amend-

ments with the International Bureau, also file a copy of such amendments with the International Preliminary Examining Authority.

(b) If the time limit for filing amendments under Article 19 (see Rule 46.1) has expired without the applicant's having filed amendments under that Article, or if the applicant has declared that he does not wish to make amendments under that Article, the International Bureau shall notify the International Preliminary Examining Authority accordingly.

Rule 63—Minimum Requirements for International Preliminary Examining Authorities

63.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 32(3) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out examinations;

(ii) that Office or organization must have at its ready disposal at least the minimum documentation referred to in Rule 34, properly arranged for examination purposes;

(iii) that Office or organization must have a staff which is capable of examining in the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated.

Rule 64—Prior Art for International Preliminary Examination

64.1 *Prior Art*

(a) For the purposes of Article 33 (2) and (3), everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) shall be considered prior art provided that such making available occurred prior to the relevant date.

(b) For the purposes of paragraph (a), the relevant date will be:

(i) subject to item (ii), the international filing date of the international application under international preliminary examination;

(ii) where the international application under international preliminary examination validly claims the priority of an earlier application, the filing date of such earlier application.

64.2 *Non-Written Disclosures*

In cases where the making available to the public occurred by means of an oral disclosure, use, exhibition or other non-written means ("non-written disclosure") before the relevant date as defined in Rule 64.1(b) and the date of such non-written disclosure is indicated in a written disclosure which has been made available to the public after the relevant date, the non-written disclosure shall not be considered part of the prior art for the purposes of Article 33 (2) and (3). Nevertheless, the international preliminary examination report shall call attention to such non-written disclosure in the manner provided for in Rule 70.9.

64.3 *Certain Published Documents*

In cases where any application or any patent which would constitute prior art for the purposes of Article 33 (2) and (3) had it been published prior to the relevant date referred to in Rule 64.1 was published, as such, after the relevant date but was filed earlier than the relevant date or claimed the priority of an earlier application which had been filed prior to the relevant date, such published application or patent shall not be considered part of the prior art for the purposes of Article 33 (2) and (3). Nevertheless, the international preliminary examination report shall call attention to such application or patent in the manner provided for in Rule 70.10.

Rule 65—Inventive Step on Non-obviousness

65.1 *Approach to Prior Art*

For the purposes of Article 33(3), the international preliminary examination shall take into consideration the relation of any particular claim to the prior art as a whole. It shall take into consideration the claim's relation not only to individual documents or parts thereof taken separately but also its relation to combinations of such documents or parts of documents, where such combinations are obvious to a person skilled in the art.

65.2 *Relevant Date*

For the purposes of Article 33(3), the relevant date for the consideration of inventive step (non-obviousness) is the date prescribed in Rule 64.1.

Rule 66—Procedure Before the International Preliminary Examining Authority

66.1 *Basis of the International Preliminary Examination*

Before the international preliminary examination starts, the applicant may make amendments according to Article 34(2)(b) and the international preliminary examination shall initially be directed to the claims, the description, and the drawings, as contained in the international application at the time the international preliminary examination starts.

66.2 *First Written Opinion of the International Preliminary Examining Authority*

(a) If the International Preliminary Examining Authority

(i) considers that the international application has any of the defects described in Article 34(4),

(ii) considers that the international preliminary examination report should be negative in respect of any of the claims because the invention claimed therein does not appear to be novel, does not appear to involve an inventive step (does not appear to be non-obvious), or does not appear to be industrially applicable,

(iii) notices that there is some defect in the form or contents of the international application under the Treaty or these Regulations,

(iv) considers that any amendment goes beyond the disclosure in the international application as filed, or

(v) wishes to accompany the international preliminary examination report by observations on the clarity of the claims, the description, and the drawings, or the question whether the claims are fully supported by the description,

the said Authority shall notify the applicant accordingly in writing.

(b) The notification shall fully state the reasons for the opinion of the International Preliminary Examining Authority.

(c) The notification shall invite the applicant to submit a written reply together, where appropriate, with amendments or corrections.

(d) The notification shall fix a time limit for the reply. The time limit shall be reasonable under the circumstances. It shall normally be 2 months after the late of notification. In no case shall it be shorter than 1 month after the said date. It shall be at least 2 months after the said date where the international search report is transmitted at the same time as the notification. In no case shall it be more than 3 months after the said date.

66.3 *Formal Response to the International Preliminary Examining Authority*

(a) The applicant may respond to the invitation referred to in Rule 66.2(c) of the International Preliminary Examining Authority by making amendments or corrections or—if he disagrees with the opinion of that Authority—by submitting arguments, as the case may be, or do both.

(b) Any response shall be submitted directly to International Preliminary Examining Authority.

66.4 *Additional Opportunity for Amendment or Correction*

(a) If the International Preliminary Examining Authority wishes to issue one or more additional written opinions, it may do so, and Rules 66.2 and 66.3 shall apply.

(b) On the request of the applicant, the International Preliminary Examining Authority may give him one or more additional opportunities to submit amendments or corrections.

66.5 *Amendment*

Any change, other than the rectification of obvious errors of transcription, in the claims, the description, or the drawings, including cancellation of claims, omission of passages in the description, or omission of certain drawings, shall be considered an amendment.

66.6 *Informal Communications With the Applicant*

The International Preliminary Examining Authority may, at any time, communicate informally, over the telephone, in writing, or through personal interviews, with the applicant. The said Authority shall, at its discretion, decide whether it wishes to grant more than one personal interview if so requested by the applicant, or whether it wishes to reply to any informal written communication from the applicant.

66.7 *Priority Document*

(a) If the International Preliminary Examining Authority needs a copy of the application whose priority is claimed in the international application, the International Bureau shall, on request, promptly furnish such copy, provided that, where the request is made before the International Bureau has received the priority document under Rule 17.1(a), the applicant shall furnish such copy to the International Bureau and directly to the International Preliminary Examining Authority.

(b) If the application whose priority is claimed is in a language other than the language or one of the languages of the International Preliminary Examining Authority, the applicant shall furnish, on invitation, a translation in the said language or one of the said languages.

(c) The copy to be furnished by the applicant under paragraph (a) and the translation referred to in paragraph (b) shall be furnished not later than by the expiration of 2 months from the date of the request or invitation. If they are not furnished within that time limit, the international preliminary examination report shall be established as if the priority had not been claimed.

66.8 *Form of Corrections and Amendments*

(a) The applicant shall be required to submit a replacement sheet for every sheet of the international application which, on account of a correction or amendment, differs from the sheet originally filed. The letter accompanying the replacement sheets shall draw attention to the differences between the replaced sheets and the replacement sheets. To the extent that any amendment results in the cancellation of an entire sheet, that amendment shall be communicated in a letter.

(b) The International Preliminary Examining Authority shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the said Authority. It shall keep in its files any replaced sheet, the letter acompanying the replacement sheet or sheets, and any letter referred to in the last sentence of paragraph (a).

Rule 67—Subject Matter Under Article 34(4)(a)(i)

67.1 *Definition*

No International Preliminary Examining Authority shall be required to carry out an international preliminary examination on an international application if, and to the extent to which, its subject matter is any of the following:

(i) scientific and mathematical theories,

(ii) plant or animal varieties or essentially biological processes for the production of plants and animals, other than microbiological processes and the products of such processes.

(iii) schemes, rules or methods of doing business, performing purely mental acts or playing games,

(iv) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods,

(v) mere presentations of information,

(vi) computer programs to the extent that the International Preliminary Examining Authority is not equipped to carry out an international preliminary examination concerning such programs.

Rule 68—Lack of Unity of Invention (International Preliminary Examination)

68.1 *No Invitation To Restrict or Pay*

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses not to invite the applicant to restrict the claims or to pay additional fees, it shall establish the international preliminary examininations report, subject to Article 34(4)(b), in respect of the entire international application, but shall indicate, in the said report, that, in its opinion, the requirement of unity of invention is not fulfilled and shall specify the reasons for which the international application is not considered as complying with the requirement of unity of invention.

68.2 *Invitation To Restrict or Pay*

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses to invite the applicant, at his option, to restrict the claims or to pay additional fees, it shall specify at least one possibility of restriction which, in the opinion of the International Preliminary Examining Authority, would be in compliance with the applicable requirement, and shall specify the amount of the additional fees and the reasons for which the international application is not considered as complying with the requirement of unity of invention. It shall, at the same time, fix a time limit, with regard to the circumstances of the case, for complying with the invitation; such time limit shall not be shorter than 1 month, and it shall not be longer than 2 months, from the date of the invitation.

68.3 *Additional Fees*

(a) The amount of the additional fee due for international preliminary examination under Article 34(3)(a) shall be determined by the competent International Preliminary Examining Authority.

(b) The additional fee due for international preliminary examination under Article 34(3)(a) shall be payable direct to the International Preliminary Examining Authority.

(c) Any applicant may pay the additional fee under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fee is excessive. Such protest shall be examined by a three-member board or other special instance of the International Preliminary Examining Authority, or any competent higher authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fee. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the elected Offices as an annex to the international preliminary examination report.

(d) The three-member board, special instance or competent higher authority, referred to in paragraph (c), shall not comprise any person who made the decision which is the subject of the protest.

68.4 *Procedure in the Case of Insufficient Restriction of the Claims*

If the applicant restricts the claims but not sufficiently to comply with the requirement of unity of invention, the International Preliminary Examining Authority shall proceed as provided in Article 34(3)(c).

68.5 *Main Invention*

In case of doubt which invention as the main invention for the purposes of Article 34(3)(c), the invention first mentioned in the claims shall be considered the main invention.

Rule 69—Time Limit For International Preliminary Examination

69.1 *Time Limit for International Preliminary Examination*

(a) All agreements concluded with International Preliminary Examining Authorities shall provide for the same time limit for the establishment of the international preliminary examination report. This time limit shall not exceed:

(i) 6 months after the start of the international preliminary examination,

(ii) in cases where the International Preliminary Examining Authority issues an invitation to restrict the claims or pay additional fees (Article 34(3)), 8 months after the start of the international preliminary examination.

(b) International preliminary examination shall start upon receipt, by the International Preliminary Examining Authority:

(i) under Rule 62.2(a), of the claims as amended under Article 19, or

(ii) under Rule 62.2(b), of a notice from the International Bureau that no amendments under Article 19 have been filed within the prescribed time limit or that the applicant has declared that he does not wish to make such amendments, or

(iii) of a notice, after the international search report is in the possession of the International Preliminary Examining Authority, from the applicant expressing the wish that the international preliminary examination should start and be directed to the claims as specified in such notice, or

(iv) of a notice of the declaration by the International Searching Authority that no international search report will be established (Article 17(2)(a)).

(c) If the competent International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the competent International Searching Authority, the international preliminary examination may, if the International Preliminary Examining Authority so wishes, start at the same time as the international search. In such a case, the international preliminary examination report shall be established, notwithstanding the provisions of paragraph (a), no later than 6 months after the expiration of the time limit allowed under Article 19 for amending the claims.

Rule 70—The International Preliminary Examination Report

70.1 *Definition*

For the purposes of this Rule, "report" shall mean international preliminary examination report.

70.2 *Basis of the Report*

(a) If the claims have been amended, the report shall issue on the claims as amended.

(b) If, pursuant to Rule 66.7(c), the report is established as if the priority had not been claimed, the report shall so indicate.

(c) If the International Preliminary Examining Authority considers that any amendment goes beyond the disclosure in the international application as filed, the report shall be established as if such amendment had not been made, and the report shall so indicate. It shall also indicate the reasons why it considers that the amendment goes beyond the said disclosure.

70.3 *Identifications*

The report shall identify the International Preliminary Examining Authority which established it by indicating the name of such Authority, and the international application, by indicating the international application number, the name of the applicant, the name of the receiving Office, and the international filing date.

70.4 *Dates*

The report shall indicate:

(i) the date on which the demand was submitted, and

(ii) the date of the report; that date shall be the date on which the report is completed.

70.5 *Classification*

(a) The report shall repeat the classification given under Rule 43.3 if the International Preliminary Examining Authority agrees with such classification.

(b) Otherwise, the International Preliminary Examining Authority shall indicate in the report the classification, at least according to the International Patent Classification, which it considers correct.

70.6 *Statement under Article 35(2)*

(a) The statement referred to in Article 35(2) shall consist of the words "YES" or "NO," or their equivalent in the language of the report, or some appropriate sign provided for in the Administrative Instructions, and shall be accompanied by the citations, explanations and observations, if any, referred to in the last sentence of Article 35(2).

(b) If any of the three criteria referred to in Article 35(2) (that is, novelty, inventive step (non-obviousness), industrial applicability) is not satisfied, the statement shall be negative. If, in such a case, any of the criteria, taken separately, is satisfied, the report shall specify the criterion or criteria so satisfied.

70.7 *Citations under Article 35(2)*

(a) The report shall cite the documents considered to be relevant for supporting the statements made under Article 35(2).

(b) The provisions of Rule 43.5(b) and (e) shall apply also to the report.

70.8 *Explanations under Article 35(2)*

The Administrative Instructions shall contain guidelines for cases in which the explanations referred to in Article 35(2) should or should not be given and the form of such explanations. Such guidelines shall be based on the following principles:

(i) explanations shall be given whenever the statement in relation to any claim is negative;

(ii) explanations shall be given whenever the statement is positive unless the reason for citing any document is easy to imagine on the basis of consultation of the cited document;

(iii) generally, explanations shall be given if the case provided for in the last sentence of Rule 70.6(b) obtains.

70.9 *Non-Written Disclosures*

Any non-written disclosure referred to in the report by virtue of Rule 64.2 shall be mentioned by indicating its kind, the date on which the written disclosure referring to the non-written disclosure was made available to the public, and the date on which the non-written disclosure occurred in public.

70.10 *Certain Published Documents*

Any published application or any patent referred to in the report by virtue of Rule

64.3 shall be mentioned as such and shall be accompanied by an indication of its date of publication, of its filing date, and its claimed priority date (if any). In respect of the priority date of any such document, the report may indicate that, in the opinion of the International Preliminary Examining Authority, such date has not been validly claimed.

70.11 *Mention of Amendments or Correction of Certain Defects*

If, before the International Preliminary Examining Authority, amendments or corrections have been made, this fact shall be indicated in the report.

70.12 *Mention of Certain Defects*

If the International Preliminary Examining Authority considers that, at the time it prepares the report:

(i) the international application contains any of the defects referred to in Rule 66.2 (a) (iii), it shall include this opinion and the reasons therefor in the report;

(ii) the international application calls for any of the observations referred to in Rule 66.2(a)(v), it may include this opinion in the report and, if it does, it shall also indicate in the report the reasons for such opinion.

70.13 *Remarks Concerning Unity of Invention*

If the applicant paid additional fees for the international preliminary examination, or if the international application or the international preliminary examination was restricted under Article 34(3), the report shall so indicate. Furthermore, where the international preliminary examination was carried out on restricted claims (Article 34(3)(a)), or on the main invention only (Article 34(3)(c)), the report shall indicate what parts of the international application were and what parts were not the subject of international preliminary examination.

70.14 *Signature*

The report shall be signed by an authorized officer of the International Preliminary Examining Authority.

70.15 *Form*

The physical requirements as to the form of the report shall be prescribed by the Administrative Instructions.

70.16 *Attachment of Corrections and Amendments*

If the claims, the description, or the drawings, were amended or any part of the international application was corrected before the International Preliminary Examining Authority, each replacement sheet marked as provided in Rule 66.8(b) shall be attached to the report as an annex thereto. Replacement sheets superseded by later replacement sheets shall not be attached. If the amendment is communicated in a letter, a copy of such letter shall also be annexed to the report.

70.17 *Languages of the Report and the Annexes*

(a) The report shall be in the language in which the international application to which it relates is published.

(b) Any annex shall be both in the language in which the international application to which it relates was filed and also, if it is different, in the language in which the international application to which it relates is published.

Rule 71—Transmittal of the International Preliminary Examination Report

71.1 *Recipients*

The International Preliminary Examining Authority shall, on the same day, transmit one copy of the international preliminary examination report and its annexes, if any, to the International Bureau, and one copy to the applicant.

71.2 *Copies of Cited Documents*

(a) The request under Article 36(4) may be presented any time during 7 years from the international filing date of the international application to which the report relates.

(b) The International Preliminary Examining Authority may require that the party (applicant or elected Office) presenting the request pay to it the cost of preparing and mailing the copies. The level of the cost of preparing copies shall be provided for in the agreements referred to in Article 32(2) between the International Preliminary Examining Authorities and the International Bureau.

(c) Any International Preliminary Examining Authority not wishing to send copies direct to any elected Office shall send a copy to the International Bureau and the International Bureau shall then proceed as provided in paragraphs (a) and (b).

(d) Any International Preliminary Examining Authority may perform the obligations referred to in (a) to (c) through another agency responsible to it.

Rule 72—Translation of the International Preliminary Examination Report

72.1 *Languages*

(a) Any elected State may require that the international preliminary examination report, established in any language other than the official language, or one of the official languages, of its national Office, be translated into English, French, German, Japanese, Russian, or Spanish.

(b) Any such requirement shall be notified to the International Bureau, which shall promptly publish it in the Gazette.

72.2 *Copies of Translations for the Applicant*

The International Bureau shall transmit a copy of each translation of the international preliminary examination report to the applicant at the same time as it communicates such translation to the interested elected Office or Offices.

72.3 *Observations on the Translation*

The applicant may make written observations on what, in his opinion, are errors of translation in the translation of the international preliminary examination report and shall send a copy of any such observations to each of the interested elected Offices and a copy to the International Bureau.

Rule 73—Communication of the International Preliminary Examination Report

73.1 *Preparation of Copies*

The International Bureau shall prepare the copies of the documents to be communicated under Article 36(3)(a).

73.2 *Time Limit for Communication*

The communication provided for in Article 36(3)(a) shall be effected as promptly as possible.

Rule 74—Translations of Annex of the International Preliminary Examination Report and Transmittal Thereof

74.1 *Time Limit*

Any replacement sheet referred to in Rule 70.16, or any amendment referred to in the last sentence of that Rule which was filed prior to the furnishing of the translation of the international application required under Article 39, or, where the furnishing of such translation is governed by Article 64)2)(a)(i), which was filed prior to the furnishing of the translation of the international application required under Article 22, shall be translated and transmitted together with the furnishing under Article 39, or, where applicable, under Article 22, or, if filed less than 1 month before such furnishing or if filed after such furnishing, 1 month after it has been filed.

Rule 75—Withdrawal of the Demand, or of Elections

75.1 *Withdrawals*

(a) Withdrawal of the demand or all the elections may be effected prior to the expiration of 25 months from the priority date except as to any elected State in which national processing or examination has already started. Withdrawal of the election of any elected State may be effected prior to the date on which examination and processing may start in that State.

(b) Withdrawal shall be effected by a signed notice from the applicant to the International Bureau. In the case of Rule 4.8 (b), the notice shall require the signature of all the applicants.

75.2 *Notification of Elected Offices*

(a) The fact that the demand or all elections have been withdrawn shall be promptly notified by the International Bureau to the national Offices of all States which, up to the time of the withdrawal, were elected States and had been informed of their election.

(b) The fact that any election has been withdrawn and the date of receipt of the withdrawal shall be promptly notified by the International Bureau to the elected Office concerned, except where it has not yet been informed that it had been elected.

75.3 *Notification of the International Preliminary Examining Authority*

The fact that the demand or all elections have been withdrawn shall be promptly notified by the International Bureau to the International Preliminary Examining Authority if, at the time of the withdrawal, the latter had been informed of the existence of the demand.

75.4 *Faculty Under Article 37(4)(b)*

(a) Any Contracting State wishing to take advantage of the faculty provided for in Article 37(4)(b) shall notify the International Bureau in writing.

(b) The notification under paragraph (a) shall be promptly published by the International Bureau in the Gazette, and shall have effect in respect of international applications filed more than 1 month after the publication date of the relevant issue of the Gazette.

Rule 76—Languages of Translations and Amounts of Fees Under Article 39(1); Translation of Priority Document

76.1 *Notification*

(a) Any Contracting State requiring the furnishing of a translation or the payment of a national fee, or both, under Article 39(1), shall notify the International Bureau of:

(i) the languages from which and the language into which it requires translation,

(ii) the amount of the national fee.

(b) Any notification received by the International Bureau under paragraph (a) shall be published by the International Bureau in the Gazette.

(c) If the requirements under paragraph (a) change later, such changes shall be notified by the Contracting State to the International Bureau and that Bureau shall promptly publish the notification in the Gazette. If the change means that translation is required into a language which, before the change, was not required, such change shall be effective only with respect to a demand submitted later than 2 months after the publication of the notification in the Gazette. Otherwise, the effective date of any change shall be determined by the Contracting State.

76.2 *Languages*

The language into which translation may be required must be an official language of the elected Office. If there are several of such languages, no translation may be required if the international application is in one of them. If there are several official languages

and a translation must be furnished, the applicant may choose any of those languages. Notwithstanding the foregoing provisions of this paragraph, if there are several official languages but the national law prescribes the use of one such language for foreigners, a translation into that language may be required.

76.3 *Statements Under Article 19*

For the purposes of Article 39 and the present Rule, any statement made under Article 19(1) shall be considered as part of the international application.

76.4 *Time Limit for Translation of Priority Document*

The applicant shall not be required to furnish to any elected Office a certified translation of the priority document before the expiration of the applicable time limit under Article 39.

Rule 77—Faculty Under Article 39(1)(b)

77.1 *Exercise of Faculty*

(a) Any Contracting State allowing a time limit expiring later than the time limit provided for in Article 39(1)(a) shall notify the Intenational Bureau of the time limit so fixed.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) Notifications concerning the shortening of the previously fixed time limit shall be effective in relation to demands submitted after the expiration of 3 months computed from the date on which the notification was published by the International Bureau.

(d) Notifications concerning the lengthening of the previously fixed time limit shall become effective upon publication by the International Bureau in the Gazette in respect of demands pending at the time or submitted after the date of such publication, or, if the Contracting State effecting the notification fixes some later date, as from the latter date.

Rule 78—Amendment of the Claims, the Description, and the Drawings, Before Elected Offices

78.1 *Time Limit Where Elections Is Effected Prior to Expiration of 19 Months from Priority Date*

(a) Where the election of any Contracting State is effected prior to the expiration of the 19th month from the priority date, the applicant shall, if he so wishes, exercise the right under Article 41 after the transmittal of the international preliminary examination report under Article 36(1) has been effected and before the time limit applicable under Article 39, expires, provided that, if the said transmittal has not taken place by the expiration of the time limit applicable under Article 39, he shall exercise the said right not later than on such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

(b) In any elected State in which the national law provides that examination starts only on special request, the national law may provide that the time limit within or the time at which the applicant may exercise the right under Article 41 shall, where the election of any Contracting State is effected prior to the expiration of the 19th month from the priority date, be the same as that provided by the national law for the filing of amendments in the case of the examination on special request, of national applications, provided that such time limit shall not expire prior to, or such time shall not come before, the expiration of the time limit applicable under Article 39.

78.2 *Time Limit Where Election Is Effected After Expiration of 19 Months From Priority Date*

Where the election of any Contracting State has been effected after the expiration of the 19th month from the priority date and the applicant wishes to make amendments under Article 41, the time limit for making amendments under Article 28 shall apply.

78.3 *Utility Models*

The provisions of Rules 6.5 and 13.5 shall apply, *mutatis mutandis*, before elected Offices. If the election was made before the expiration of the 19th month from the priority date, the reference to the time limit applicable under Article 22 is replaced by a reference to the time limit applicable under Article 39.

PART D—RULES CONCERNING CHAPTER III OF THE TREATY

Rule 79—Calendar

79.1 *Expressing Dates*

Applicants, national Offices, receiving Offices, International Searching and Preliminary Examining Authorities, and the International Bureau, shall, for the purposes of the Treaty and the Regulations, express any date in terms of the Christian era and the Gregorian calendar, or, if they use other eras and calendars, they shall also express any date in terms of the Christian era and the Gregorian calendar.

Rule 80—Computation of Time Limits

80.1 *Periods Expressed in Years*

When a period is expressed as one year or a certain number of years, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

80.2 *Periods Expressed in Months*

When a period is expressed as one month or a certain number of months, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

80.3 *Periods Expressed in Days*

When a period is expressed as a certain number of days, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire on the day on which the last day of the count has been reached.

80.4 *Local Dates*

(a) The date which is taken into consideration as the starting date of the computation of any period shall be the date which prevails in the locality at the time when the relevant event occurred.

(b) The date on which any period expires shall be the date which prevails in the locality in which the required document must be filed or the required fee must be paid.

80.5 *Expiration on a Non-Working Day*

If the expiration of any period during which any document or fee must reach a national Office or intergovernmental organization falls on a day on which such Office or organization is not open to the public for the purposes of the transaction of official business, or on which ordinary mail is not delivered in the locality in which such Office or organization is situated, the period shall expire on the next subsequent day on which neither of the said two circumstances exists.

80.6 *Date of Documents*

Where a period starts on the day of the date of a document or letter emanating from a national Office or intergovernmental organization, any interested party may prove that the said document or letter was mailed on a day later than the date it bears, in which case the date of actual mailing shall, for the purposes of computing the period, be considered to be the date on which the period starts.

80.7 *End of Working Day*

(a) A period expiring on a given day shall expire at the moment the national Office or intergovernmental organization with which the document must be filed or to which the fee must be paid closes for business on that day.

(b) Any Office or organization may depart from the provisions of paragraph (a) up to midnight on the relevant day.

(c) The International Bureau shall be open for business until 6 p.m.

Rule 81—Modification of Time Limits Fixed in the Treaty

81.1 *Proposal*

(a) Any Contracting State or the Director General may propose a modification under Article 47(2).

(b) Proposals made by a Contracting State shall be presented to the Director General.

81.2 *Decision by the Assembly*

(a) When the proposal is made to the Assembly, its text shall be sent by the Director General to all Contracting States at least 2 months in advance of that session of the Assembly whose agenda includes the proposal.

(b) During the discussion of the proposal in the Assembly, the proposal may be amended or consequential amendments proposed.

(c) The proposal shall be considered adopted if none of the Contracting States present at the time of voting votes against the proposal.

81.3 *Voting by Correspondence*

(a) When voting by correspondence is chosen, the proposal shall be included in a written communication from the Director General to the Contracting States, inviting them to express their vote in writing.

(b) The invitation shall fix the time limit within which the reply containing the vote expressed in writing must reach the International Bureau. That time limit shall not be less than 3 months from the date of the invitation.

(c) Replies must be either positive or negative. Proposals for amendments or mere observations shall not be regarded as votes.

(d) The proposal shall be considered adopted if none of the Contracting States opposes the amendment and if at least one-half of the Contracting States express either approval or indifference or abstention.

Rule 82.—Irregularities in the Mail Service

82.1 *Delay or Loss in Mail*

(a) Subject to the provisions of Rule 22.3, any interested party may offer evidence that he has mailed the document or letter 5 days prior to the expiration of the time limit. Except in cases where surface mail normally arrives at its destination within 2 days of mailing, or where no airmail service is available, such evidence may be offered only if the mailing was by airmail. In any case, evidence may be offered only if the mailing was by mail registered by the postal authorities.

(b) If such mailing is proven to the satisfaction of the national Office or intergovernmental organization which is the addressee, delay in arrival shall be excused, or, if the document or letter is lost in the mail, substitution for it of a new copy shall be permitted, provided that the interested party proves to the satisfaction of the said Office or organization that the document or letter offered in substitution is identical with the document or letter lost.

(c) In the cases provided for in paragraph (b), evidence of mailing within the prescribed time limit, and, where the document or letter was lost, the substitute document

or letter as well, shall be submitted within 1 month after the date on which the interested party noticed—or with due diligence should have noticed—the delay or the loss, and in no case later than 6 months after the expiration of the time limit applicable in the given case.

82.2 *Interruption in the Mail Service*

(a) Subject to the provisions of Rule 22.3, any interested party may offer evidence that on any of the 10 days preceding the day of expiration of the time limit the postal service was interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, in the locality where the interested party resides or has his place of business or is staying.

(b) If such circumstances are proven to the satisfaction of the national Office or intergovernmental organization which is the addressee, delay in arrival shall be excused, provided that the interested party proves to the satisfaction of the said Office or organization that he effected the mailing within 5 days after the mail service was resumed. The provisions of Rule 82.1(c) shall apply *mutatis mutandis*.

Rule 83—Right to Practice Before International Authorities

83.1 *Proof of Right*

The International Bureau, the competent International Searching Authority, and the competent International Preliminary Examining Authority, may require the production of proof of the right to practice referred to in Article 49.

83.2 *Information*

(a) The national Office or the intergovernmental organization which the interested person is alleged to have a right to practice before shall, upon request, inform the International Bureau, the competent International Searching Authority, or the competent International Preliminary Examining Authority, whether such person has the right to practice before it.

(b) Such information shall be binding upon the International Bureau, the International Searching Authority, or the International Preliminary Examining Authority, as the case may be.

PART E—RULES CONCERNING CHAPTER V OF THE TREATY

Rule 84—Expenses of Delegations

84.1 *Expenses Borne by Governments*

The expenses of each Delegation participating in any organ established by or under the Treaty shall be borne by the Government which has appointed it.

Rule 85—Absence of Quorum in the Assembly

85.1 *Voting by Correspondence*

In the case provided for in Article 53(5)(b), the International Bureau shall communicate the decisions of the Assembly (other than those concerning the Assembly's own procedure) to the Contracting States which were not represented and shall invite them to express in writing their vote or abstention within a period of 3 months from the date of the communication. If, at the expiration of that period, the number of Contracting States having thus expressed their vote or abstention attains the number of Contracting States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

Rule 86—The Gazette

86.1 *Contents*

The Gazette referred to in Article 55(4) shall contain:

(i) for each published international application, data specified by the Administrative Instructions taken from the front page of the pamphlet published under Rule 48, the drawing (if any) appearing on the said front page, and the abstract,

(ii) the schedule of all fees payable to the receiving Offices, the International Bureau, and the International Searching and Preliminary Examining Authorities,

(iii) notices the publication of which is required under the Treaty or these Regulations,

(iv) information, if and to the extent furnished to the International Bureau by the designated or elected Offices, on the question whether the requirements provided for in Articles 22 or 39 have been complied with in respect of the international applications designating or electing the Office concerned,

(v) any other useful information prescribed by the Administrative Instructions, provided access to such information is not prohibited under the Treaty or these Regulations.

86.2 *Languages*

(a) The Gazette shall be published in an English-language edition and a French-language edition. It shall also be published in editions in any other language, provided the cost of publication is assured through sales or subventions.

(b) The Assembly may order the publication of the Gazette in languages other than those referred to in paragraph (a).

86.3 *Frequency*

The Gazette shall be published once a week.

86.4 *Sale*

The subscription and other sale prices of the Gazette shall be fixed in the Administrative Instructions.

86.5 *Title*

The title of the Gazette shall be "Gazette of International Patent Applications," and "Gazette des Demandes internationales de brevets," respectively.

86.6 *Further Details*

Further details concerning the Gazette may be provided for the Administrative Instructions.

Rule 87—Copies of Publications

87.1 *International Searching and Preliminary Examining Authorities*

Any International Searching or Preliminary Examining Authority shall have the right to receive, free of charge, two copies of every published international application, of the Gazette, and of any other publication of general interest published by the International Bureau in connection with the Treaty or these Regulations.

87.2 *National Offices*

(a) Any national Office shall have the right to receive, free of charge, one copy of every published international application of the Gazette, and of any other publication of general interest published by the International Bureau in connection with the Treaty or these Regulations.

(b) The publications referred to in paragraph (a) shall be sent on special request, which shall be made, in respect of each year, by November 30 of the preceding year. If any publication is available in more than one language, the request shall specify the language in which it is desired.

Rule 88—Amendment of the Regulations

88.1 *Requirement of Unanimity*

Amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment:

(i) Rule 14.1 (Transmittal Fee),

(ii) Rule 22.2 (Transmittal of the Record Copy; Alternative Procedure),

(iii) Rule 22.3 (Time Limit Under Article 12(3)),

(iv) Rule 33 (Relevant Prior Art for International Search),

(v) Rule 64 (Prior Art for International Preliminary Examination),

(vi) Rule 81 (Modification of Time Limits Fixed in the Treaty),

(vii) the present paragraph (i.e., Rule 88.1).

88.2 *Requirement of Unanimity During a Transitional Period*

During the first 5 years after the entry into force of the Treaty, amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment:

(i) Rule 5 (The Description),

(ii) Rule 6 (The Claims),

(iii) the present paragraph (i.e., Rule 88.2).

88.3 *Requirement of Absence of Opposition by Certain States*

Amendment of the following provisions of these Regulations shall require that no State referred to in Article 58(3)(a)(ii) and having the right to vote in the Assembly vote against the proposed amendment:

(i) Rule 34 (Minimum Documentation),

(ii) Rule 39 (Subject Matter Under Article (17(2)(a)(i)),

(iii) Rule 67 (Subject Matter Under Article 34(4)(a)(i)),

(iv) the present paragraph (i.e., Rule 88.3).

88.4 *Procedure*

Any proposal for amending a provision referred to in Rules 88.1, 88.2, or 88.3, shall, if the proposal is to be decided upon in the Assembly, be communicated to all Contracting States at least 2 months prior to the opening of that session of the Assembly which is called upon to make a decision on the proposal.

Rule 89—Administrative Instructions

89.1 *Scope*

(a) The Administrative Instructions shall contain provisions:

(i) concerning matters in respect of which these Regulations expressly refer to such Instructions,

(ii) concerning any details in respect of the application of these Regulations.

(b) The Administrative Instructions shall not be in conflict with the provisions of the Treaty, these Regulations, or any agreement concluded by the International Bureau with an International Searching Authority, or an International Preliminary Examining Authority.

89.2 *Source*

(a) The Administrative Instructions shall be drawn up and promulgated by the Director General after consultation with the receiving Offices and the International Searching and Preliminary Examining Authorities.

(b) They may be modified by the Director General after consultation with the Offices or Authorities which have a direct interest in the proposed modification.

(c) The Assembly may invite the Director General to modify the Administrative Instructions, and the Director General shall proceed accordingly.

89.3 *Publication and Entry Into Force*

(a) The Administrative Instructions and any modification thereof shall be published in the Gazette.

(b) Each publication shall specify the date on which the published provisions come into effect. The dates may be different for different provisions, provided that no provision may be declared effective prior to its publication in the Gazette.

PART F—RULES CONCERNING SEVERAL CHAPTERS OF THE TREATY

Rule 90—Representation

90.1 *Definitions*

For the purposes of Rule 90.2 and Rule 90.3:

(i) "agent" means any of the persons referred to in Article 49;

(ii) "common representative" means the applicant referred to in Rule 4.8.

90.2 *Effects*

(a) Any act by or in relation to an agent shall have the effect of an act by or in relation to the applicant or applicants having appointed the agent.

(b) Any act by or in relation to a common representative or his agent shall have the effect of an act by or in relation to all the applicants.

(c) If there are several agents appointed by the same applicant or applicants, any act by or in relation to any of the several agents shall have the effect of an act by or in relation to the said applicant or applicants.

(d) The effects described in paragraphs (a), (b), and (c), shall apply to the processing of the international application before the receiving Office, the International Bureau, the International Searching Authority, and the International Preliminary Examining Authority.

90.3 *Appointment*

(a) Appointment of any agent or of any common representative within the meaning of Rule 4.8(a), if the said agent or common representative is not designated in the request signed by all applicants, shall be effected in a separate signed power of attorney (i.e., a document appointing an agent or a common representative).

(b) The power of attorney may be submitted to the receiving Office or the International Bureau. Whichever of the two is the recipient of the power of attorney submitted shall immediately notify the other and the interested International Searching Authority and the interested International Preliminary Examining Authority.

(c) If the separate power of attorney is not signed as provided in paragraph (a), or if the required separate power of attorney is missing, or if the indication of the name or address of the appointed person does not comply with Rule 4.4, the power of attorney shall be considered non-existent unless the defect is corrected.

90.4 *Revocation*

(a) Any appointment may be revoked by the persons who have made the appointment or their successors in title.

(b) Rule 90.3 shall apply, *mutatis mutandis*, to the document containing the revocation.

Rule 91—Obvious Errors of Transcription

91.1 *Rectification*

(a) Subject to paragraphs (b) to (g), obvious errors of transcription in the international application or other papers submitted by the applicant may be rectified.

(b) Errors which are due to the fact that something other than what was obviously intended was written in the international application or other paper shall be regarded as obvious errors of transcription. The rectification itself shall be obvious in the sense that anyone would immediately realize that nothing else could have been intended than what is offered as rectification.

(c) Omissions of entire elements or sheets of the international application, even if clearly resulting from inattention, at the stage, for example, of copying or assembling sheets, shall not be rectifiable.

(d) Rectification may be made on the request of the applicant. The authority having discovered what appears to be an obvious error of transcription may invite the applicant to present a request for rectification as provided in paragraphs (e) to (g).

(e) No rectification shall be made except with the express authorization:

(i) of the receiving Office if the error is in the request,

(ii) of the International Searching Authority if the error is in any part of the international application other than the request or in any paper submitted to that Authority,

(iii) of the International Preliminary Examining Authority if the error is in any part of the international application other than the request or in any paper submitted to that Authority, and

(iv) of the International Bureau if the error is in any paper, other than the international application or amendments or corrections to that application, submitted to the International Bureau.

(f) The date of the authorization shall be recorded in the files of the international application.

(g) The authorization for rectification referred to in paragraph (e) may be given until the following events occur:

(i) in the case of authorization given by the receiving Office and the International Bureau, the communication of the international application under Article 20;

(ii) in the case of authorization given by the International Searching Authority, the establishment of the international search report or the making of a declaration under Article 17(2)(a);

(iii) in the case of authorization given by the International Preliminary Examining Authority, the establishment of the international preliminary examination report.

(h) Any authority, other than the International Bureau, which authorizes any rectification shall promptly inform the International Bureau of such rectification.

Rule 92—Correspondence

92.1 *Need for Letter and for Signature*

(a) Any paper submitted by the applicant in the course of the international procedure provided for in the Treaty and these Regulations, other than the international application, itself, shall, if not itself in the form of a letter, be accompanied by a letter identifying the international application to which it relates. The letter shall be signed by the applicant.

(b) If the requirements provided for in paragraph (a) are not complied with, the paper shall be considered not to have been submitted.

92.2 *Languages*

(a) Subject to the provisions of paragraphs (b) and (c), any letter or document submitted by the applicant to the International Searching Authority or the International Preliminary Examining Authority shall be in the same language as the international application to which it relates.

(b) Any letter from the applicant to the International Searching Authority or the International Preliminary Examining Authority may be in a language other than that of the international application, provided the said Authority authorizes the use of such language.

(c) When a translation is required under Rule 55.2, the International Preliminary Examining Authority may require that any letter from the applicant to the said Authority be in the language of that translation.

(d) Any letter from the applicant to the International Bureau shall be in English or French.

(e) Any letter or notification from the International Bureau to the applicant or to any national Office shall be in English or French.

92.3 *Mailings by National Offices and Intergovernmental Organizations*

Any document or letter emanating from or transmitted by a national Office or an intergovernmental organization and constituting an event from the date of which any time limit under the Treaty or these Regulations commences to run shall be sent by registered air mail, provided that surface mail may be used instead of air mail in cases where surface mail normally arrives at its destination within 2 days from mailing or where air mail service is not available.

Rule 93—Keeping of Records and Files

93.1 *The Receiving Office*

Each receiving Office shall keep the records relating to each international application or purported international application, including the home copy, for at least 10 years from the international filing date or, where no international filing date is accorded, from the date of receipt.

93.2 *The International Bureau*

(a) The International Bureau shall keep the file, including the record copy, of any international application for at least 30 years from the date of receipt of the record copy.

(b) The basic records of the International Bureau shall be kept indefinitely.

93.3 *The International Searching and Preliminary Examining Authorities*

Each International Searching Authority and each International Preliminary Examining Authority shall keep the file of each international application it receives for at least 10 years from the international filing date.

93.4 *Reproductions*

For the purposes of this Rule, records, copies and files shall also mean photographic reproductions of records, copies, and files, whatever may be the form of such reproductions (microfilms or other).

Rule 94—Furnishing of Copies by the International Bureau and the International Preliminary Examining Authority

94.1 *Obligation To Furnish*

At the request of the applicant or any person authorized by the applicant, the International Bureau and the International Preliminary Examining Authority shall furnish, subject to reimbursement of the cost of the service, copies of any document contained in the file of the applicant's international application or purported international application.

Rule 95—Availability of Translations

95.1 *Furnishing of Copies of Translations*

(a) At the request of the International Bureau, any designated or elected Office shall provide it with a copy of the translation of the international application furnished by the applicant to that Office.

(b) The International Bureau may, upon request and subject to reimbursement of the cost, furnish to any person copies of the translations received under paragraph (a).

REPORT OF THE U.S. DELEGATION TO THE WASHINGTON DIPLOMATIC CONFERENCE ON THE PATENT COOPERATION TREATY, WASHINGTON, D.C., MAY 25 THROUGH JUNE 19, 1970

Submitted to the Secretary of State:

Eugene M. Braderman, Co-Chairman of the Delegation.

William E. Schuyler, Jr., Co-Chairman of the Delegation.

Prepared by: Business Practices Division, Bureau of Economic Affairs; Office of the Assistant Legal Advisor, Department of State, Office of Legislation and International Affairs, Patent Office, Department of Commerce.

1. TITLE, SITE, AND DATE

The "Washington Diplomatic Conference on the Patent Cooperation Treaty" was held in the Conference Suite of the Department of State in Washington, D.C., from May 25 to June 19, 1970.

2. BRIEF BACKGROUND

As a result of a United States initiative in September 1966, the Executive Committee of the Convention of Paris for the Protection of Industrial Property unanimously approved a resolution asking the Secretariat for that Convention, the United International Bureaux for the Protection of Intellectual Property (BIRPI), to undertake a study of practicable means to simplify the patenting of any given invention in a number of countries.

In the present situation, patenting in each country is a wholly independent affair and the national laws of most countries generally do not take account of the fact that protection for the same invention may be sought in other countries. For example, it is estimated that more than 50 percent of the

700,000 patent applications filed worldwide are duplicates of other applications. As a result, there is a great deal of duplication of effort and a considerable waste of time, talent, and money, both for the patent applicant and the national Patent Offices.

On the basis of the 1966 resolution of the Executive Committee of the Paris Convention and after consultation with interested Governments and international governmental and non-governmental organizations, BIRPI released a first draft of a proposed Patent Cooperation Treaty at the end of May 1967.

In the United States, officials of the Patent Office and the Department of State discussed this draft in detail with bar and industry groups. In addition, a Coordination Committee on the Patent Cooperation Treaty composed of the major patent law and industrial associations in the United States was established to study the draft in depth. The input from all of these groups weighed heavily in developing the position of United States Government representatives at several meetings of experts called by BIRPI to consider the draft. As a consequence, the United States proposed a number of significant revisions which were accepted and incorporated in a new draft of the Treaty prepared by BIRPI and released in July 1968.

In order to intensify the efforts to develop a treaty draft that would best serve U.S. interests the Department of State, in conjunction with the Patent Office, established in July 1968 an International Industrial Property Panel composed of representatives of all the important United States organizations interested in this field. Meetings of the Panel on the proposed PCT were held in July and December 1968, in March 1969, and in February 1970.

Individual groups interested in patent matters, such as the American Group of the International Patent and Trademark Association and the American Patent Law Association, also studied and made suggestions for changes in the PCT. In all cases the Patent Office and the Department of State carefully considered these suggestions, and in many instances were successful in getting these changes incorporated in the treaty drafts.

In December 1968 there was a meeting of a Committee of Experts to which all Paris Union members were invited to consider the July 1968 Draft. Forty states participated. These countries approved the basic concepts of the PCT and indicated clearly a desire to move ahead toward the final negotiation of the Treaty at a diplomatic conference some time during the first half of 1970.

On the basis of the December 1968 Committee of Experts meeting, BIRPI revised the July 1968 Draft and issued new revised drafts in March 1969. In April 1969 a meeting of Government experts from nine Paris Union Member States (France, Federal Republic of Germany, Japan, Netherlands, Soviet Union, Sweden, Switzerland, United Kingdom, and the United States) met to consider the March 1969 Revised Drafts. BIRPI also consulted with interested non-governmental organizations in April and May. Following these meetings, there was a further meeting with the Government experts for the aforementioned nine Paris Union Member States in mid-June 1969. BIRPI once more revised both the PCT and the PCT Regulations and issued the July 1969 Drafts, which became the basic negotiating drafts for the Diplomatic Conference.

In March 1970 the member States of the Paris Union and a number of intergovernmental and non-governmental organizations were invited by BIRPI to a Preparatory Study Group on the draft PCT Regulations in Geneva. A total of 40 States, 9 intergovernmental organizations, and 11 non-governmental organizations participated in the Study Group. The basic purpose of the meeting was to expedite the work on the extensive and detailed Regulations at the Diplomatic Conference.

3. AGENDA

1. Opening of the Conference.
2. Address by the Director of BIRPI.
3. Election of the President of the Conference.
4. Adoption of the Agenda.
5. Adoption of the Rules of Procedure.
6. Election of:
(a) the Vice-Presidents of the Conference.
(b) the members of the Credentials Committee, the General Drafting Committee and the two Drafting Committees.
(c) the Chairmen and Vice-Chairmen of the two Main Committees and of each of the four other Committees referred to in the preceding item.
7. Introduction of the Draft Patent Cooperation Treaty by the Secretary General of the Conference.
8. Introductory and general observations by Member Delegations.
9. Consideration of the reports of the Credentials Committee.
10. Consideration of the texts submitted by the two Main Committees and the General Drafting Committee.
11. Final vote on:
(a) the text of the Patent Cooperation Treaty and of the Regulations under that Treaty.
(b) any other instruments, resolutions, or recommendations.
12. Closing of the Conference by the President of the Conference.

4. PARTICIPATION

(a) Participating Countries (Member States of Paris Union):
Algeria (2).
Argentina (5).
Australia (4).
Austria (3).
Belgium (4).
Brazil (9).
Bulgaria (1).
Cameroon (1).
Canada (7).
Central African Republic (3).
Denmark (3).
Dominican Republic (1).
Finland (3).
France (7).
Gabon (1).
Germany (Federal Republic of) (8).
Hungary (5).
Indonesia (1).
Iran (3).
Ireland (1).
Israel (3).
Italy (14).
Ivory Coast (2).
Japan (6).
Luxembourg (1).
Malagasy Republic (3).
Malawi (1).
Malta (1).
Mauritania (1).
Mexico (1).
Monaco (1).
Netherlands (8).
Niger (1).
Norway (3).
Philippines (4).
Poland (4).
Portugal (7).
Romania (4).
Republic of South Africa (3).
Spain (4).
Sweden (5).
Switzerland (5).
Togo (3).
Trinidad and Tobago (1).
Turkey (1).
Uganda (2).
Union of Soviet Socialist Republics (8).
United Arab Republic (1).
United Kingdom (8).
United States (13).
Uruguay (2).
Yugoslavia (2).
Zambia (3).
(b) Observer Countries (non-member States of Paris Union):
Barbados (1).
Bolivia (1).
Burundi (1).
Chile (2).
Republic of China (3).
Costa Rica (1).
Ecuador (2).
Ghana (1).
Guatemala (2).
Guyana (1).
Jamaica (1).
Jordan (1).
Republic of Korea (3).
Laos (1).
Libya (1).
Malaysia (1).
Nicaragua (1).
Panama (1).
Paraguay (1).
Peru (1).
Rwanda (1).
Saudi Arabia (1).
Thailand (1).
(c) International Organizations:
(i) Intergovernmental Organizations:
United Nations (1).
United Nations Conference on Trade and Development (UNCTAD) (1).
United Nations Industrial Development Organization (UNIDO) (1).
International Patent Institute (IIB) (3).
International Institute for the Unification of Private Law (UNIDROIT) (1).
African & Malagasy Industrial Property Office (OAMPI) (1).
Commission of the European Communities (3).
European Free Trade Association (EFTA) (2).
Industrial Development Center for Arab States (IDCAS) (1).
Inter-Governmental Conference for the Setting Up of a European System for the Grant of Patents (2).
Organization of American States (OAS) (3).
(ii) Non-Governmental Organizations:
Asian Patent Attorneys Association (APAA) (8).
Committee of National Institutes of Patent Agents (CNIPA) (1).
Council of European Industrial Federations (1).
European Industrial Research Management Association (2).
Inter-American Association of Industrial Property (ASIPI) (3).
International Association for the Protection of Industrial Property (IAPIP) (2).
International Chamber of Commerce (2).
International Federation of Inventors Associations (IFIA) (2).
International Federation of Patent Agents (FICPI) (5).
Pacific Industrial Property Association (PIPA) (9).
Union of Industries of the European Community (UNICE) (1).

5. UNITED STATES DELEGATION

Co-Chairmen

Eugene M. Braderman, Deputy Assistant Secretary for Commercial Affairs and Business Activities, Department of State.

William E. Schuyler, Jr., Commissioner of Patents, Patent Office, Department of Commerce.

Alternate Co-Chairmen

George R. Clark, General Patent Counsel, Sunbeam Corporation, Chicago, Illinois.

Harvey J. Winter, Chief, Business Practices Division, Department of State.

Senior Advisers

James W. Brennan, International Patent Specialist, Patent Office, Department of Commerce.

Edward F. McKie, Jr., Patent Attorney, Birch, Swindler, McKie and Beckett, Washington, D.C.

Advisers

Donald W. Banner, General Patent Counsel, Borg-Warner Corporation, Chicago, Illinois.

Robert B. Benson, General Patent Attorney, Allis-Chalmers Corporation, Milwaukee, Wisconsin.

Pasquale J. Federico, Examiner-in-Chief (Retired), Patent Office, Department of Commerce.

H. Dieter Hoinkes, International Patent Specialist, Patent Office, Department of Commerce,

W. Brown Morton, Jr., Patent Attorney, McLean, Morton and Boustead, Washington, D.C.

Sylvia E. Nilsen, Deputy Assistant Legal Adviser, Department of State.

William A. Smith, III, International Patent Specialist, Patent Office, Department of Commerce.

6. ORGANIZATION OF THE CONFERENCE

I. Conference

President: Mr. Eugene M. Braderman (United States).

Vice-Presidents:

Mr. Pedro E. Real (Argentina).

Mr. K. B. Peterson (Australia).

Mr. Celso Diniz (Brazil).

Mr. Michael K. Epangue (Cameroon).

Mr. Francois Savignon (France).

Mr. H. Groepper (Germany, Federal Republic of).

Mr. Emil Tasnadi (Hungary).

Dr. Giorgio Ranzi (Italy).

Mr. Fatagoma Coulibaly (Ivory Coast).

Mr. Bunroku Yoshino (Japan).

Mr. Pablo R. Suarez, Jr. (Philippines).

Mr. Y. Artemiev (Soviet Union).

Mr. A. Fernandez-Mazarambroz (Spain).

Mr. G. Borggard (Sweden).

Mr. M. Abel Salam (United Arab Republic).

Mr. Edward Armitage (United Kingdom).

Secretary General: Mr. Arpad Bogsch (BIRPI).

Assistant Secretary General: Mr. Joseph Voyame (BIRPI).

Assistant Secretary General for Administration: Mr. William T. Keough (U.S. Department of State).

II. Main Committee I

Chairman: Mr. William E. Schuyler, Jr. (United States).

Vice-Chairmen:

Dr. Kurt Haertel (Germany, Federal Republic of).

Mr. A. D. Ibrahim (Indonesia).

III. Main Committee II

Chairman: Mr. J. B. van Bentham (Netherlands).

Vice-Chairmen:

Dr. M. Besarovich (Yugoslavia).

Mr. V. C. Akponor (Zambia).

Secretary: Mr. Joseph Voyame (BIRPI).

IV. Credentials Committee

Chairman: Mr. Bunroku Yoshino (Japan).

Vice-Chairmen:

Mr. W. Koeffler (Autria).

Mr. C. Randrianasolo (Malagasy Republic).

Other Members:

Mr. E. Tuxen (Denmark).

Dr. M. Read-Vittini (Dominican Republic).

Dr. A. A. Afshar (Iran).

Mr. M. J. Quinn (Ireland).

Mr. Ze'ev Sher (Israel).

Mrs. K. Matlaszek (Poland).

Dr. Jose de Oliveira Ascensao (Portugal).

Mr. G. S. Lule (Uganda).

Miss S. Nilsen (United States).

Secretary: Mr. Joseph Voyame (BIRPI).

V. General Drafting Committee

Chairman: Mr. Y. Artemiev (Soviet Union).

Vice-Chairmen:

Mr. B. Roussin (Canada).

Dr. Walter Stamm (Switzerland).

Other Members:

Mr. Alvaro Gurgel de Alencar (Brazil).

Mr. P. Guerin (France).

Dr. R. Singer (Germany, Federal Republic of).

Mr. R. Messerotti-Benvenuti (Italy).

Mr. Kataro Otani (Japan).

Dr. C. Schertenleib (Monaco).

Mr. S. Lewin (Sweden).

Mr. J. D. Fergusson (United Kingdom).

Mr. G. R. Clark or Mr. H. J. Winter (United States).

Secretary: Dr. Arpad Bogsch (BIRPI).

VI. Drafting Committee of Main Committee I

Chairman: Mr. Edward Armitage (United Kingdom).

Vice Chairman:

Mr. E. M. Haddrick (Australia).

Mr. A. Braun (Belgium).

Other Members:

Mr. S. Finne (Finland).

Mr. R. Gajac (before June 8); Mr. P. Fressonnet (from June 8) (France).

Dr. H. Mast (Germany, Federal Republic of).

Mr. Yoshiro Hashimoto (Japan).

Honorable H. E. Corneliu Bogden (Ambassador, Embassy of the Socialist Republic of Romania).

Mr. Y. Gyrdymov (Soviet Union).

Mr. G. R. Clark (United States).

Secretary: Mr. Klaus Pfanner (BIRPI).

VII. Drafting Committee on Main Committee II

Chairman: Mr. J. Balmary (France).

Vice Chairmen:

Mr. S. Bouzidi (Algeria).

Honorable Amir-Aslan Afshar (Ambassador, Embassy of Iran).

Other Members:

Dr. W. Tilmann (Germany, Federal Republic of).

Mr. Noriaki Owada (Japan).

Mr. L. Nordstrand (Norway).

Mr. E. Gavrilov (Soviet Union).

Mr. R. Bowen (United Kingdom).

Miss S. Nilsen (United States).

Dr. M. Besarovic (Yugoslavia).

Secretary: Mr. Joseph Voyame (BIRPI).

VIII. Steering Committee

Chairman: Mr. Eugene M. Braderham (President of the Conference).

Members:

Mr. Y. Artemiev (Chairman of the General Drafting Committee).

Mr. J. B. van Benthem (Chairman of Main Committee II).

Mr. William E. Schuyler, Jr. (Chairman of Main Committee I).

Mr. Bunroku Yoshino (Chairman of the Credentials Committee).

Secretary: Dr. Arpad Bogsch (Secretary General of Conference).

7. WORK OF THE COMMITTEE

The principal negotiating work of the Conference was carried out in two Main Committees. Main Committee I dealt with Chapters I (international application and international search), II (international preliminary examination), and III (common provisions) of the Draft Treaty PCT/DC/4) and with the related Rules of the Draft Regulations (PAT/DC/5). Main Committee II dealt with then Chapters IV (administrative provisions) and V (final provisions) and the Related Rules of the Draft Regulations.

During the Conference some new chapters were added to the Treaty which necessitated a renumbering of the chapters from those in the 1969 Draft (PCT/DC/4). A new chapter on "Technical Services" became Chapter IV and was dealt with in Main Committee I. Another new chapter on "Disputes" became Chapter VI and was handled by Main Committee II. Two articles of the 1969 Draft—Article 55 on "Revision of the Treaty" and Article 56 on "Amendment of Certain Provisions of the Treaty"—were put into a separate chapter (Chapter VII) and were dealt with in Main Committee II.

Eight Working Groups were set up during the Conference to deal with specific problems. Each of these Groups reported back to the two Main Committees, which acted upon the reports of the Working Groups.

On the basis of United States interests, we have selected for comment the following major issues which were acted upon in the two Main Committees.

ARTICLE 2—DEFINITIONS

In the negotiating draft (PCT/DC/4), inventors' certificates were treated in Article 43 of the "Common Provisions". That Article construed references to patents to include references to inventors' certificates. This enabled applicants in countries having inventors' certificates, when filing an international application, to base their priority claim on a first filed inventor's certificate. The system of inventors' certificates is used widely by Soviet applicants to protect industrial property in the Soviet Union and in some of the other Eastern European Countries. Since Article 43 did not equate inventors' certificates with patents, the United States position was to support treatment of inventors' certificates along the lines of this Article. In document PCT/DC/11, however, BIRPI proposed deletion of Article 43 and insertion of a paragraph in Article 2 (Definitions), stating that patents *meant* both patents and inventors' certificates.

The Soviet Union was in favor of removing the reference to inventors' certificates from the latter part of the treaty draft and placing it into Article 2. It further proposed that patents and inventors' certificates be defined as meaning "legal institutions which, for the purposes of this Treaty, were the main form of protection of inventions". Although this language did not specifically equate patents to inventors' certificates, it nevertheless placed them side by side and thereby went far beyond the original meaning of Article 43.

The United States suggested a further compromise along the general lines of the BIRPI proposal in PCT/DC/11. It involved the deletion of Article 43 and the insertion in Article 2 of the definition of inventors' certificates as contained in Article 43. Thus, inventors' certificates were given a physically more prominent spot in the Treaty, while assuring at the same time that the concept of patents would not be equated with that of inventors' certificates. The compromise proposal was accepted by the Soviet Union, which withdrew its proposal.

ARTICLE 4—THE REQUEST

Article 4 of the negotiating draft (PCT/DC/4) provided that for each international application the request should contain the name and other prescribed data concerning the inventor. Article 4(4) provided that where, according to the national law of a designated State, an inventor's identity would not be required in a national application, failure to indicate the name and other prescribed data concerning the inventor would have no consequence in such State.

The Soviet union proposed (PCT/DC/18) that Article 4 be amended to require that the name and other data concerning the inventor be indicated in the request *in any case*. On the other hand, France proposed (PCT/DC/19) that the compulsory naming of the inventor in the request at the time of filing be deleted from the Treaty and that the naming of the inventor be deferred until the start of the national phase. Specifically, the French proposal provided that

the inventor's name did not need to be furnished until the expiration of the 20th month time limit of Article 22. The French proposal permitted the request to contain the name of the inventor and the prescribed indications concerning his identity. However, if such particulars were not included in the request, they could be communicated at a later date to the designated State within the time limit of Article 22. Moreover, failure to mention such particulars in the request or in a separate communication at a later date would have been of no consequence in those designated States whose national law did not require an indication of the inventor's identity. Switzerland, Austria, Italy, the Federal Republic of Germany, the European Industrial Research Management Association (EIRMA), the Union of Industries of the European Community (UNICE), and the Council of European Industrial Federations (CIFE) supported the French proposal.

Sweden, United States, Hungary, Poland, Japan, Norway, United Kingdom, Spain, Israel and the Pacific Industrial Property Association (PIPA) supported the Soviet proposal. Israel urged support for naming the inventor at the earliest date, even though its own national law did not so require. It was pointed out that the Paris Union recognized the fundamental right of the inventor to be named in an application. While it was argued, on behalf of the French proposal, that only after the scope of the invention had been finally settled could the inventor be determined, it was suggested by Israel that postponing the naming of the inventor could increase the risk that the wrong inventor would be named.

The United States explained that under present United States law the inventor must sign the application as filed. Since failure to name the inventor is a fatal defect in a U.S. application, and since the intent of Article 11(3) is that the international application will have the immediate effect of a regular national application in each designated State, it is important that where the United States is designated, the inventor at least be identified in the request. This was essentially the United States position with regard to Article 4.

No votes were taken on the proposals when first raised, the matter being deferred until the conclusion of the deliberations on Chapter I of the Treaty. When again taken up, France presented a compromise proposal (PCT/DC/50), which was adopted. In substance Articles 4(1)(v) and 4(4) of the Treaty now require that the name of the inventor be furnished at the time of filing if the national law of *at least one* of the designated States requires such an indication. Otherwise, the name may be furnished in a separate notice addressed to each designated State whose national law requires the naming of the inventor, but permits it to be furnished at a time later than the filing of the application. Failure to indicate the name of the inventor on filing is to have no consequence in any designated State whose national law requires naming the inventor but permits it to be furnished later than the time of filing. Moreover, failure to furnish the name in a separate notice shall have no consequences in any designated State whose national law does not require it at any time.

ARTICLE 8—CLAIMING PRIORITY

Article 8(1) of the negotiating draft (PCT/DC/4) stated that an international application could contain a claim of priority of earlier national or international applications filed in any member country of the Paris Union. In light of the new definition of the term "application", references to "national" and "international" became superfluous and were deleted in the final draft by Main Committee I.

Paragraph 2(a) of Article 8 in the negotiating draft stated that "subject to subparagraphs (b) and (c)" the conditions and effects of priority claims should be as provided in the Paris Convention.

The United States position was that the provisions of the Paris Convention should be controlling and that the national law of a designated State could control only where the sole basis for the priority claim in that State was either an earlier national application filed in that State or an earlier international application in which *only* that one State was designated.

It was subparagraph (2)(c) which divided Main Committee I and ultimately led to the formation of a Working Group on the whole of Article 8. The negotiating draft of this subparagraph provided that where the claim of priority was based on a prior *international* application and where a State was designated in both applications, the validity of the designation and the conditions and effects of the priority claim in the later international application were to be governed by the national law of the designated State. On the basis of an earlier proposal by the Federal Republic of Germany, BIRPI suggested (PCT/DC/11) a change in this subparagraph, making the validity of the priority claim dependent upon the withdrawal, within a specified time period, of the earlier international application, or the designation of States contained therein which were also designated in the later international application. France had also submitted a proposal (PCT/DC/19) which was similar to the BIRPI proposal.

The United States position was that both the original and the rewritten drafts of paragraph (2)(c) were unacceptable since they encroached upon the rights granted under the Paris Convention. As an example, it was stated that if an earlier international application contained the designation of two States, the later international application claiming the priority of the earlier one should be able to contain the designation of the same two States, without any question of the validity of the claimed priority, since in one State the priority of the international application designating the other State could be claimed and vice versa. The United States noted that each State could amply protect itself against the dangers of double patenting, etc., in the national phase.

The Working Group dealing with the whole question of priority adopted the view of the United States in that it recognized that national law should only be controlling in the situations where the claim of priority in an international application designating a State was either based on an earlier national application of that State, or an earlier international application designating only that State.

France, the Federal Republic of Germany, the Netherlands, and the United Kingdom voiced preference for the BIRPI proposal in PCT/DC/11, but accepted the solution suggested by the Working Group which is reflected in the adopted version of Article 8.

ARTICLE 9—THE APPLICANT

Article 9(1) of the negotiating draft (PCT/DC/4) limited the filing of international applications to residents or nationals of Contracting States. The necessity for such a limitation was recognized and Article 9(1) was adopted without opposition. In discussing this provision, the Federal Republic of Germany explained the basis upon which a treaty could thus exclude residents or nationals of countries which were members of the Paris Union. It stated that where a treaty was open to any State member of the Paris Union, it could properly limit the availability of its benefits to nationals or residents of Contracting States. In other words, any resident or national of a State member of the Paris Union could be excluded, until that State became a Contracting State (i.e. a State party to the PCT). On the other hand, where a treaty was not open to every member State of the Paris Union, it could not exclude residents and nationals of non-participating Paris Union member States from its advantages, without violating the national treatment principles of the Paris Union.

Article 9(2) of the negotiating draft provided that the Assembly may decide to allow residents or nationals of "specified States", other than States party to the PCT, to file international applications. The BIRPI Secretariat proposed (PCT/DC/11) an Alternative to Article 9(2) which would have limited "specified States" to member States of the Paris Convention. A similar proposal was made by Japan (PCT/DC/7).

The Secretary General of the Conference, stated that in view of the strong sentiment for limiting Article 9(2) to Paris Union countries, as evidenced at the March 1970 meeting on Rules, he had drafted the alternative proposal appearing in PCT/DC/11.

The United States position on the question of limiting the "specified States" to Paris Union members was that although the United States favored in principle a patent treaty offering the fullest opportunity for filing by residents or nationals of any State, it recognized that opening the PCT to residents or nationals of non-Paris Union States would raise considerable administrative difficulties as well as substantive questions under the Paris Convention. The United States therefore supported the proposed BIRPI Alternative and the Japanese proposal. The Federal Republic of Germany and the United Kingdom also supported this position, pointing out that any member State of the Paris Union could join the PCT and to that extent it was indeed an "open" Treaty.

In discussing the proposed Alternative the general feeling was that it would not be prudent to permit access to the PCT by residents or nationals of non-Paris Union States since such persons would achieve all of the benefits of the PCT while their States would neither adhere to the broad principles of the Paris Convention, nor would they incur any of the obligations of the PCT. The BIRPI Alternative was accordingly adopted by the Conference and now appears as Article 9(2) of the Treaty.

ARTICLES 11(3), 27(5), 64(4)—PRIOR ACT RESERVATION

Article 11(3) of the negotiating draft (PCT/DC/4) stated that an international application would have the effect of a regular national application in each designated State as of the international filing date.

The negotiating draft contained a provision in Article 27(5) that the effective date of any international application for prior art purposes in each Contracting State was "governed by the national law of that State and not by the provisions of Article 11(3) or any other provision of this Treaty".

The provision in Article 27(5) of the negotiating draft traces its origin to a proposal made to BIRPI by interested United States groups in a meeting, hosted by BIRPI in Geneva, in May 1969. The intent of the proposal was to prevent the Treaty from overriding national substantive law. It was felt that any change should be accomplished through normal legislative processes.

Prior to the Diplomatic Conference, the United States had received many indications that the proviso would be attacked by European Delegations at the Conference.

A formal written proposal to delete the final sentence of Article 27(5) was co-sponsored by Austria, Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom. This proposal was also supported by the Soviet Union.

Several Delegations stated that the proviso in Article 27(5) represented a grave exception

to the fundamental principle of the Treaty, as expressed in Article 11(3).

Canada noted that the number of applications affected by Article 27(5) were extremely small and that although a breach in the principle of Article 11(3) existed, it was de minimis in practice.

The United States vigorously supported the retention of the provision in Article 27(5) and stated that it would probably be impossible for the United States to become a party to the Treaty under its present law if the proviso were deleted.

Several countries, notably Argentina and Brazil, supported the United States position that national law should be left untouched by the Treaty.

A Working Group consisting of the representatives of Argentina, Austrialia, Canada, France, the Federal Republic of Germany, Israel, the Netherlands, Soviet Union, Switzerland, United Kingdom, United States and Zambia was formed. The Working Group held five sessions.

After extensive discussions the Working Group was able to report a compromise to Main Committee I which consisted of the following changes in the negotiating draft:

A paragraph was inserted in Article 64(4) under "Reservations" stating that any State whose national law does not equate for prior art purposes the priority date claimed under the Paris Convention for the Protection of Industrial Property to the actual filing date could so declare and state the date from which international applications designating that State would become effective as prior art in that State.

Article 11(3) was amended to read, "Subject to Article 64(4), any international application" would "have the effect of a regular national application in each designated State as of the international filing date, which date shall be considered to be the actual filing date in each designated State."

The last sentence of Article 27(5) was deleted.

This compromise was adopted by Main Committee I and is acceptable to the United States, with the understanding that in line with its position to allow complete freedom in applying the criteria of its own national law in respect of prior art, ratification by the United States of the PCT, would be conditioned upon the making by the United States of a reservation under Article 64(4), if, at the time of such ratification, United States law does not equate, for prior art purposes, the priority date claimed under the Paris Convention to the actual filing date in the United States.

ARTICLE 15—THE INTERNATIONAL SEARCH

In the negotiating draft (PCT/DC/4), Article 15(5) provided for an "international-type search" on a national application at the option of the applicant so that he could better evaluate the desirability of filing an international application.

At the request of Portugal and Brazil, subparagraphs (b) and (c) of Article 15(5) providing for an international-type search on national applications, at the option of the Contracting State, have been added to this Article. The effect of this provision is to permit any country, but especially countries which have no examination system or have an examination system which is not of high quality to require that any applicant obtain an international-type search from an International Searching Authority. It is expected that this search will be conducted by the International Patent Institute (IIB) which is expected to be the International Searching Authority for smaller countries.

Countries not members of the IIB, may thereby acquire a right to request such searches from the Institute even though they have not paid the large membership fee to become a member of the IIB.

This provision expands the concept of the international search of applications to domestic applications. In those countries in which an application is filed under the Paris Convention rather than PCT, the applicant may have to pay the additional costs of the IIB search. For this reason, it might be viewed as not being in the short-term interest of some applicants from developed countries, who may wish to avoid the prejudicial effect of a negative search report. This was discussed within the United States Delegation. There was general agreement by the Delegation, including patent counsels for two corporations having extensive foreign filing programs, to accept the Portuguese-Brazilian proposal for the following reasons:

1. Such a provision would tend to upgrade the national patent system of participating countries taking advantage of the proviso.

2. Although the "international-type search" would increase costs for those applicants filing applications outside the PCT, the PCT route could be utilized to avoid extra payment for the international-type search.

3. The desirable tendency of this provision would be to increase filings under PCT.

Accordingly, the United States did not oppose the provisions after being assured by the delegates from Portugal and Brazil that they intended to apply these provisions in a non-discriminatory manner.

The IIB first agreed to, but then questioned, the added subparagraphs, principally for the reason that it could thereby lose control of its workload. However, when assured by the Secretariat and the countries proposing the resolution that it would be subject to the searching agreement and to the provisions regarding gradual application of the Treaty, it withdrew its question.

ARTICLE 20—COMMUNICATION TO DESIGNATED OFFICES; RULE 44 TRANSMITTAL OF THE INTERNATIONAL SEARCH REPORT, ETC.

The negotiating draft contained no provision for furnishing the applicant with copies of the references cited in the international search report. At the Preparatory Study Group Meeting in March 1970 on the Regulations, the United States proposed that Rules 43 and 44 be amended to require that copies of the cited documents be forwarded to the applicant. This proposal is consistent with resolutions which had been adopted by the APLA and the ABA. At that meeting, Poland, however, urged that the proposal be broadened so that the International Searching Authority would be required to send, on request, a copy of any document cited in the international search report to any designated or elected Office or any International Preliminary Examining Authority.

At the Diplomatic Conference, Poland again suggested that the Searching Authority be requested to send copies not only to the applicant but also to designated or elected Offices. Other proposals relating to this general subject matter were submitted by Argentina (PCT/DC/71), Brazil (PCA/DC/34), Japan (PCT/DC/48), Portugal (PCT/DC/42), Sweden (PCT/DC/72) and BIRPI (PCT/DC/12, PCT/DC/88).

These proposals dealt not only with the supplying of copies of references but also with translations of the search report and the references and the requirements that especially pertinent references be indicated.

The first item discussed was the question of whether search reports should be translated into the languages of each of the designated Offices at the responsibility of the applicant, as proposed by Argentina. The Secretary General pointed out that this would be of little practical use since the search report would generally follow a standard format and would include little or no text matter except numbers and dates which do not require translation. When put to a vote, the Argentine proposal was defeated.

When discussing the Brazilian proposal (PCT/DC/34), Sweden and the United Kingdom questioned the meaning of the proposed requirement. Was the intent that each cited document be translated into the language of the developing country, or was only a translation of the most relevant portions of the cited documents intended? The Delegates continued to hold conflicting views and when put to a vote, the proposal was defeated.

There was considerable discussion on the merits of the Swedish proposal concerning the special indication of citations of particular relevance. The Federal Republic of Germany opposed the Swedish view, noting that it had been discussed before and that some "interested circles" were opposed on the grounds that search reports should be free of opinions. It further noted that the right to amend claims could make a reference irrelevant, although the same had once been considered of "particular relevance." Japan, Switzerland, the Netherlands, United Kingdom, and a number of observer Associations such as the International Association for the Protection of Industrial Property (AIPPI), International Federation of Patent Agents (FICPI), PIPA, and EIRMA supported the Federal Republic of Germany in its opposition to the Swedish proposal. On the other hand, Israel, Denmark, Austria, Finland, and Australia supported the Swedish proposal on the ground that it would produce a more useful and meaningful search report. The Secretary General pointed out that search reports would become complex and costly if too much was included in them. Austria pointed out that references of particular relevance could be "specifically indicated" merely by the use of an X or appropriate symbol.

The Swedish proposal was adopted and appears in the PCT as paragraph (c) of Rule 43.5. Insofar as the special indication might merely be an asterisk and insofar as it may improve the usefulness of search reports, it should not in any way burden International Searching Authorities.

The BIRPI proposal for Article 20(3) and Rules 44 and 71 (PCT/DC/88) was adopted, subject to minor drafting revisions, and now appears in Article 20 and Rules 44 and 71 of the approved text. Even though the BIRPI proposal is somewhat broader than the original United States proposal in that it permits not only the applicant, but also designated Offices, to request copies of the documents cited in the search report, it is acceptable. Moreover, when an International Searching Authority sends the search report and copies of references to the applicant it could, instead of sending copies of the cited references to interested designated States, send a set of these copies to the International Bureau which, in turn, could prepare additional copies for those designated States. The flexibility for this procedure is provided in paragraph (c) of Rule 43.3.

ARTICLE 21—INTERNATIONAL PUBLICATION AND ARTICLE 64(3)—RESERVATIONS

The negotiating draft (PCT/DC/4) stated in Article 21(2)(a), that subject to the exceptions ("Reservations") provided for in Article 60(3)(b) (now Article 64(3)), the international publication of the international application would be effected promptly after the expiration of 18 months from the priority date of that application. Article 60(3)(a) provided that any State could declare that international publication of international applications was not required as far as it was concerned.

Article 60(3)(b) provided that international applications would not be automatically published at the expiration of 18 months if they contained only designations of States which had made the declaration under Article 60(3)(a).

Switzerland made a proposal (PCT/DC/

55) to delete the reservation provision of Article 60(3) and thereby make publication of all international applications mandatory at the end of the 18th month from the priority date.

The position of the United States was to support vigorously the retention of the reservation clause. The reason was that publication of an applicant's invention should not be forced on him without his authorization.

Canada supported the United States position and since Switzerland did not insist on its proposal, it was withdrawn and Main Committee II adopted the text of the negotiating draft. Article 60(3) became Article 64(a) in the adopted text of the Treaty.

ARTICLE 31—DEMAND FOR INTERNATIONAL PRELIMINARY EXAMINATION

Chapter II of the negotiating draft (PCT/DC/4) provided for a double option. In order to receive the international preliminary examination report, the applicant would have to elect a Contracting State, which itself had opted to adhere to Chapter II. In addition, the applicant could not obtain an examination report unless he was a resident or national of a Contracting State which itself had agreed to be bound by the provisions of Chapter II.

Israel proposed (PCT/DC/41) that the demand for international preliminary examination be available not only to an applicant who is resident or national of a Contracting State bound by Chapter II, but also to a PCT applicant who elected a State member of the PCT, which requires that every international application designating it be accompanied by an examination. The Israeli proposal was intended to modify Chapter II so that a designated State could require that *every* international application designating it be accompanied by an international preliminary examination report. This would have taken away from the PCT applicant the option of proceeding either under Chapter I only, or under both Chapters, in such countries.

A Working Group consisting of representatives of Austria, Brazil, France, the Federal Republic of Germany, Israel, Ivory Coast, Japan, the United Kingdom and the United States was appointed to consider the question.

At its first meeting, the Working Group considered a new proposal (PCT/DC/WG.V/2) submitted by Israel as a substitute for the prior proposal of PCT/DC/41 and PCT/DC/WG.V/1. The proposal concerned Articles 33 and 61, and in essence provided that, if the national law of a Contracting State bound by Chapter II so permitted, the applicant filing a national application might request that an examination similar to an international preliminary examination be carried out on such application provided that such national application had been the subject of an international-type search. This is a Chapter II counterpart to the Chapter I provision of Article 15(5) of the negotiating draft. The proposal was objected to by France, the Federal Republic of Germany, Japan and the United States. It was considered that this proposal even exceeded the scope of the original proposal.

After extensive discussion of Document PCT/DC/WG.V/2 Israel presented a revised proposal concerning Article 31 in Document PCT/DC/WG.V/3.

This new proposal provided that:

"The Assembly may decide to allow residents and nationals of Contracting States not bound by Chapter II to make demands for international preliminary examination of their international applications in designated States bound by Chapter II, whose national law permits such examination . . . provided, however, that in such case the Assembly shall provide to the national Office, which fulfills the requirements under Article 32, the opportunity to become the International Preliminary Examining Authority for such applications for which that national office is the receiving office."

The United Kingdom supported the Federal Republic of Germany and suggested that the details of what International Preliminary Examining Authority would be appointed for which Contracting States be left to the Regulations. Thereupon, Israel proposed that Article 31(2)(b) read as follows:

"The Assembly may decide to allow residents and nationals of Contracting States not bound by Chapter II to make demands for international preliminary examination of their international applications in designated States bound by Chapter II whose national law permits such examination, under conditions to be decided by the Assembly."

The United States supported the provision in the first half of Article 31(2)(b) and agreed with the United Kingdom proposal concerning the relegation to the Rules of the details of which International Preliminary Examining Authority would be appointed for a particular Contracting State. In addition the United States suggested that if the Israeli proposal for maintaining the first half of paragraph (b) were adopted, the language "whose national law permits such examination" be changed to read—"whose national law requires an examination for all applications". It was considered that this would be made consistent with the Pairs Convention. The United Kingdom presented a formal proposal (PCT/DC/WG.V/4) for specific amendments to Articles 31 and 32 and Rule 59. The proposal was generally accepted by the Working Group and subject to minor drafting changes approved by the Conference for incorporation into Articles 31, 32 and Rule 59.

The Treaty now provides that the Assembly may decide to allow persons entitled to file international applications to make demands for international preliminary examination even if they are residents or nationals of a State not party to the Treaty and not bound by Chapter II. Such applicants however may elect only such Contracting States bound by Chapter II which have declared that they are prepared to be elected by applicants under the terms of paragraph (2)(b) of Article 31. Moreover in the case of demands filed under the procedures of Article 31(2)(b) the Assembly shall (in accordance with the applicable agreement between the Preliminary Examining Authority or Authorities and the International Bureau) specify the Preliminary Examining Authority or Authorities competent for preliminary examination. This provision appears in Article 32(2). Details of the procedure for the appointment of an International Preliminary Examining Authority, in the case where the national Office in which the international application is filed is not itself an International Preliminary Examining Authority are spelled out in Rule 59.2 and provide that the Assembly shall "give preference" to the International Preliminary Examining Authority recommended by that Office.

This latter provision generally accommodates the United States position. Without being bound by Chapter II the United States may accept appointment as an International Preliminary Examining Authority for United States applicants who require an international preliminary examination for certain Chapter II States under Article 31(2)(b). To this extent the Rule requires that if the United States otherwise qualifies as an International Preliminary Examining Authority it will be given preference by the Assembly when considering which Preliminary Examining Authority should be appointed.

ARTICLE 45—REGIONAL PATENT TREATIES

Article 44 of the negotiating draft (PCT/DC/4) (now Article 45) dealt with regional patent treaties. Prior to the Diplomatic Conference, France and the Netherlands urged that the Article provide for the possibility for States members of regional patent treaty to consider applications designating them as applications for a regional patent rather than a national patent. In States taking advantage of such a provision, it would not be possible to obtain a national patent via the PCT route.

Various reasons were advanced in support of the proposal in private discussions. The Netherlands suggested that it was a means of phasing out its national patent system in the event that the European Patent became a reality. Others suggested that another reason for the proposal was the possibility of a supplemental search of every PCT international application coming into European countries by virtue of the European Patent Convention, where the initial search was conducted by an International Searching Authority which, in the opinion of the "European Patent Office", did not conduct adequate international searches. A third reason suggested for the French-Netherlands proposal relates to internal negotiations within the European Community as to which would be the dominant force in the European Patent system. By providing that all applications filed under the PCT will be considered as regional applications in France or the Netherlands, the number of domestic applications filed in other European countries would also be decreased since the applicant must file a regional patent application if he uses PCT. It was alleged that, given the above system, it did not make economic sense to obtain patents in other European countries via the traditional non-PCT route.

The Scandinavian countries and the United Kingdom opposed the Netherlands proposal. In the debate of the French-Netherlands proposal, it was clear that the Soviet Union would remain neutral and that the Scandinavian countries, the United Kingdom and Japan would be against it. Initially the United States aligned itself with the position of the United Kingdom, thereby making it clear to the supporters of the proposal that it would be impossible to have the provision adopted. Later, the United States indicated that it would be possible for it to support the provision provided it was amended to state that a regional patent treaty may provide that international applications designating a State party to the regional patent treaty and the PCT may be filed as applications for a regional patent if it gives to all persons who "according to Article 9, are entitled to file international applications, the right to file applications for such regional) patents."

This provision would assure that if the PCT were to be used as a route to a regional patent (European Patent), the regional treaty would have to be open to nationals and residents of all member states of the PCT, including the United States.

The Netherlands-French proposal, as amended by the proposal of the United States, was adopted by a vote of 15–14. The Soviet Union abstained.

Article 45, as adopted, gives member States of regional treaties power to exclude the filing of national applications via PCT. However, if this is done it must provide access to the regional convention via PCT to all member States of PCT. Representatives of United States industry and various observer nongovernmental organizations regarded this to be a very satisfactory solution. Some went so far as to categorize Article 45 as the most important and beneficial Article to American industry in the entire Treaty.

The fact that it may be more expensive to file a European Patent via PCT than one or two national patents in Europe is not seen as a great disadvantage since it would be unlikely that American industry would desire protection in that small a number of European countries.

ARTICLE 50—PATENT INFORMATION SERVICES; ARTICLE 51—TECHNICAL ASSISTANCE; ARTICLE 52—RELATIONS WITH OTHER PROVISIONS OF THE TREATY

Chapter IV on "Technical Services" is completely new, having been developed at the Conference in Working Group II. The origin of this chapter may be traced back to an Israeli proposal (PCT/DC/20), which was introduced on the opening day of the Conference. Under the original proposal, entitled "Information Centers", the various International Searching Authorities would, upon payment of prescribed fees, have been called upon to provide information on issued patents and published know-how.

The Israeli proposal immediately aroused the interest of the developing countries and was strongly supported by them, with Brazil taking the lead. Since the Israeli proposal was rather loosely drafted, Main Committee I decided to establish a Working Group of fourteen countries, including the United States, to deal with this matter. Because of its expertise in the patent documentation field, the International Patent Institute (IIB) was also placed on the Working Group. Brazil was elected Chairman of the Working Group.

Soon after the Working Group began its discussion, it was quite clear that developing countries were not only interested in access to published technical information but also legal-technical assistance concerning improvement of their patent systems. The initial postiion of the United States was that these matters more appropriately might be dealt with under the new World Intellectual Property Organization (W.I.P.O.), an important task of which is to develop a legal-technical assistance program for developing countries. This position received support in the Working Group only from the Federal Republic of Germany and Japan.

After prolonged discussions in a series of meetings which began on May 27 and ended on June 10, a new Chapter IV was added to the Treaty. It was approved unanimously in the Working Group and adopted unanimously in Main Committee I.

Article 50, "Patent Information Services", states that the International Bureau may furnish services by providing technical and other pertinent information available in the form of *published documents*, primarily patents and published applications. This service is to be provided at cost to Governments of Contracting States and below cost to developing countries if the difference can be covered by profits made on services to other than Governments of Contracting States, or from international organizations.

Article 51, "Technical Assistance", provides for legal-technical assistance for developing countries to improve their patent systems individually or on a regional basis. A Committee for Technical Assistance will be established to organize and supervise this technical assistance. Financing for this is contingent on agreements between the International Bureau, and international financing organizations and intergovernmental organizations, especially the UN.

Article 52 divorces the Chapter on "Technical Services" from the financial provisions in any other Chapter in the Treaty. During the course of the discussion of Chapter IV in both the Working Group and the Main Committee several developing countries emphasized the point that this chapter would make the PCT more attractive to them. The new Chapter received specific endorsement by a wide range of developing and developed countries, including the United States.

In his closing speech the Secretary General of the Conference, Dr. Arpad Bogsch, summarized the principal accomplishments of the Diplomatic Conference. He had the following to say about Chapter IV:

"Among the many improvements effected by the distinguished Delegates attending this Conference, perhaps the most significant is the writing into the Treaty of a new Chapter—Chapter IV which goes beyond the original goals of the Treaty, and provides the framework for technical assistance to developing countries. Assistance to developing countries is the main preoccupation of our times and the most difficult of the tasks of international organizations . . ."

ARTICLE 53(6)(a)—ASSEMBLY; ARTICLE 58(2)(b)—REGULATIONS

Under Articles 50(6)(a) and 54(2)(b) of the negotiating draft (PCT/DC/4), adoption by the Assembly of amendments to the Regulations would have required two-thirds of the votes cast, subject to certain exceptions. The United States proposed (PCA/DC/58) that the majority be increased to three-fourths, subject to the exceptions. The proposal was adopted by Main Commitee II. Articles 50 and 54 became Articles 53 and 58 respectively in the adopted text.

ARTICLE 54—EXECUTIVE COMMITTEE

The negotiating draft of the PCT, unlike the Stockholm revision of the Paris Industrial Property Convention, did not contain a separate Article on the Executive Committee. Some provisions relating to the Executive Committee were, however, included in Article 50 of the negotiating draft (PCT/DC/4), on the Assembly. It was provided only, that when the number of Contracting States exceeded forty, the Assembly would establish an Executive Committee to which it could delegate for the intervals between the sessions of the Assembly certain specified functions. Further, it was provided that the Executive Committee would meet once in every calendar year in ordinary session and would meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of the Chairman of the Executive Committee, or of one-fourth of its members.

Yugoslavia proposed (PCT/DC/65), that a separate article be included covering the Executive Committee in view of the importance of the role of the Executive Committee and the fact that separate articles had been reserved for the Assembly, the International Bureau and the Committee for Technical Cooperation. The Secretary General indicated that a seperate article had not been included, since it would be some time before an Executive Committee could be established—only after forty States had become party to the Convention. The prposal by Yugoslavia, however, met with general support and no opposition from the Delegations. A text of an article on the Executive Committee (PCT/DC/81) was subsequently introduced by Yugoslavia. That text, with some few changes, was adopted by Main Committee II and is basically the same as the Article on the Executive Committee contained in the Stockholm revision of the Paris Convention for the Protection of Industrial Property. This addition was acceptable to the United States.

ARTICLE 57—FINANCES

Article 53 of the negotiating draft (PCT/DC/4) (now Article 57) dealt with finances. Paragraph 5(b) provided that if any financial year closed with a deficit, the contracting States should contribute to cover the deficit. The amount of the contribution was to be determined by the number of international applications emanating from each of them in the relevant year and "other pertinent factors". It is anticipated that the United States will file a rather large percentage of the applications under the Treaty; the Soviet Union on the other hand is expected to file a very small percentage. Japan would be in a situation similar to that of the Soviet Union.

Despite the fact that the Treaty is designed to be self-supporting, there is always the possibility that deficits may occur and therefore this question was considered important to the United States. It should also be noted that Article 57(7)(a) provided for the constitution of a working capital fund. Contributions to this fund would be based on factors similar to those taken into account in the payment of any deficits that occur on an annual basis.

Australia proposed elimination of the language "other pertinent factors" because it was too vague. The developing countries, with United States support, suggested that the most pertinent factor should be the level of development of each of the countries. The proposal to base the contribution upon industrial capability did not receive broad support from the developed countries.

A working Group was appointed to look into the problem and to present a proposal to Main Committee II which, if possible, would enumerate those factors which should be considered pertinent in arriving at the contributions of each country.

In the Working Group, the United States advanced the proposition that the number of applications *received* from abroad should be one of the important determining factors. It noted that patent offices receiving such applications would benefit, since either there would be less work involved in processing a PCT international application accompanied by a search report than is necessary today in examining countries or, in the case of registration countries, the file would be more complete. This argument was not accepted by other countries. After prolonged discussion, it became apparent that the members of the Working Group were unable to agree on a comprehensive list of pertinent factors. Accordingly, the United States agreed to accept the deletion of the words "other pertinent factors" provided that it was understood that in lieu thereof it would be agreed that no country would be required to pay more than 20 percent of the total deficit for any one year. This limiting factor would have protected the United States.

The report of the Working Group to Main Committee II with this limitation was not accepted. A principal objector was the Federal Republic of Germany which noted that such a limitation would put the United States and the Federal Republic of Germany in about the same position with respect to contributions.

A compromise to raise the amount to 25 percent likewise did not meet with approval. The provision was stricken by a vote in Main Committee II.

The United States decided to accept the outcome since the benefits accruing to United States applicants from the Treaty justified a contribution based on participation. It noted for the record, however, that (a) every effort should be made to assure that the Treaty would be selfsupporting, and (b) should deficits occur, there might well be limitations on the contributions which the United States could make to cover them. As adopted, the number of PCT international applications originating from each country was retained as the sole factor in determining contributions under Article 57(5) of the Treaty.

ARTICLE 59—DISPUTES; ARTICLE 64(5), (6)(A) AND (B)—RESERVATIONS

The negotiating draft PCT/DC/4) did not contain a provision on the settlement of disputes concerning the interpretation or application of the Treaty and the Regulations. A proposal (PCT/DC/86) for the inclusion of such a provision, similar to that contained in Article 28 of the Stockholm revision of the Paris Convention for the Protection of Industrial Property, was pre-

sented at the Conference by six States: Australia, France, Japan, the Netherlands, Switzerland, and Zambia.

An amendment (PTC/DC/92) to the six-Country proposal was presented by Portugal, but was subsequently withdrawn. The six-Country proposals (PCT/DC/86) also permitted a State to declare at the time of signature or of deposit of its instrument of ratification or accession that it did not consider itself bound by the provisions relating to the settlement of disputes. The amendment by Portugal would have permitted such a declaration to be made also at any later time.

The Soviet Union stated that, since it did not recognize the jurisdiction of the International Court of Justice, it would not want to have provisions in the Treaty as proposed in document PCT/DC/86, but that in a spirit of compromise it would not insist on a vote.

The six-Country proposal was adopted by Main Committee II but referred it to the Drafting Committee for transfer to Article 64 on "Reservations". These provisions permit a State to declare that it does not consider itself bound by the provisions on the settlement of disputes. The provisions as thus revised by the Drafting Committee were adopted by Main Committee II.

Inclusion of provisions for the submission of disputes to the International Court of Justice is in accord with United States Government policy.

ARTICLE 62(3) AND (4)—BECOMING PARTY TO THE TREATY

The negotiating draft (PCT/DC/4) did not have a provision on territorial application, as contained in Article 24 of the Stockholm revision of the Paris Convention for the Protection of Industrial Property. A proposal of the United Kingdom (PCT/DC/25), as revised and as adopted, added paragraph (3) to Article 62, which paragraph provides that Article 24 of the Stockholm revision of the Paris Convention ("Territories") shall apply to the Treaty.

A new paragraph (4), not contained in Article 24 of the Paris Convention, has, however, been added to Article 62. The addition of paragraph (4) was the result of a compromise resulting from a proposal (PCT/DC/111) by Algeria. The proposal by Algeria, presented three alternatives with respect to paragraph (3) on territorial application which was added under the United Kingdom proposal: Alternative I was to delete paragraph (3); Alternative II was to include the provision on territorial application among the provisions which could be subject to express reservations by States party to the Treaty; Alternative III was to add a new paragraph (4) as follows: "However, paragraph (3) of this Article shall not entail for any State party to this Treaty the recognition or tacit acceptance of any legal implications that might arise from such declarations or notifications."

The discussions on paragraphs (3) and (4) revealed the following: the Soviet Union preferred the deletion of paragraph (3) but might accept its inclusion if something along the lines of proposed paragraph (4) were adopted; the United Kingdom would prefer that no paragraph (4) be added, but might consider a revision of the proposed paragraph (4). A drafting group was set up to deal with the proposed paragraph (4) as being the one alternative which possibly could provide some basis for acceptance if revised. The drafting group was composed of Algeria, France, the Soviet Union, and the United Kingdom.

The text presented by the drafting group (PCT/DC/118) was adopted by Main Committee II and is included as paragraph (4) of Article 62. This text was acceptable to the United States.

ARTICLE 63—ENTRY INTO FORCE OF THE TREATY

Article 58 of the negotiating draft (PCT/DC/4), provided for entry into force of the Treaty three months after either of the following conditions were fulfilled:

1. Five States ratify of which three are countries in which the total number of applications filed per year exceed 40,000 (paragraph (1)(i)) or;

2. Seven States ratify which have either (a) received 10,000 patent applications from abroad, or (b) the citizens of which have filed at least 1,000 patent applications in one specific foreign country (paragraph (1)(ii)).

In a proposal which could have delayed the entry into force of the Treaty, Italy suggested the deletion of paragraph (1)(i) and an increase of the number of States in paragraph (1)(ii), from seven to ten (PCT/DC/69). The Secretariat proposed the compromise now appearing in Article 63 of the Treaty. Under this formulating, entry into force would occur upon ratification by eight States, provided at least four of them fulfilled any one of the three criteria set forth in the original version of the Treaty. The compromise was acceptable to the United States. It was accepted by Main Committee II.

Despite the fact that the required number of ratifying States has been increased, the effect of this compromise is to hasten entry into force of the Treaty while still providing for adherence by a number of "significant" States. Inasmuch as all criteria are now combined, it is likely that a combination of States sufficient to trigger operation of the Treaty should occur at an earlier date than would have occurred under the original formulation.

Rule 5.1(a)(vi)—The Description /Utility/

Rule 5.1(a)(vi) of the negotiating draft concerning the PCT Regulations (PCT/DC/5) stated that the description of the invention should indicate the way in which the subject of the invention could be made and used in industry, or if it could only be made or only be used, the way in which it could be made or used. The BIRPI Secretariat suggested an alternative for this Rule (PCT/DC/12) to read:

"Indicate the way in which the subject of the invention can be made and used in industry—'industry' being understood in its broadest sense as in the Paris Convention for the Protection of Industrial Property—or, if it can only be used, the way in which it can be used."

Switzerland objected to the wording of both PCT/DC/5 and PCT/DC/12, and proposed (PCT/DC/17) that, since the use of an invention was obvious in most cases, no special requirement was necessary or even desirable. Hence, an indication of utility should only be made where it could not be implied from the general description of the invention. France supported the Swiss view and further proposed (PCT/DC/21), to make the requirement of stating the utility of an invention entirely optional for the applicant.

The United States vigorously supported the retention of the requirement to show utility of an invention, stating that applications which did not include this criterion in their description of the invention did not satisfy the utility requirements of United States law and could be fatally defective in the United States. Furthermore, any dilution of this requirement would necessitate change in substantive U.S. law. Canada supported this position, stating that Canadian law had similar provisions.

The Secretary General noted that since the purpose of an international application was ultimately to become a national application in each of the designated States, it was important that all necessary elements of an application be present. The United Kingdom supported the view of the Secretary General.

The United States noted that its national law did not require the exact description of an obvious method of making and using an invention and that an indication of use would satisfy United States patent law.

France, however, insisted on its proposal which was put to the vote and rejected. Thereafter, the Rule was referred to the Drafting Committee which presented a version to Main Committee I that was adopted and does not conflict with United States law.

RULE 22.2—TRANSMITTAL OF THE RECORD COPY

The negotiating draft (PCT/DC/5) contained a provision in Rule 22.2 (e) to the effect that had the applicant opted for transmittal of the record copy through him and the Receiving Office did not hold the record copy for the applicant at least 10 days before the expiration of 13 months from the priority date, or had the Receiving Office agreed to mail the record copy to the applicant and he had not received the copy at the above mentioned date, he could file a copy of his international application directly with the International Bureau and pay to the Bureau a "special fee". The amount of the special fee was to be $25.00.

The imposition of a special fee was objected to by the United States, the Soviet Union and representatives from the AIPPI and NAM at the Study Group Meeting in March 1970 on the Regulations. It was considered unfair that the applicant be required to pay a penalty fee for a fault on the part of the receiving Office. On the other hand, various delegations including the Federal Republic of Germany, were of a view that, in the absence of a penalty, in practice the 13 month deadline could well become a 14 month deadline. Since no consensus was reached on this matter at the March 1970 Meeting, the Alternative proposed for Rule 22.2 (e) in document PCT/DC/12 still included the requirement for the payment of a special fee.

When discussing Rule 22.2 (e) at the Diplomatic Conference, the United States again raised its objection to the imposition of the penalty. Japan seconded the United States proposal, while the Federal Republic of Germany, the Netherlands and the United Kingdom supported the negotiating draft on the basis that without the penalty there may be a misuse of the provision with the result that copies of international applications would regularly be received late at the national Offices (for example, under Article 13). In apparent support of the United States position, Austria questioned whether other remedies might not be available to the applicant. The representatives of a number of international non-governmental organizations, for example IFIA, PIPA, AIPPI, and UNICE, agreed with the position of the United States. In view of the strong support by these organizations, the Federal Republic of Germany, withdrew its opposition as did the Netherlands. The United States proposal (PCT/DC/67) for deletion of the special fee was thereupon adopted.

RULE 42—TIME LIMIT FOR INTERNATIONAL SEARCH

The negotiating draft (PCT/DC/5) imposed a time limit for the production of the international search report. Rule 42.1 set this time limit at 3 months from the receipt of the search copy by the International Searching Authority, or 9 months from the priority date, whichever occurs later.

At the Study Group Meeting in March 1970 on the Regulations, the United States proposed that the word "Generally" be inserted in Rule 42 to give the International Searching Authority a certain amount of leeway in preparing search reports. The United States proposal was opposed by Austria, France and the Federal Republic of Germany, which feared that the 3 to 9 months time period of the Rule would thereby become the exception rather than

the Rule and that most search reports would not be available until much later than the deadline provided by Rule 42. During the discussion, the BIRPI Secretariat stated that it would not specify different time limits for different Authorities even if "Generally" were included in the Rule.

At the Diplomatic Conference the United States proposed (PCT/DC/83) that for the first 5 years after implementation of the Treaty, the International Bureau and the International Searching Authorities be permitted to agree upon longer time limits for producing search reports than those presently set forth in Rule 42.

The United States pointed out that initially it would be dangerous to impose strict time limits on International Searching Authorities. Without experience in preparing search reports and without actually knowing the number of applications filed under PCT, these Authorities would be unable to agree to an inflexible time table. Austria opposed the United States view, while the Federal Republic of Germany, Japan, and the I.I.B. supported it.

The Secretary General mentioned that there were certain advantages to the United States proposal and that it semed preferable to the earlier proposal concerning the insertion of "Generally" into Rule 42. The Delegation of the United Kingdom supported by the I.I.B., proposed that the 5 year period should be diminished. Canada and the Soviet Union requested more time to study the proposal.

When the discussion was resumed, Canada with the support of Norway and the Soviet Union, proposed that the maximum extension of time be limited to 2 months during this transitional period. The Netherlands suggested that there should be an outside maximum of 18 months from the priority date for the production of the search report. The United Kingdom supported this proposal. When the views of the international non-governmental organizations were solicited, they were in favor of early search reports, but did not oppose reasonable flexibility for a transitional period.

When put to a vote the following sentence was adopted as an addition to the last part of Rule 42.1:

"For a transitional period of 3 years from the entry into force of this Treaty, time limits for the agreement with any International Searching Authority may be individually negotiated, provided that such time limits shall not extend by more than 2 months the time limits referred to in the preceding sentence and in any case shall not go beyond the expiration of the 18th month after the priority date."

Rule 42.1 now accommodates the United States position, particularly in view of the fact that the Treaty may not become operational until about 1975. The 3 year transitional period should enable potential International Searching Authorities to negotiate workable contracts for the production of search reports.

RULE 88—AMENDMENT OF THE REGULATIONS

Rule 88 of the negotiating draft (PCT/DC/5) provided that certain regulations could be amended only by unanimous vote in the Assembly. The United States proposed, that Rule 5 dealing with "The Description", and Rule 6 concerning "The Claims" be added to the list of regulations which could be amended only by unanimous vote.

When the United States proposal was advanced in Main Committee II, it was widely opposed. At the request of the United States, despite the opposition to this proposal, the matter was referred to a Working Group. As a compromise, a reference to Rules 5 and 6 was added in new Rule 88.2 which requires unanimity for revision during a transitional period of 5 years after entry into force of the Treaty. In view of the fact that changes in regulations now require a three-fourths vote (Article 58(2)(b)), instead of a two-thirds vote under the negotiating draft, this compromise satisfactorily safeguards the interest of the United States.

8. Work of the Conference

The Washington Diplomatic Conference on the Patent Cooperation Treaty concluded on June 19, 1970 with the signature of the approved text of the Treaty and the Final Act. Twenty countries, including the United States, signed the Treaty on June 19. The Treaty remained open for signature until December 31, 1970. During this period an additional fifteen countries signed the Treaty bringing the total number of signatories to thirty-five (Annex I).

A "Final Act", which in effect indicated that the signatories had attended the Washington Diplomatic Conference, was signed by 44 countries.

At the Plenary Session of the Diplomatic Conference on June 17 a "Resolution Concerning Preparatory Measures for the Entry Into Force of the Patent Cooperation Treaty" was approved unanimously (Annex II). This Resolution invited the Assembly and the Executive Committee of the Paris Industrial Property Union and the Director General of the new World Intellectual Property Organization to undertake certain measures for the preparation of the entry into force of the PCT. It was recommended that such measures include: (a) the setting up of an Interim Committee for Technical Assistance in connection with Article 51 of the Treaty, (b) the establishment of an Interim Committee for Technical Cooperation with respect to Article 56 of the PCT, and (c) the setting up of an Interim Advisory Committee for Administrative Questions to deal with questions which will necessitate solutions by the national Patent Offices and the International Bureau when the PCT enters into force.

9. Future Meetings

The "Resolution Concerning Preparatory Measures for the Entry Into Force of the Patent Cooperation Treaty", which was approved by the Washington Diplomatic Conference on June 17, 1970, was considered by the Assembly and Executive Committee of the Paris Industrial Property Union at the meetings of these bodies in Geneva, September 21–28, 1970. As a result of decisions taken at these meetings, the three Interim Committees to be established in connection with preparatory work for entry into force of the PCT will meet in Geneva, February 8–11, 1971.

10. Conclusions

The Patent Cooperation Treaty in its final form was consistent with the United States position on all major points and therefore the United States Delegation unanimously agreed that it should be signed by the United States. This was done at the signing ceremony on June 19, 1970.

ANNEX I—SIGNATORIES OF PATENT COOPERATION TREATY AS OF DECEMBER 31, 1970

STATE AND DATE OF SIGNATURE

Algeria, June 19, 1970.
Argentina, December 21, 1970.
Austria, December 22, 1970.
Belgium, December 30, 1970.
Brazil, June 19, 1970.
Canada, June 19, 1970.
Denmark, June 19, 1970.
Federal Republic of Germany, June 19, 1970.
Finland, June 19, 1970.
France, December 31, 1970.
Holy See, June 19, 1970.
Hungary, June 19, 1970.
Iran, July 7, 1970.
Ireland, June 19, 1970.
Israel, June 19, 1970.
Italy, June 19, 1970.
Ivory Coast, December 3, 1970.
Japan, June 19, 1970.
Luxembourg, Dec. 30, 1970.
Madagascar, December 10, 1970.
Monaco, December 31, 1970.
Kingdom of the Netherlands, December 31, 1970.
Norway, June 19, 1970.
Philippines, June 19, 1970.
Romania, December 28, 1970.
Senegal, December 29, 1970.
Sweden, June 19, 1970.
Switzerland, June 19, 1970.
Syria, December 29, 1970.
Togo, December 23, 1970.
Union of Soviet Socialist Republics, December 23, 1970.
United Arab Republic, June 19, 1970.
United Kingdom of Great Britain and Northern Ireland, June 19, 1970.
United States of America, June 19, 1970.
Yugoslavia, June 19, 1970.

ANNEX II—RESOLUTION CONCERNING PREPARATORY MEASURES FOR THE ENTRY INTO FORCE OF THE PATENT COOPERATION TREATY

The Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970,

Considering the desirability of preparing the application of the Patent Cooperation Treaty pending the entry into force of the Treaty,

1. Invites the Assembly and the Executive Committee of the International (Paris) Union for the Protection of Industrial Property and the Director General of the World Intellectual Property Organization to adopt, direct and supervise the measures necessary for the preparation of the entry into force of the Treaty.

2. Recommends that such measures include:

(a) the setting up of an Interim Committee for Technical Assistance, which should prepare the establishment of the Committee for Technical Assistance referred to in Article 51 of the Treaty;

(b) the setting up of an Interim Committee for Technical Cooperation, which should prepare the establishment of the Committee for Technical Cooperation referred to in Article 56 of the Treaty and advise the prospective International Searching and Preliminary Examining Authorities on the questions which will require solution when the Treaty enters into force;

(c) the setting up of an Interim Advisory Committee for Administrative Questions, which should study and recommend measures on the questions which will require solutions by the national Offices and the International Bureau when the Treaty enters into force.

3. Expresses the desire that the organizations of inventors, industries, and the patent profession be associated, as in the preparation of the Treaty, in the preparatory work referred to in the present Resolution.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that supporting data be inserted in the RECORD at this point in explanation of the treaty.

There being no objection, the excerpt from the committee report was ordered to be printed in the RECORD, as follows:

PURPOSE

The basic objective of the Patent Cooperation Treaty is to simplify the procedure for applying for patents on the same invention in a number of countries by providing, among other things, a centralized filing procedure and a standardized application format.

At the present time, patent procedures differ from country to country and the national laws of most nations generally do not take account of the fact that protection for the same invention may be sought in other countries. For example, it is estimated that more than 50 percent of the 700,000 patent

applications filed world-wide are duplicates of other applications. This Treaty is intended to eliminate some of this wasted effort for both the applicant and the national Patent Offices.

BACKGROUND

As a result of a United States initiative in September 1966, the Executive Committee of the Convention of Paris for the Protection of Industrial Property unanimously approved a resolution asking the Secretariat for that Convention, the United International Bureau for the Protection of Intellectual Property—known as BIRPI from its French initials—to undertake a study of practicable means to simplify the patenting of any given invention in a number of countries.

In May 1967, BIRPI released a first draft of the Patent Cooperation Treaty. After three years of extensive negotiations and consultations on both the international and national level, a diplomatic conference was convened in Washington. Seventy-seven countries were represented at that Conference and on June 19, 1970, twenty-one countries signed the Treaty. As of October 9, 1973, thirty-five nations had become signatories. These countries are: the United States, Algeria, Brazil, Canada, Denmark, Finland, Federal Republic of Germany, Holy See, Hungary, Ireland, Israel, Italy, Japan, Norway, Philippines, Sweden, Switzerland, United Arab Republic, United Kingdom, Yugoslavia, Iran, Ivory Coast, Madagascar, Argentina, Austria, Togo, Soviet Union, Romania, Senegal, Syria, Luxembourg, Belgium, Netherlands, France, and Monaco. To date, only five countries with minor patent activity have ratified or acceded to this Treaty (the Ceneral African Republic, Senegal, Madagascar, Malawi and Cameroon).

On September 12, 1972, the Treaty was submitted to the Senate for its advice and consent to ratification. The enabling legislation (S. 2469) was introduced in the Senate on September 21, 1973, and was referred to the Judiciary Committee. As of this date, no action has been taken on this legislation.

MAJOR PROVISIONS

The Treaty consists of a short preamble, 69 articles and 95 rules or regulations.

Under Chapter I of the Treaty, an inventor applies for a patent by filing an international application with a Receiving Office, which is usually the Patent Office in the State of which he is a resident or national. This application will be filed in a specified language (English for U.S. applicants) in a standard format, and will include the designation of those States in which the inventor desires protection. After supplying the necessary information and paying the international fee, the applicant will have up to 20 months to prepare translations, assess the economic potential of his invention and pay patent fees in those countries where he desires protection. This is a distinct improvement over the existing Paris Convention, which has a waiting period of 12 months.

International search authorities will prepare a report on whether there exists "relevant prior art," that is, other patented inventions that are equal or so similar to the one described in the application that a granting of a new patent would be an infringement of previous rights.

Upon receiving a copy of the search report, the inventor may amend or correct his application, for distribution by BIRPI to each nation designated by the applicant. Domestic search, examination and legal processing will then proceed in accordance with each nation's patent laws.

Chapter II of the Treaty provides for a further procedure whereby, under certain conditions, an applicant may demand a preliminary examination report for one or more elected countries in which he intends to use the results of such report.

Chapter IV of the Treaty establishes information services which will be of benefit to developing countries in facilitating their acquisition of technology and technical information. This Chapter also establishes a committee which would organize and supervise technical assistance to improve the patent systems of developing countries.

The Regulations annexed to the Treaty provide rules concerning such matters as administrative requirements and procedures as well as details useful in the implementation of the provisions of the Treaty.

DATE OF ENTRY INTO FORCE

The Treaty will enter into force three months after eight governments ratify it—including four nations considered "major" in terms of patent activity. The six leading patent issuing countries are the U.S.S.R., U.S., Japan, West Germany, Great Britain, and France.

DECLARATIONS

The Secretary of State has requested that the Senate give its advice and consent subject to three declarations.

The first declaration, under Article 64(1)(a) is that the United States shall not be bound by the provisions of Chapter II of the Treaty. This declaration is necessary because present divergence of the examining systems of other potential member countries from that in the United States would make application of Chapter II, which deals with preliminary examination, impracticable for the United States at this time.

The second declaration, under Article 64(3)(a), is that, as far as this country is concerned, international publication of international applications is not required. Failure to make such a declaration would conflict with an underlying philosophy of our patent system which enables an applicant to keep his invention confidential until he obtains patent protection.

The third declaration, under Article 64(4)(a), is that the filing outside of the United States of an international application designating this country is not equated to an actual filing in the United States for prior art purposes. This declaration is necessary in order to avoid a conflict with United States patent law (35 U.S.C. 102(e)) which accords to a United States patent the effect as a prior art reference only as of its filing date in the United States.

It also is the intention of the United States that the United States Patent Office will become a Receiving Office and an International Searching authority in order to process international applications for patents filed under the Treaty.

COMMITTEE ACTION

During a public hearing held on October 9, 1973, the Committee on Foreign Relations received testimony on the Patent Cooperation Treaty from the following witnesses: Mr. George R. Clark, President, International Patent and Trademark Association; and Mr. Harvey J. Winter, Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State. A copy of Mr. Winter's prepared statement is printed in the appendix of this report.

During that hearing, Mr. Clark suggested that the Committee act favorably on the Treaty, subject to the condition that the Executive would withhold filing the instrument of ratification until the implementing legislation is enacted. It is the understanding of the Committee that the Administration has agreed to comply with this procedure.

On October 11, 1973, the Committee met in executive session and, by a voice vote, ordered the Treaty reported favorably to the Senate for its advice and consent to ratification, subject to three declarations requested by the Department of State.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the resolution of ratification.

The PRESIDING OFFICER. Without objection, the treaty will be considered as having passed through its various parliamentary stages, up to and including the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Patent Cooperation Treaty and Annexed Regulations, done at Washington on June 19, 1970 Ex. S, 92-2), subject to the following three declarations:

(1) Under Article 64(1)(a), the United States shall not be bound by the provisions of Chapter II of the Treaty;

(2) Under Article 64(3)(a), as far as the United States is concerned, international applications is not required; and

(3) Under Article 64(4)(a) the filing outside of the United States of an international application designating this country is not equated to an actual filing in the United States for prior art purposes.

STRASBOURG AGREEMENT CONCERNING THE INTERNATIONAL PATENT CLASSIFICATION—EXECUTIVE E (93D CONG., 1ST SESS.)

The Senate, as in Committee of the Whole, proceeded to consider Executive E (93d Cong., 1st sess.), the Strasbourg Agreement concerning the International Patent Classification, signed March 24, 1971, which was read the second time, as follows:

STRASBOURG AGREEMENT CONCERNING THE INTERNATIONAL PATENT CLASSIFICATION OF MARCH 24, 1971

The Contracting Parties,

Considering that the universal adoption of a uniform system of classification of patents, inventors' certificates, utility models and utility certificates is in the general interest and is likely to establish closer international cooperation in the industrial property field, and to contribute to the harmonization of national legislation in that field,

Recognizing the importance of the European Convention on the International Classification of Patents for Invention, of December 19, 1954, under which the Council of Europe created the International Classification of Patents for Invention,

Having regard to the universal value of this Classification, and to its importance to all countries party to the Paris Convention for the Protection of Industrial Property,

Having regard to the importance to developing countries of this Classification, which gives them easier access to the ever-expanding volume of modern technology,

Having regard to Article 19 of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967,

Agree as follows:

ARTICLE 1—ESTABLISHMENT OF A SPECIAL UNION; ADOPTION OF AN INTERNATIONAL CLASSIFICATION

The countries to which this Agreement applies constitute a Special Union and adopt a common classification for patents for in-

vention, inventors' certificates, utility models and utility certificates, to be known as the "International Patent Classification" (hereinafter designated as the "Classification").

ARTICLE 2—DEFINITION OF THE CLASSIFICATION

(1) (a) The Classification comprises:

(i) the text which was established pursuant to the provisions of the European Convention on the International Classification of Patents for Invention of December 19, 1954 (hereinafter designated as the "European Convention"), and which came into force and was published by the Secretary General of the Council of Europe on September 1, 1968;

(ii) the amendments which have entered into force pursuant to Article 2(2) of the European Convention prior to the entry into force of this Agreement;

(iii) the amendments made thereafter in accordance with Article 5 which enter into force pursuant to the provisions of Article 6.

(b) The Guide and the notes included in the text of the Classification are an integral part thereof.

(2) (a) The text referred to in paragraph (1) (a) (i) is contained in two authentic copies, each in the English and French languages deposited, at the time that this Agreement is opened for signature, one with the Secretary General of the Council of Europe and the other with the Director General of the World Intellectual Property Organization (hereinafter respectively designated "Director General" and "Organization") established by the Convention of July 14, 1967.

(b) The amendments referred to in paragraph (1) (a) (ii) shall be deposited in two authentic copies, each in the English and French languages, one with the Secretary General of the Council of Europe and the other with the Director General.

(c) The amendments referred to in paragraph (1) (a) (iii) shall be deposited in one authentic copy only, in the English and French languages, with the Director General.

ARTICLE 3—LANGUAGES OF THE CLASSIFICATION

(1) The Classification shall be established in the English and French languages, both texts being equally authentic.

(2) Official texts of the Classification, in German, Japanese, Portuguese, Russian, Spanish and in such other languages as the Assembly referred to in Article 7 may designate, shall be established by the International Bureau of the Organization (hereinafter designated as the "International Bureau"), in consultation with the interested Governments and either on the basis of a translation submitted by those Governments or by any other means which do not entail financial implications for the budget of the Special Union or for the Organization.

ARTICLE 4—USE OF THE CLASSIFICATION

(1) The Classification shall be solely of an administrative character.

(2) Each country of the Special Union shall have the right to use the Classification either as a principal or as a subsidiary system.

(3) The competent authorities of the countries of the Special Union shall include in

(i) patents, inventors' certificates, utility models and utility certificates issued by them, and in applications relating thereto, whether published or only laid open for public inspection by them, and

(ii) notices, appearing in official periodicals of the publication or laying open of the documents referred to in subparagraph (i) the complete symbols of the Classification applied to the invention to which the document referred to in subparagraph (i) relates.

(4) When signing this Agreement or when depositing its instrument of ratification or accession:

(i) any country may declare that it does not undertake to include the symbols relating to groups or subgroups of the Classification in applications as referred to in paragraph (3) which are only laid open for public inspection and in notices relating thereto, and

(ii) any country which does not proceed to an examination as to novelty, whether immediate or deferred, and in which the procedure for the grant of patents or other kinds of protection does not provide for a search into the state of the art, may declare that it does not undertake to include the symbols relating to the groups and subgroups of the Classification in the documents and notices referred to in paragraph (3). If these conditions exist only in relation to certain kinds of protection or certain fields of technology, the country in question may only make this reservation to the extent that the conditions apply.

(5) The symbols of the Classification, preceded by the words "International Patent Classification" or an abbreviation thereof to be determined by the Committee of Experts referred to in Article 5, shall be printed in heavy type, or in such a manner that they are clearly visible, in the heading of each document referred to in paragraph (3) (i) in which they are to be included.

(6) If any country of the Special Union entrusts the grant of patents to an intergovernmental authority, it shall take all possible measures to ensure that this authority uses the Classification in accordance with this Article.

ARTICLE 5—COMMITTEE OF EXPERTS

(1) A Committee of Experts shall be set up in which each country of the Special Union shall be represented.

(2) (a) The Director General shall invite intergovernmental organizations specialized in the patent field, and of which at least one of the member countries is party to this Agreement, to be represented by observers at meetings of the Committee of Experts.

(b) The Director General may, and, if requested by the Committee of Experts, shall, invite representatives of other intergovernmental and international non-governmental organizations to participate in discussions of interest to them.

(3) The Committee of Experts shall:

(i) amend the Classification;

(ii) address recommendations to the countries of the Special Union for the purpose of facilitating the use of the Classification and promoting its uniform application;

(iii) assist in the promotion of international cooperation in the reclassification of documentation used for the examination of inventions, taking in particular the needs of developing countries into account;

(iv) take all other measures which, without entailing financial implications for the budget of the Special Union or for the Organization, contribute towards facilitating the application of the Classification by developing countries;

(v) have the right to establish subcommittees and working groups.

(4) The Committee of Experts shall adopt its own Rules of Procedure. These shall allow for the possibility of participation of intergovernmental organizations, referred to in paragraph (2) (a), which can perform substantial work in the development of the Classification, in meetings of its subcommittees and working groups.

(5) Proposals for amendments to the Classification may be made by the competent authority of any country of the Special Union, the International Bureau, any intergovernmental organization represented in the Committee of Experts pursuant to paragraph (2) (a) and any other organization specially invited by the Committee of Experts to submit such proposals. The proposals shall be communicated to the International Bureau which shall submit them to the members of the Committee of Experts and to the observers not later than two months before the session of the Committee of Experts at which the said proposals are to be considered.

(6) (a) Each country member of the Committee of Experts shall have one vote.

(b) The decisions of the Committee of Experts shall require a simple majority of the countries represented and voting.

(c) Any decision which is regarded by one-fifth of the countries represented and voting as giving rise to a modification in the basic structure of the Classification or as entailing a substantial work of reclassification shall require a majority of three-fourths of the countires represented and voting.

(d) Abstentions shall not be considered as votes.

ARTICLE 6—NOTIFICATION, ENTRY INTO FORCE AND PUBLICATION OF AMENDMENTS AND OTHER DECISIONS

(1) Every decision of the Committee of Experts concerning the adoption of amendments to the Classification and recommendations of the Committee of Experts shall be notified by the International Bureau to the competent authorities of the countries of the Special Union. The amendments shall enter into force six months from the date of dispatch of the notification.

(2) The International Bureau shall incorporate in the Classification the amendments which have entered into force. Announcements of the amendments shall be published in such periodicals as are designated by the Assembly referred to in Article 7.

ARTICLE 7—ASSEMBLY OF THE SPECIAL UNION

(1) (a) The Special Union shall have an Assembly consisting of the countries of the Special Union.

(b) The Government of each country of the Special Union shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Any intergovernmental organization referred to in Article 5(2) (a) may be represented by an observer in the meetings of the Assembly, and, if the Assembly so decides, in those of such committees or working groups as may have been established by the Assembly.

(d) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) (a) Subject to the provisions of Article 5, the Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;

(ii) give direction to the International Bureau concerning the preparation for conferences of revision;

(iii) review and approve the reports and activities of the Director General concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;

(iv) determine the program and adopt the triennial budget of the Special Union, and approve its final accounts;

(v) adopt the financial regulations of the Special Union;

(vi) decide on the establishment of official texts of the Classification in languages other than English, French and those listed in Article 3(2);

(vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;

(viii) determine, subject to paragraph (1) (c), which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted as observers to its meetings, and to those of any committee or working group established by it;

(ix) take any other appropriate action designed to further the objectives of the Special Union;

(x) perform such other functions as are appropriate under this Agreement.

(b) With respect to matters which are of interest also to other Unions administered

by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3)(a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 11(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one country only.

(4)(a) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

(5) The Assembly shall adopt its own Rules of Procedure.

ARTICLE 8—INTERNATIONAL BUREAU

(1)(a) Administrative tasks concerning the Special Union shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly, the Committee of Experts and such other committees or working groups as may have been established by the Assembly or the Committee of Experts.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Committee of Experts and such other committees or working groups as may have been established by the Assembly or the Committee of Experts. The Director General, or a staff member designated by him, shall be *ex officio* secretary of those bodies.

(3)(a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for revision conferences.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for revision conferences.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) The International Bureau shall carry out any other tasks assigned to it.

ARTICLE 9—FINANCES

(1)(a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

(i) contributions of the countries of the Special Union;

(ii) fees and charges due for services rendered by the International Bureau in relation to the Special Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iv) gifts, bequests and subventions;

(v) rents, interests and other miscellaneous income.

(4)(a) For the purpose of establishing its contribution referred to in paragraph (3)(i), each country of the Special Union shall belong to the same class as it belongs to in the Paris Union for the Protection of Industrial Property, and shall pay its annual contribution on the basis of the same number of units as is fixed for that class in that Union.

(b) The annual contribution of each country of the Special Union shall be an amount in the same proportion to the total sum to be contributed to the budget of the Special Union by all countries as the number of its units is to the total of the units of all contributing countries.

(c) Contributions shall become due on the first of January of each year.

(d) A country which is in arrears in the payment of its contributions may not exercise its rights to vote in an organ of the Special Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the special Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(e) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(6)(a) The Special Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7)(a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it was notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

ARTICLE 10—REVISION OF THE AGREEMENT

(1) This Agreement may be revised from time to time by a special conference of the countries of the Special Union.

(2) The convocation of any revision conference shall be decided by the Assembly.

(3) Articles 7, 8, 9 and 11 may be amended either by a revision conference or according to the provisions of Article 11.

ARTICLE 11—AMENDMENT OF CERTAIN PROVISIONS OF THE AGREEMENTS

(1) Proposals for the amendment of Articles 7, 8, 9 and of the present Article may be initiated by any country of the Special Union or by the Director General. Such proposals shall be communicated by the Director General to the countries of the Special Union at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 7 and to the present paragraph shall require four-fifths of the votes cast.

(3)(a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Special Union at the time the amendment was adopted.

(b) Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Special Union at the time the amendment enters into force, provided that any amendment increasing the financial obligations of countries of the Special Union shall bind only those countries which have notified their acceptance of such amendment.

(c) Any amendment accepted in accordance with the provisions of subparagraph (a) shall bind all countries which become members of the Special Union after the date on which the amendment entered into force in accordance with the provisions of subparagraph (a).

ARTICLE 12—BECOMING PARTY TO THE AGREEMENT

(1) Any country party to the Paris Convention for the Protection of Industrial Property may become party to this Agreement by:

(i) signature followed by the deposit of an instrument of ratification, or

(ii) deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

(3) The provisions of Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

(4) Paragraph (3) shall in no way be un-

derstood as implying the recognition or tacit acceptance, by a country of the Special Union, of the factual situation concerning a territory to which this Agreement is made applicable by another country by virtue of the said paragraph.

ARTICLE 13—ENTRY INTO FORCE OF THE AGREEMENT

(1)(a) This Agreement shall enter into force one year after instruments of ratification or accession have been deposited by:

(i) two-thirds of the countries party to the European Convention on the date on which this Agreement is opened for signature, and

(ii) three countries party to the Paris Convention for the Protection of Industrial Property, which were not previously party to the European Convention and of which at least one is a country where, according to the most recent annual statistics published by the International Bureau on the date of deposit of its instrument of ratification or accession, more than 40,000 applications for patents or inventors' certificates have been filed.

(b) With respect to any country other than those for which this Agreement has entered into force pursuant to subparagraph (a), it shall enter into force one year after the date on which the ratification or accession of that country was notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Agreement shall enter into force with respect to that country on the date thus indicated.

(c) Countries party to the European Convention which ratify this Agreement or accede to it shall be obliged to denounce the said Convention, at the latest, with effect from the day on which this Agreement enters into force with respect to those countries.

(2) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Agreement.

ARTICLE 14—DURATION OF THE AGREEMENT

This Agreement shall have the same duration as the Paris Convention for the Protection of Industrial Property.

ARTICLE 15—DENUNCIATION

(1) Any country of the Special Union may denounce this Agreement by notification addressed to the Director General.

(2) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(3) The right of denunication provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.

ARTICLE 16—SIGNATURE, LANGUAGES, NOTIFICATION, DEPOSITARY FUNCTIONS

(1)(a) This Agreement shall be signed in a single original in the English and French languages, both texts being equally authentic.

(b) This Agreement shall remain open for signature at Strasbourg until September 30, 1971.

(c) The original of this Agreement, when no longer open for signature, shall be deposited with the Director General.

(2) Official texts shall be established by the Director General, after consultation with the interested Governments, in German, Japanese, Portuguese, Russian, Spanish and such other languages as the Assembly may designate.

(3)(a) The Director General shall transmit two copies, certified by him, of the signed text of this Agreement to the Governments of the countries that have signed it and, on request, to the Government of any other country. He shall also transmit a copy, certified by him, to the Secretary General of the Council of Europe.

(b) The Director General shall transmit two copies, certified by him, of any amendment to this Agreement to the Governments of all countries of the Special Union and, on request, to the Government of any other country. He shall also transmit a copy, certified by him, to the Secretary General of the Council of Europe.

(c) The Director General shall, on request, furnish the Government of any country that has signed this Agreement, or that accedes to it, with a copy of the Classification, certified by him, in the English or French language.

(4) The Director General shall register this Agreement with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries party to the Paris Convention for the Protection of Industrial Property and the Secretariat General of the Council of Europe of:

(i) signatures;

(ii) deposits of instruments of ratification or accession;

(iii) the date of entry into force of this Agreement;

(iv) reservations on the use of the Classification;

(v) acceptances of amendments of this Agreement;

(vi) the dates on which such amendments enter into force;

(vii) denunciations received.

ARTICLE 17—TRANSITIONAL PROVISIONS

(1) During the two years following the entry into force of this Agreement, the countries party to the European Convention which are not yet members of the Special Union may enjoy, if they so wish, the same rights in the Committee of Experts as if they were members of the Special Union.

(2) During the three years following the expiration of the period referred to in paragraph (1), the countries referred to in the said paragraph may be represented by observers in the meetings of the Committee of Experts and, if the said Committee so decides, in any subcommittee or working group established by it. During the same period they may submit proposals for amendments to the Classification, in accordance with Article 5(5), and shall be notified of the decisions and recommendations of the Committee of Experts, in accordance with Article 6(1).

(3) During the five years following the entry into force of this Agreement, the countries party to the European Convention which are not yet members of the Special Union may be represented by observers in the meetings of the Assembly and, if the Assembly so decides, in any committee or working group established by it.

In witness whereof, the undersigned, being duly authorized hereto, have signed this Agreement.

Done at Strasbourg on March 24, 1971.*

For Algeria: Pour L'Algerie:

For Argentina: Pour L'Argentine:

For Australia: Pour L'Australie:

For Austria: Pour L'Autriche: Strasbourg, le 9 septembre 1971, Laube.

For Belgium: Pour La Belgique: J. Lodewijck.

For Brazil: Pour Le Bresil. Strasbourg, le 28 juin 1971, Paulo Cabral de Mello.

For Bulgaria: Pour La Bulgarie:

For Cameroon: Pour Le Cameroun:

For Canada: Pour Le Canada:

For the Central African Republic: Pour La Republique Centrafricaine:

For Ceylon: Pour Ceylan:

For Chad: Pour Le Tchad:

For the Congo (Brazzaville): Pour Le Congo (Brazzaville):

For Cuba: Pour Cuba:

For Cyprus: Pour Chypre:

For Czechoslovakia: Pour La Tchecoslovaquie:

For Dahomey: Pour Le Dahomey:

For Denmark: Pour Le Danemark: E. Tuxen.

For the Dominican Republic: Pour La Republique Dominicaine:

For the Federal Republic of Germany: Pour La Republique Federale D'Allemagne: von Keller, Kurt Haertel.

For Finland: Pour La Finlande: Erkki Tuuli.

For France: Pour La France: Strasbourg, le 20 septembre 1971, M. de Camaret.

For Gabon: Pour Le Gabon:

For Greece: Pour La Grece: Georges Papoulias, ad referendum.

For Haiti: Pour Haiti:

For the Holy See: Pour Le Saint-Siege: Roland Ganghoffer.

For Hungary: Pour La Hongrie:

For Iceland: Pour L'Islande:

For Indonesia: Pour L'Indonesie:

For Iran: Pour L'Iran: Strasbourg, le 22 juin 1971, H. Pakravan.

For Ireland: Pour L'Irlande:

For Israel: Pour Israel:

For Italy: Pour L'Italie: P. Archi.

For the Ivory Coast: Pour La Cote D'Ivoire:

For Japan: Pour Le Japon: Strasbourg, le 13 septembre 1971, Hideo Kitahara.

For Kenya: Pour Le Kenya:

For Lebanon: Pour Le Liban:

For Liechtenstein: Pour Le Liechtenstein: Gerliczy-Burian.

For Luxembourg: Pour Le Luxembourg: J. P. Hoffman.

For Madagascar: Pour Madagascar:

For Malawi: Pour Le Malawi:

For Malta: Pour Malte:

For Mauritania: Pour La Mauritanie:

For Mexico: Pour Le Mexique:

For Monaco: Pour Monaco. Strasbourg, le 27 septembre 1971, R. Jung.

For Morocco: Pour Le Maroc:

For the Kingdom of the Netherlands: Pour Le Royaume Des Pays-Bas: Strasbourg, le 22 septembre 1971, J. G. de Jong.

For New Zealand: Pour La Nouvelle-Zelanda:

For Niger: Pour Le Niger:

For Nigeria: Pour Le Nigeria:

For Norway: Pour La Norvege: Leif Nordstrand.

For the Philippines: Pour Les Philippines:

For Poland: Pour La Pologne:

For Portugal: Pour Le Portugal:

For Romania: Pour La Romanie:

For San Marino: Pour Saint-Marin:

For Senegal: Pour Le Senegal:

For South Africa: Pour L'Afrique Du Sud:

For Spain: Pour L'Espagne: L. Martinez Campos Conde de Santovenia, Antonio F. Mazarambroz.

For Sweden: Pour La Suede: Göran Borggård.

For Switzerland: Pour La Suisse: Walter Stamm.

For Syria: Pour La Syrie:

For Tanzania: Pour La Tanzanie:

For Togo: Pour Le Togo:

For Trinidad and Tobago: Pour La Trinite et Tobago:

For Tunisia: Pour La Tunisie:

For Turkey: Pour La Turquie:

For Uganda: Pour L'Ouganda:

For the Union of Soviet Socialist Republics: Pour L'Union des Republiques Socialistes Sovietiques:

For the United Arab Republic: Pour La Republique Arabe Unie:

For the United Kingdom of Great Britain and Northern Ireland: Pour le Royaume-Uni de Grande-Bretagne et D'Irlande du Nord: E. Armitage.

For the United States of America: Pour les Etats-Unis D'Amerique: Richard A. Wahl, Harvey J. Winter.

For Upper Volta: Pour La Haute-Volta:

For Uruguay: Pour L'Uruguay:

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*Note: All the signatures were affixed on March 24, 1971, unless otherwise indicated.

For the Republic of Viet-Nam: Pour la Republique du Viet-Nam:

For Yugoslavia: Pour la Yougoslavie: N. Jankovic.

For Zambia: Pour la Zambie:

I hereby certify that the foregoing text is a true copy of the Strasbourg Agreement.

G. H. C. BODENHAUSEN.
Director General, World Intelectual Property Organizaton.
DECEMBER 15, 1971.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that supporting data be inserted in the RECORD at this point in explanation of the treaty.

There being no objection, the excerpt from the committee report was ordered to be printed in the RECORD, as follows:

PURPOSE AND PROVISIONS

According to the Administration, the purpose of the Strasbourg Agreement is generally similar to that set forth in the Nice Agreement Concerning International Classification of Goods and Services to Which Trademarks are Applied (Ex. M, 91–2), and the Locarno Agreement Establishing an International Classification for Industrial Designs (Ex. I, 92–2) which were approved by the Senate on December 11, 1971. Under the terms of the Strasbourg Agreement, a common classification is adopted for patents for inventions, inventors' certificates, utility models and utility certificates, to be known as the "International Patent Classification" and provisions are included for its amendment.

The Agreement provides that each contracting party shall have the right to use the classification as a principal or as a subsidiary system and that the classification shall be solely of an administrative character. The Patent Office has been applying the international patent classification to its published patent documents as a secondary or subsidiary system of classification since January 1969.

The Committee is informed that the Agreement will expedite inclusion of large numbers of foreign patents into United States Patent Office search files and will facilitate processing of patent documents among examining patent offices of the various countries on multilateral projects. It will facilitate the research into the existence of exclusive rights and will be of material assistance in the implementation of United States patent protection.

COST OF U.S. PARTICIPATION

The cost of United States participation in the Strasbourg Agreement will amount to approximately $3,200 per year.

COMMITTEE ACTION

The Committee held a public hearing on the Strasbourg Agreement on October 9, 1973, at which time Mr. Harvey J. Winter, Director, Office of Business Practices, Department of State, testified in support of the Agreement. His prepared statement is reprinted below.

During an executive session held on October 11, 1973, the Committee (by voice vote) reported the Agreement favorably to the Senate for advice and consent to ratification.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the resolution of ratification.

The PRESIDING OFFICER. Without objection, the treaty will be considered as having passed through its various parliamentary stages, up to and including the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Strasbourg Agreement Concerning the International Patent Classification, signed March 24, 1971 (Ex. E, 93–1).

STATUTES OF THE WORLD TOURISM ORGANIZATION—EXECUTIVE R (93D CONG., 1ST SESS.)

The Senate, as in Committee of the Whole, proceeded to consider Executive R (93d Cong., 1st sess.), the Statutes of the World Tourism Organization, done at Mexico City on September 27, 1970, which was read the second time, as follows:

STATUTES OF THE WORLD TOURISM ORGANIZATION (WTO)

ESTABLISHMENT

Article 1

The World Tourism Organization, hereinafter referred to as "the Organization", an international organisation of intergovernmental character resulting from the transformation of the International Union of Official Travel Organisations (IUOTO), is hereby established.

HEADQUARTERS

Article 2

The Headquarters of the Organisation shall be determined and may at any time be changed by decision of the General Assembly.

AIMS

Article 3

1. The fundamental aim of the Organisation shall be the promotion and development of tourism with a view to contributing to economic development, international understanding, peace, prosperity, and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The Organisation shall take all appropriate action to attain this objective.

2. In pursuing this aim, the Organisation shall pay particular attention to the interests of the developing countries in the field of tourism.

3. In order to establish its central role in the field of tourism, the Organisation shall establish and maintain effective collaboration with the appropriate organs of the United Nations and its specialised agencies. In this connection the Organisation shall seek a cooperative relationship with and participation in the activities of the United Nations Development Programs, as a participating and executing agency.

MEMBERSHIP

Article 4

Membership of the Organisation shall be open to:

(*a*) Full Members.
(*b*) Associate Members.
(*c*) Affiliate Members.

Article 5

1. Full membership of the Organisation shall be open to all sovereign States.

2. States whose national tourism organisations are Full Members of IUOTO at the time of adoption of these Statutes by the Extraordinary General Assembly of IUOTO shall have the right to become Full Members of the Organisation, without requirement of vote, on formally declaring that they adopt the Statutes of the Organisation and accept the obligations of membership.

3. Other States may become Full Members of the Organisation if their candidatures are approved by the General Assembly by a majority of two-thirds of the Full Members present and voting provided that said majority is a majority of the Full Members of the Organisation.

Article 6

1. Associate membership of the Organisation shall be open to all territories or groups of territories not responsible for their external relations.

2. Territories or groups of territories whose national tourism organisations are Full Members of IUOTO at the time of adoption of these Statutes by the Extraordinary General Assembly of IUOTO shall have the right to become Associate Members of the Organisations, without requirement of vote, provided that the State which assumes responsibility for their external relations approves their membership and declares on their behalf that such territories or groups of territories adopt the Statutes of the Organisation and accept the obligations of membership.

3. Territories or groups of territories may become Associate Members of the Organisation if their candidature has the prior approval of the Member State which assumes responsibility for their external relations and declares on their behalf that such territories or groups of territories adopt the Statutes of the Organisation and accept the obligations of membership. Such candidatures must be approved by the Assembly by a majority of two-thirds of the Full Members present and voting provided that said majority is a majority of the Full Members of the Organisation.

4. When an Associate Member of the Organisation becomes responsible for the conduct of its external relations, that Associate Member shall be entitled to become a Full Member of the Organisation on formally declaring in writing to the Secretary-General that it adopts the Statutes of the Organisation and accepts the obligations of full membership.

Article 7

1. Affiliate membership of the Organisation shall be open to international bodies, both intergovernmental and nongovernmental, concerned with specalised interests in tourism and to commercial bodies and associations whose activities are related to the aims of the Organisation or fall within its competence.

2. Associate Members of IUOTO at the time of adoption of these Statutes by the Extraordinary General Assembly of IUOTO shall have the right to become Affiliate Members of the Organisation, without requirement of vote, on declaring that they accept the obligations of Affiliate membership.

3. Other international bodies, both intergovernmental and nongovernmental, concerned with specialised interests in tourism, may become Affiliate Members of the Organisation provided the request for membership is presented in writing to the Secretary-General and receives approval by the Assembly by a majority of two-thirds of the Full Members present and voting and provided that said majority is a majority of the Full Members of the Organisation.

4. Commercial bodies or associations with interests defined in paragraph 1 above may become Affiliate Members of the Organisation provided their requests for membership are presented in writing to the Secretary-General and are endorsed by the State in which the headquarters of the candidate is located. Such candidatures must be approved by the General Assembly by a majority of two-thirds of the Full Members present and voting provided that said majority is a majority of the Full Members of the Organisation.

5. There may be a Committee of Affiliate Members which shall establish its own rules and submit them to the General Assembly for approval. The Committee may be represented at meetings of the Organisation. It may request the inclusion of questions in the agenda of those meetings. It may also make recommendations to the meetings.

6. Affiliate Members may participate in the activities of the Organisation individually

or grouped in the Committee of Affiliate Members.

ORGANS

Article 8

1. The organs of the Organisation are:

(*a*) The General Assembly, hereinafter referred to as the Assembly.

(*b*) The Executive Council, hereinafter referred to as the Council.

(*c*) The Secretariat.

2. Meetings of the Assembly and the Council shall be held at the headquarters of the Organisation unless the respective organs decide otherwise.

GENERAL ASSEMBLY

Article 9

1. The Assembly is the supreme organ of the Organisation and shall be composed of delegates representing Full Members.

2. At each session of the Assembly each Full and Associate Member shall be represented by not more than five delegates, one of whom shall be designated by the Member as Chief Delegate.

3. The Committee of Affiliate Members may designate up to three observers and each Affiliate Member may designate one observer, who may participate in the work of the Assembly.

Article 10

The Assembly shall meet in ordinary session every two years and, as well, in extraordinary session when circumstances require. Extraordinary sessions may be convened at the request of the Council or of a majority of Full Members of the Organisation.

Article 11

The Assembly shall adopt its own rules of procedure.

Article 12

The Assembly may consider any question and make recommendations on any matter within the competence of the Organisation. Its functions, other than those which have been conferred on it elsewhere in the present Statutes, shall be:

(*a*) to elect its President and Vice-Presidents;

(*b*) to elect the members of the Council;

(*c*) to appoint the Secretary-General on the recommendation of the Council;

(*d*) to approve the Financial Regulations of the Organization;

(e) to lay down general guidelines for the administration of the Organisation;

(*f*) to approve the staff regulations applicable to the personnel of the Secretariat;

(*g*) to elect the auditors on the recommendation of the Council;

(*h*) to approve the general programme of work of the Organisation;

(*i*) to supervise the financial policies of the Organisation and to review and approve the budget;

(*j*) to establish any technical or regional body which may become necessary;

(*k*) to consider and approve reports on the activities of the Organisation and of its organs and to take all necessary steps to give effect to the measures which arise from them;

(*l*) to approve or to delegate the power to approve the conclusion of agreements with governments and international organisations;

(*m*) to approve or to delegate the power to approve the conclusion of agreements with private organisations or private entities;

(*n*) to prepare and recommend international agreements on any question that falls within the competence of the Organisation;

(*o*) to decide, in accordance with the present Statutes, on applications for membership.

Article 13

1.The Assembly shall elect its President and Vice-Presidents at the beginning of each session.

2. The President shall preside over the Assembly and shall carry out the duties which are entrusted to him.

3. The President shall be responsible to the Assembly while it is in session.

4. The President shall represent the Organisation for the duration of his term of office on all occasions on which such representation is necessary.

EXECUTIVE COUNCIL

Article 14

1. The Council shall consist of Full Members elected by the Assembly at the ratio of one member for every five Full Members, in accordance with the Rules of Procedure laid down by the Assembly, with a view to achieving fair and equitable geographical distribution.

2. One Associate Member selected by the Associate Members of the Organisation may participate in the work of the Council without the right to vote.

3. A representative of the Committee of Affiliate Members may participate in the work of the Council without the right to vote.

Article 15

The term of elected members shall be four years except that the terms of one-half of the members of the first Council, as determined by lot, shall be two years. Election for one-half of the membership of the Council shall be held every two years.

Article 16

The Council shall meet at least twice a year.

Article 17

The Council shall elect a Chairman and Vice-Chairman from among its elected members to serve for a term of one year.

Article 18

The Council shall adopt its own Rules of Procedure.

Article 19

The functions of the Council, other than those which are elsewhere assigned to it in these Statutes, shall be:

(*a*) To take all necessary measures, in consultation with the Secretary-General, for the implementation of the decisions and recommendations of the Assembly and to report thereon to the Assembly;

(*b*) to receive from the Secretary-General reports on the activities of the Organisation;

(*c*) To submit proposals to the Assembly;

(*d*) to examine the general programme of work of the Organisation as prepared by the Secretary-General, prior to its submission to the Assembly;

(e) to submit reports and recommendations on the Organisation's accounts and budget estimates to the Assembly;

(f) to set up any subsidiary body which may be required by its own activities;

(g) to carry out any other functions which may be entrusted to it by the Assembly.

Article 20

Between sessions of the Assembly and in the absence of any contrary provisions in these Statutes, the Council shall take such administrative and technical decisions as may be necessary, within the functions and financial resources of the Organisations, and shall report the decisions which have been taken to the Assembly at its following session, for approval.

SECRETARIAT

Article 21

The Secretariat shall consist of the Secretary-General and such staff as the Organisation may require.

Article 22

The Secretary-General shall be appointed by a two-thirds majority of Full Members present and voting in the Assembly, on the recommendation of the Council, and for a term of four years. His appointment shall be renewable.

Article 23

1. The Secretary-General shall be responsible to the Assembly and Council.

2. The Secretary-General shall carry out the direction of the Assembly and Council. He shall submit to the Council reports on the activities of the Organisation, its accounts and the draft general programme of work and budget estimates of the Organisation.

3. The Secretary-General shall ensure the legal representation of the Organisation.

Article 24

The Secretary-General shall appoint the staff of the Secretariat in accordance with staff regulations approved by the Assembly.

2. The staff of the Organisation shall be responsible to the Secretary-General.

3. The paramount consideration in the recruitment of staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, technical competence and integrity. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

4. In the performance of their duties the Secretary-General and staff shall not seek or receive instructions from any government or any other authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organisation.

BUDGET AND EXPENDITURE

Article 25

1. The budget of the Organisation, covering its administrative functions and the general programme of work, shall be financed by contributions of the Full, Associate and Affiliate Members according to a scale of assessment accepted by the Assembly and from other possible sources of receipts for the Organisation in accordance with the Financing Rules which are attached to these Statutes and form an integral part thereof.

2. The budget prepared by the Secretary-General shall be submitted by the Council to the Assembly for examination and approval.

Article 26

1. The account of the Organisation shall be examined by two auditors elected by the Assembly on the recommendation of the Council for a period of two years. The auditors shall be eligible for re-election.

2. The auditors, in addition to examining the accounts, may make such observations as they deem necessary with respect to the efficiency of the financial procedures and management, the accounting system, the internal financial controls and, in general, the financial consequences of administrative practices.

QUORUM

Article 27

1. The presence of a majority of the Full Members shall be necessary to constitute a quorum at meetings of the Assembly.

2. The presence of a majority of the Full Members of the Council shall be necessary to constitute a quorum at meetings of the Council.

VOTING

Article 28

Each Full Member shall be entitled to one vote.

Article 29

1. Subject to other provisions of the present Statutes decisions on all matters shall be taken in the Assembly by a simple majority of Full Members present and voting.

2. A two-thirds majority vote of the Full Members, present and voting, shall be necessary to take decisions on matters involving budgetary and financial obligations of the Members, the location of the headquarters of the Organisation, and other questions deemed of particular importance by a simple

majority of the Full Members present and voting at the Assembly.

Article 30

Decisions of the Council shall be made by a simple majority of Members present and voting except on budgetary and financial recommendations which shall be approved by a two-thirds majority of Members present and voting.

LEGAL PERSONALITY, PRIVILEGES AND IMMUNITIES

Article 31

The Organisation shall have legal personality.

Article 32

The Organisation shall enjoy in the territories of its Member States the privileges and immunities required for the exercise of its functions. Such privileges and immunities may be defined by agreements concluded by the Organisation.

AMENDMENTS

Article 33

1. Any suggested amendment to the present Statutes and its Annex shall be transmitted to the Secretary-General who shall circulate it to the Full Members at least six months before being submitted to the consideration of the Assembly.

2. An amendment shall be adopted by the Assembly by a two-thirds majority of Full Members present and voting.

3. An amendment shall come into force for all Members when two-thirds of the Member States have notified the Depository Government of their approval of such amendment.

SUSPENSION OF MEMBERSHIP

Article 34

1. If any Member is found by the Assembly to persist in a policy that is contrary to the fundamental aim of the Organisation as mentioned in Article 3 of these Statutes, the Assembly may, by a resolution adopted by a majority of two-thirds of Full Members present and voting, suspend such Member from exercising the rights and enjoying the privileges of membership.

2. The suspension shall remain in force until a change of such policy is recognised by the Assembly.

WITHDRAWAL FROM MEMBERSHIP

Article 35

1. Any Full Member may withdraw from the Organisation on the expiry of one year's notice in writing to the Depository Government.

2. Any Associate Member may withdraw from the Organisation on the same conditions of notice, provided the Depository Government has been notified in writing by the Full Member which is responsible for the external relations of that Associate Member.

3. An Affiliate Member may withdraw from the Organisation on the expiry of one year's notice in writing to the Secretary-General.

ENTRY INTO FORCE

Article 36

The present Statutes shall enter into force one-hundred-and-twenty days after fifty-one States whose official tourism organisations are Full Members of IUOTO at the time of adoption of these Statutes, have formally signified to the provisional Depository their approval of the Statutes and their acceptance of the obligations of membership.

DEPOSITORY

Article 37

1. These Statutes and any declarations accepting the obligations of Membership shall be deposited for the time being with the Government of Switzerland.

2. The Government of Switzerland shall notify all States entitled to receive such notification of the receipt of such declarations and of the date of entry into force of these Statutes.

INTERPRETATION AND LANGUAGES

Article 38

The official languages of the Organisation shall be English, French, Russian and Spanish.

Article 39

The English, French, Russian and Spanish texts of these Statutes shall be regarded as equally authentic.

TRANSITIONAL PROVISIONS

Article 40

The headquarters shall provisionally be in Geneva, Switzerland, pending a decision by the General Assembly under Article 2.

Article 41

During a period of one-hundred-and-eighty days after these Statutes enter into force, States Members of the United Nations, the specialised agencies and the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice shall have the right to become Full Members of the Organisation, without requirement of vote, on formally declaring that they adopt the Statutes of the Organisation and accept the obligations of membership.

Article 42

During the year following the entry into force of the present Statutes, States whose national tourism organisations were members of IUOTO at the time of adoption of these Statutes and which have adopted the present Statutes subject to approval may participate in the activities of the Organization with the rights and obligations of a Full Member.

Article 43

During the year following the entry into force of the present Statutes, territories or groups of territories not responsible for their external relations but whose tourism organisations were Full Members of IUOTO and are therefore entitled to Associate membership and which have adopted the Statutes subject to approval by the State which assumes responsibility for their external relations may participate in the activities of the organisation with the rights and obligations of an Associate Member.

Article 44

When the present Statutes come into force, the rights, and obligations of IUOTO shall be transferred to the Organisation.

Article 45

The Secretary-General of IUOTO at the time of the entry into force of the present Statutes shall act as Secretary-General of the Organisation until such time as the Assembly has elected the Secretary-General of the Organisation.

Done at Mexico City on 27 September 1970.

* * * * *

The text of the present Statutes is an exact copy of the text authenticated by the signatures of the President of the Extraordinary General Assembly, President of the International Union of Official Travel Organisations, and of the Secretary-General of the International Union of Official Travel Organisations.

Certified true and complete copy.

ROBERT C. LONATI,
Secretary-General of the International Union of Official Travel Organisations.

ANNEX

Financing Rules

1. The financial period of the Organisation shall be two years.

2. The financial year shall be from 1 January to 31 December.

3. The budget shall be financed by the contributions of the Members according to a method of apportionment to be determined by the Assembly, based on the level of economic development of and the importance of tourism in each country, and by other receipts of the Organization.

4. The budget shall be formulated in United States dollars. The currency used for the payment of contributions shall be the United States dollar. This shall not preclude acceptance by the Secretary-General, to the extent authorised by the Assembly, of other currencies in payment of Members' contributions.

5. A General Fund shall be established. All membership contributions made pursuant to paragraph 3, miscellaneous income and any advances from the Working Capital Fund shall be credited to the General Fund. Expenditure for administration and the general programme of work shall be paid out of the General Fund.

6. A Working Capital Fund shall be established, the amount of which is to be fixed by the Assembly. Advance contributions of Members and any other budget receipts which the Assembly decides may be so used, shall be paid into the Working Capital Fund. When required, amounts therefrom shall be transferred to the General Fund.

7. Funds-in-trust may be established to finance activities not provided for in the budget of the Organisation which are of interest to some member countries or groups of countries. Such Funds shall be financed by voluntary contributions. A fee may be charged by the Organisation to administer these Funds.

8. The Assembly shall determine the utilisation of gifts, legacies and other extraordinary receipts not included in the budget.

9. The Secretary-General shall submit the budget estimates to the Council at least three months before the appropriate meeting of the Council. The Council shall examine these estimates and shall recommend the budget to the Assembly for final examination and approval. The Council's estimates shall be sent to Members at least three months before the appropriate session of the Assembly.

10. The Assembly shall approve the budget by years for the succeeding two-year financial period and its annual apportionment, as well as its administrative accounts for each year.

11. The accounts of the Organisation for the last financial year shall be transmitted by the Secretary-General to the auditors and to the competent organ of the Council.

The auditors shall report to the Council and to the Assembly.

12. The Members of the Organisation shall pay their contribution in the first month of the financial year for which it is due. Members shall be notified of the amount of their contribution, as determined by the Assembly, six months before the beginning of the financial year to which it relates.

However, the Council may approve justified cases of arrears due to different financial years existing in different countries.

13. A Member which is in arrears in the payment of its financial contributions to the Organisation's expenditure shall be deprived of the privileges enjoyed by the Members in the form of services and the right to vote in Assembly and the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two financial years. At the request of the Council, the Assembly may, however, permit such a Member to vote and to enjoy the services of the Organisation if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

14. A Member withdrawing from the Organisation shall be liable for assessments on a *pro rata* basis up to the time the withdrawal becomes effective.

In calculating the assessments of Associate and Affiliate Members, account shall be taken of the different bases of their membership and the limited rights they enjoy within the Organisation.

Done at Mexico City on 27 September 1970.

* * * * *

The text of the present Financing Rules attached to the Statutes of the World Tourism Organisation is an exact copy of the text authenticated by the signatures of the President of the Extraordinary General Assembly, President of the International Union of Official Travel Organisations, and of the Secretary-General of the International Union of Official Travel Organisations.

Certified true and complete copy.

ROBERT C. LONATI,
Secretary-General of the International Union of Official Travel Organisations.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that supporting data be inserted in the RECORD at this point in explanation of the statutes.

There being no objection, the excerpt from the committee report was ordered to be printed in the RECORD, as follows:

PURPOSE

This treaty transforms the International Union of Official Travel Organizations (IUOTO, originally founded as the International Congress of Official Propaganda Associations in 1925), a non-governmental organization into the World Tourism Organization (WTO), an inter-governmental tourist organization. Its purpose will be the promotion and development of tourism "with a view to contributing to international development, international understanding, peace, prosperity * * *"

The WTO's organs will be a General Assembly (meeting at least once every two years), an Executive Council (meeting at least twice a year), and a Secretariat.

It is expected that the WTO will become affiliated with the United Nations system at some future date.

BACKGROUND

The development of the IUOTO from a non-governmental to an inter-governmental organization is described as follows in the August 24, 1973, letter of submittal by the Acting Secretary of State Kenneth Rush:

IUOTO was founded in 1925 and organized into its present form in 1947. Its membership consists of national tourist offices rather than the States they represent. IUOTO has been the only international organization that is continuously and exclusively concerned with matters relating to tourism on a worldwide basis. The fundamental aim of this organization has been the promotion and development of tourism to further the economic, social, and cultural progress of all nations. IUOTO has been the only forum where public and private tourism officials have been able to meet to exchange ideas and to discuss problems of mutual interest. One of its tasks has been the stimulation and coordination of tourism deveopment, including the special area of faciiltation. It also has conducted a number of technical activities such as monitoring and identifying world tourism trends, studying travel demand and market trends, and assessing environmental impact of travel expansion. Perhaps most important, IUOTO has been the primary source for collection, analysis, and dissemination of international travel statistics on a worldwide basis.

The process of transition of IUOTO to WTO began in 1967 in Tokyo at IUOTO's XXth General Assembly meeting. At that meeting a resolution was adopted recommending that member governments create an intergovernmental tourist organization enpowered to deal on a worldwide scale with all matters concerning tourism, and as an independent body, to establish cooperation with other competent international organizations, especially those of the United Nations system. This resolution was later reaffirmed and expanded on at the Intergovernmental Conference on Tourism held in Sofia in May 1969 and later at the XXIst General Assembly of IUOTO held in Dublin in October of 1969. One month later in New York, the United Nations endorsed the future role of IUOTO through General Assembly Resolution 2529 (XXIV) recommending that IUOTO "amend the statutes of the Union in order to give the organization an intergovermental character."

An Extraordinary General Assembly meeting was held in Mexico City in September of 1970 to draft the statutes of WTO and then to adopt those statutes and to work towards the ratification of a simplified multilateral agreement by the member countries. The statutes change the character of IUOTO from an international organization of official travel offices governed by private law to an international organization of "intergovernmental character," governed by public law, to which countries rather than tourism organizations would be members. WTO will come into existence when 51 States whose national tourist offices were IUOTO members at the time of the General Assembly meeting in Mexico City have officially approved its statutes in accordance with their domestic procedures and deposited instruments of ratification with the Swiss Federal Government, the provisional depositary.

COMMITTEE ACTION

The treaty was transmitted to the Senate on Sepember 12, 1973, and a public hearing was held on October 9. The statement of the principal witness, Dr. Roy D. Morey, Deputy Assistant Secretary of State, is appended to this report. On October 11, the Committee (by voice vote) ordered the treaty reported favorably to the Senate.

COSTS

It is anticipated that the WTO budget will be in the neighborhood of one million dollars. The U.S. share of contributions is presently set at 4.5% of the total and would amount to approximately $45,000. The percentage of the U.S. assessment is expected to decrease when the membership exceeds 100.

Members' assessments are based on their gross national product and the volume of in-coming tourist business. The Committee takes this occasion to recommend strongly gradual abandonment of gross national product as a standard for determining U.S. contributions to international organizations and for other matters as well. The GNP is not a valid criteria of the wealth of a country and its capacity to pay and more realistic criteria should be developed.

COMMITTEE RECOMMENDATION

The Committee was informed that there was no objection to ratification of the Statutes. In fact, it was told that "the tourism industry here in the United States strongly supports ratification of these statutes." The Statutes will enter into force 120 days after 51 countries have signified their approval. To date 42 countries, all developing nations, have ratified.

The Committee noted the "concern which is shared by the U.S. Government agencies affected, that there will be a diffusion of tourism matters to various inter-governmental organizations in the U.N. system if their present centralization remains with a non-governmental organization like IUOTO. This could lead to a proliferation of work on tourism matters, and probably costly duplications."

The Committee believes, therefore that the national interest will be served by approving the Statutes of the World Tourism Organization and recommends that the Senate give its advice and consent to its ratification.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the statutes be considered as having passed through their various parliamentary stages up to and including the resolution of ratification.

The PRESIDING OFFICER. Without objection, the statutes will be considered as having passed through their various parliamentary stages, up to and including the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Statutes of the World Tourism Organization, done at Mexico City on September 27, 1970 (Ex. R, 93–1).

CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE—EXECUTIVE F (93D CONG., 1ST SESS.)

The Senate, as in Committee of the Whole, proceeded to consider Executive F (93d Cong., 1st sess.), the Convention Concerning the Protection of the World Cultural and Natural Heritage, done at Paris on November 23, 1972, subject to a declaration under article 16(2) that the United States shall not be bound by the provisions of article 16(1) which was read the second time, as follows:

CONVENTION FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session,

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction.

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions.

Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong.

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole.

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective sys-

tem of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods,

Having decided, at its sixteenth session, that this question should be made the subject of an international convention,

Adopts this sixteenth day of November 1972 this Convention.

I. DEFINITIONS OF THE CULTURAL AND THE NATURAL HERITAGE

Article 1

For the purposes of this Convention, the following shall be considered as "cultural heritage":

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

Article 2

For the purposes of this Convention, the following shall be considered as "natural heritage":

Natural features consisting of physical and biological formations or groups of such formations, which are outstanding universal value from the aesthetic or scientific point of view;

Geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

Natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.

II. NATIONAL PROTECTION AND INTERNATIONAL PROTECTION OF THE CULTURAL AND NATURAL HERITAGE

Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Article 5

To ensure that effective and active measures are taken for the protection, conservation, and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, insofar as possible, and as appropriate for each country:

(*a*) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;

(*b*) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;

(*c*) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;

(*d*) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and

(*e*) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

2. The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.

3. Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention.

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.

III. INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 8

1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within the United Nations Educational, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization. The number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States.

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world.

3. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.

Article 9

1. The term of office of States members of the World Heritage Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session.

2. The term of office of one-third of the members designated at the time of the first election shall, however, cease at the end of the first ordinary session of the General Conference following that at which they were elected; and the term of office of a further third of the members designated at the same time shall cease at the end of the second ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference of the United Nations Educational, Scientific and Cultural Organization after the first election.

3. States members of the Committee shall choose as their representatives persons qualified in the field of the cultural or natural heritage.

Article 10

1. The World Heritage Committee shall adopt its Rules of Procedure.

2. The Committee may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems.

3. The Committee may create such consultative bodies as it deems necessary for the performance of its functions.

Article 11

1. Every State Party to this Convention shall, insofar as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.

2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List," a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger," a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat

of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides, volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

5. The Committee shall define the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the lists mentioned in paragraphs 2 and 4 of this article.

6. Before refusing a request for inclusion in one of the two lists mentioned in paragraphs 2 and 4 of this article, the Committee shall consult the State Party in whose territory the cultural or natural property in question is situated.

7. The Committee shall, with the agreement of the States concerned, co-ordinate and encourage the studies and research needed for the drawing up of the lists referred to in paragraphs 2 and 4 of this article.

Article 12

The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists mentioned in paragraphs 2 and 4 of Article 11 shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists.

Article 13

1. The World Heritage Committee shall receive and study requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories, and included or potentially suitable for inclusion in the lists referred to in paragraphs 2 and 4 of Article 11. The purpose of such requests may be to secure the protection, conservation, presentation or rehabilitation of such property.

2. Requests for international assistance under paragraph 1 of this article may also be concerned with identification of cultural or natural property defined in Articles 1 and 2, when preliminary investigations have shown that further inquiries would be justified.

3. The Committee shall decide on the action to be taken with regard to these requests, determine where appropriate, the nature and extent of its assistance, and authorize the conclusion, on its behalf, of the necessary arrangements with the government concerned.

4. The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property requiring protection, the need to give international assistance to the property most representative of a natural environment or of the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.

5. The Committee shall draw up, keep up to date and publicize a list of property for which international assistance has been granted.

6. The Committee shall decide on the use of the resources of the Fund established under Article 15 of this Convention. It shall seek ways of increasing these resources and shall take all useful steps to this end.

7. The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organizations, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN), as well as on public and private bodies and individuals.

8. Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting. A majority of the members of the Committee shall constitute a quorum.

Article 14

1. The World Heritage Committee shall be assisted by a Secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization, utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the Committee's documentation and the agenda of its meetings and shall have the responsibility for the implementation of its decisions.

IV. FUND FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 15

1. A Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Fund", is hereby established.

2. The Fund shall constitute a trust fund, in conformity with the provisions of the Financial Regulations of the United Nations Educational, Scientific and Cultural Organization.

3. The resources of the Fund shall consist of:

(*a*) compulsory and voluntary contributions made by the States Parties to this Convention,

(*b*) contributions, gifts or bequests which may be made by:

(*i*) other States;

(*ii*) the United Nations Educational, Scientific and Cultural Organization, other organizations of the United Nations system, particularly the United Nations Development Programme or other intergovernmental organizations;

(*iii*) public or private bodies or individuals;

(*c*) any interest due on the resources of the Fund;

(*d*) funds raised by collections and receipts from events organized for the benefit of the Fund; and

(*e*) all other resources authorized by the Fund's regulations, as drawn up by the World Heritage Committee.

4. Contributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define. The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project. No political conditions may be attached to contributions made to the Fund.

Article 16

1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay regularly, every two years, to the World Heritage Fund, contributions, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly of States Parties to the Convention, meeting during the sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. This decision of the General Assembly requires the majority of the States Parties present and voting, which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the compulsory contribution of States Parties to the Convention exceed 1% of the contribution to the Regular Budget of the United Nations Educational, Scientific and Cultural Organization.

2. However, each State referred to in Article 31 or in Article 32 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

3. A State Party to the Convention which has made the declaration referred to in paragraph 2 of this Article may at any time withdraw the said declaration by notifying the Director-General of the United Nations Educational, Scientific and Cultural Organization. However, the withdrawal of the declaration shall not take effect in regard to the compulsory contribution due by the State until the date of the subsequent General Assembly of States Parties to the Convention.

4. In order that the Committee may be able to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article, shall be paid on a regular basis at least every two years, and should not be less than the contributions which they should have paid if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to the Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the World Heritage Committee, although this provision shall not apply to the first election.

The terms of office of any such State which is already a member of the Committee shall terminate at the time of the elections provided for in Article 8, paragraph 1 of this Convention.

Article 17

The States Parties to this Convention shall consider or encourage the establishment of national, public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of this Convention.

Article 18

The States Parties to this Convention shall give their assistance to international fund-raising campaigns organized for the World Heritage Fund under the auspices of the United Nations Educational, Scientific and Cultural Organization. They shall facilitate collections made by the bodies mentioned in paragraph 3 of Article 15 for this purpose.

V. CONDITIONS AND ARRANGEMENTS FOR INTERNATIONAL ASSISTANCE

Article 19

Any State Party to this Convention may request international assistance for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. It shall submit with its request such information and documentation provided for in Article 21 as it has in its possession and as will enable the Committee to come to a decision.

Article 20

Subject to the provisions of paragraph 2 of Article 13, sub-paragraph (c) of Article 22

and Article 23, international assistance provided for by this Convention may be granted only to property forming part of the cultural and natural heritage which the World Heritage Committee has decided, or may decide, to enter in one of the lists mentioned in paragraphs 2 and 4 of Article 11.

Article 21

1. The World Heritage Committee shall define the procedure by which requests to it for international assistance shall be considered and shall specify the content of the request, which should define the operation contemplated, the work that is necessary, the expected cost thereof, the degree of urgency and the reasons why the resources of the State requesting assistance do not allow it to meet all the expenses. Such requests must be supported by experts' reports whenever possible.

2. Requests based upon disasters or natural calamities should, by reasons of the urgent work which they may involve, be given immediate, priority consideration by the Committee, which should have a reserve fund at its disposal against such contingencies.

3. Before coming to a decision, the Committee shall carry out such studies and consultations as it deems necessary.

Article 22

Assistance granted by the World Heritage Committee may take the following forms:

(a) studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined in paragraphs 2 and 4 of Article 11 of this Convention;

(b) provision of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;

(c) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;

(d) supply of equipment which the State concerned does not possess or is not in a position to acquire;

(e) low-interest or interest-free loans which might be repayable on a long-term basis;

(f) the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Article 23

The World Heritage Committee may also provide international assistance to national or regional centres for the training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage.

Article 24

International assistance on a large scale shall be preceded by detailed scientific, economic and technical studies. These studies shall draw upon the most advanced techniques for the protection, conservation, presentation and rehabilitation of the natural and cultural heritage and shall be consistent with the objectives of this Convention. The studies shall also seek means of making rational use of the resources available in the State concerned.

Article 25

As a general rule, only part of the cost of work necessary shall be borne by the international community. The contribution of the State benefiting from international assistance shall constitute a substantial share of the resources devoted to each programme or project, unless its resources do not permit this.

Article 26

The World Heritage Committee and the recipient State shall define in the agreement they conclude the conditions in which a programme or project for which international assistance under the terms of this Convention is provided, shall be carried out. It shall be the responsibility of the State receiving such international assistance to continue to protect, conserve and present the property so safeguarded, in observance of the conditions laid down by the agreement.

VI. EDUCATIONAL PROGRAMMES

Article 27

1. The States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the Convention.

2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of activities carried on in pursuance of this Convention.

Article 28

States Parties to this Convention which receive international assistance under the Convention shall take appropriate measures to make known the importance of the property for which assistance has been received and the role played by such assistance.

VII. REPORTS

Article 29

1. The States Parties, to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

2. These reports shall be brought to the attention of the World Heritage Committee.

3. The Committee shall submit a report on its activities at each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization.

VIII. FINAL CLAUSES

Article 30

This Convention is drawn up in Arabic English, French, Russian and Spanish, the five tests being equally authoritative.

Article 31

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 32

1. This Convention shall be open to accession by all States not menbers of the United Nations Educational, Scientific and Cultural Organization which are invited by the General Conference of the organization to accede to it.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 33

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 34

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system:

(*a*) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(*b*) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 35

1. Each State Party to this Convention may denounce the Convention.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall not affect the financial obligations of the denouncing State until the date on which the withdrawal takes effect.

Article 36

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 32, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, or accession provided for in Articles 31 and 32, and of the denunciations provided for in Article 35.

Article 37

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 38

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris, this twenty-third day of November 1972, in two authentic copies bearing the signature of the President of the seventeenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 31 and 32 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its seventeenth session, which was held in Paris and declared closed the twenty-first day of November 1972.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of November 1972.

The President of the General Conference:
TORU HAGUIWARA
The Director-General:
RENE MAHEU

ARTICLE-BY-ARTICLE ANALYSIS

ARTICLE 1

The Article defines "cultural heritage" for the purposes of the Convention to include monuments, works of architecture, monumental sculpture and painting, groups of buildings and other archaeological sites which have "outstanding universal value" from a historical, aesthetic, scientific or ethnological point of view.

ARTICLE 2

This Article defines "natural heritage" for the purposes of the Convention to include geological, physical and biological formations, habitats of threatened species of wildlife, and other natural areas of "outstanding universal value" from a scientific, aesthetic or conservationist viewpoint.

ARTICLE 3

Article 3 emphasizes the primary responsibility of each State Party to the Convention to identify and delineate those areas and sites within its territory which fall within the definitions in Articles 1 and 2.

ARTICLE 4

This Article recognizes that each Party has a duty to identify and protect its own areas falling within the cultural and natural heritage of mankind to ensure its transmission to future generations, and to provide such financial, technical and scientific resources as may be necessary to fulfill this duty to the extent of its own ability or through technical assistance it may be able to obtain.

ARTICLE 5

Article 5 describes with greater particularity the measures which Parties are expected to undertake to protect areas of the cultural and natural heritage within their own territories. Among such measures, to the extent of each State's ability, are: the adoption of a general policy of integrating the protection of the cultural and natural heritage into the life of the community and public planning; the establishment of technical and administrative staffs to preserve these areas; the development of scientific and technical research and expertise to identify and counteract dangers thereto; the adoption of appropriate legal, financial, administrative, and technical measures to identify, restore and protect this heritage; and the establishment of national and regional centers to encourage the training and scientific research necessary for these purposes.

ARTICLE 6

This Article recognizes that the areas described in Articles 1 and 2 constitute a heritage of mankind as a whole which the international community should assist and protect, and that each Party should undertake including by provision of technical assistance, to assist others in this effort and to refrain from deliberate actions which might damage any areas in the cultural and natural heritage situated on others' territory. The Article recognizes the sovereignty of each State over its territory and property rights protected by its legislation.

ARTICLE 7

This Article recognizes that international protection of the world cultural and natural heritage should be effected through an international system of co-operation and assistance, as provided in subsequent articles.

ARTICLE 8

Article 8 establishes an Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called the World Heritage Committee, within the UNESCO framework. The Committee would be composed of representatives of 15 Parties elected by all Parties meeting in general assembly during the ordinary session of each UNESCO General Conference. The size of the Committee would be increased to 21 members after at least 40 States have become Parties. In electing the Committee, equitable representation is to be given to the various regions and cultures of the world.

Representatives of the Rome Centre, ICOMOS, IUCN and other appropriate intergovernmental or non-governmental organizations may be invited to attend Committee meetings in an advisory capacity.

ARTICLE 9

This Article prescribes the term of office of members of the Committee, which extends from the end of the session of the UNESCO General Conference in which they are elected to the end of the third subsequent session (a period of 6 years). However, one-third of the initial membership of the Committee is to be replaced at the end of the first subsequent session and another one-third at the end of the second subsequent session, so that in the future one-third of the Committee would stand election at each session of the General Conference. The Article also requires Parties to select as their representatives persons qualified in the field of natural or cultural heritage.

ARTICLE 10

This Article provides for the adoption by the Committee of its own Rules of Procedure, and permits it to create such consultative bodies or to engage in such public or private consultations as it finds necessary for the performance of its functions.

ARTICLE 11

Article 11 provides for the creation of a World Heritage List of areas within the natural and cultural heritage of mankind, and a List of World Heritage in Danger of areas requiring special immediate international efforts to avert man-made or natural dangers.

The World Heritage List consists of those natural and cultural areas which the Committee deems to be of universal outstanding value. The List is drawn up, kept up to date and published by the Committee on the basis of criteria developed by the Committee and periodic inventories submitted by each Party of natural and cultural areas located in its territory which fall within the definitions in Articles 1 and 2. The inclusion of an area on the List requires the consent of the State in whose territory it is located.

The List of World Heritage in Danger is also maintained and published by the Committee, and consists of those areas on the World Heritage List for which the Committee finds major protective operations are necessary and for which international assistance has been requested. Areas may be placed on the "Danger List" as a result of any of a number of serious and immediate threats, including human developments, natural calamities, abandonment or changes in ownership, or accelerated natural deterioration. Before refusing a request for inclusion of an area on the "Danger List", the Committee is required to consult with the Party on whose territory the area is located.

ARTICLE 12

This Article recognizes that the mere fact that an area does not appear on one of the Lists provided in Article 11 does not necessarily mean that it lacks outstanding universal value for other purposes.

ARTICLE 13

This Article provides for the consideration by the Committee of requests for international assistance for natural and cultural areas, and delegates to the Committee decisions on the use for this purpose of the resources of the Fund established under Article 15. The Committee is directed to determine an order of priorities for its decisions in this regard, bearing in mind the relative importance of the areas requiring protection, the urgency of the work to be done, and the relative ability of States to protect their own areas through their own resources. In the performance of these functions, the Committee is authorized to call upon and cooperate with the Rome Centre, ICOMOS, IUCN and other international and national governmental and non-governmental organizations with similar objectives.

Decisions of the Committee are to be taken by two-thirds of the members present and voting.

ARTICLE 14

This Article provides for the appointment of a Secretariat by the UNESCO Director-General to assist the Committee in its duties and requires the Director-General to utilize the services of the organizations mentioned in Article 13 in preparing for the meetings of the Committee and in implementing its decisions.

ARTICLE 15

Article 15 establishes a Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called the "World Heritage Fund", as a trust fund in conformity with UNESCO Financial Regulations. The resources of the Fund are to include contributions of the Parties, contributions, gifts and bequests of other States, United Nations bodies, and public or private bodies or individuals, and income from Fund resources. Political conditions may not be attached to contributions to the Fund, but contributions designated for a specific program may be accepted if the Committee has approved the program. Fund resources may only be used for purposes designated by the Committee.

ARTICLE 16

Article 16 makes provision for compulsory contributions by Parties to the Fund on a biannual basis in amounts determined by the Parties meeting in general assembly on the basis of "a uniform percentage applicable to all States". In no case are such contributions to exceed 1% of a State's contribution to the Regular Budget of UNESCO. One percent of the contribution of the United States to the Regular Budget of UNESCO for 1973 amounts to $155,045.

However, Article 16(2) provides that any Party may, at the time of deposit of its instrument of ratification, acceptance or accession, declare that it will not be bound by this provision for compulsory contributions. States which make such a declaration agree that they will undertake to make voluntary contributions to the Fund on a regular basis to assist the Committee to plan its operations effectively, and that its voluntary contributions "should not be less than the contributions which they should have paid if they had been bound" by the compulsory contribution requirement.

Any Party which is in arrears with its compulsory or voluntary contributions, as the case may be, would not be eligible for membership on the World Heritage Committee.

ARTICLE 17

This Article requires Parties to consider or encourage the establishment of public and private foundations to invite donations to the fund.

ARTICLE 18

This Article pledges Parties to lend their assistance to international fund-raising campaigns conducted by the Fund.

ARTICLE 19

Article 19 provides that any Party may request international assistance for any areas

in the cultural or natural heritage within its territory. The submission of appropriate information and documentation is required.

ARTICLE 20

This Article provides that international assistance under the Convention may only be granted for the protection of areas entered on one of the lists maintained by the Committee under Article 11, for the identification of potential heritage areas, and for the training of specialists in the disciplines required for the identification and protection of such areas.

ARTICLE 21

This Article directs the Committee to establish procedures for the consideration and content of requests, including information on the operation proposed, the cost expected, the degree of urgency involved and the reasons why the requesting State's resources are not adequate to meet all expenses. Requests based upon natural disasters are to be given priority attention, and the Committee is to establish a reserve fund to meet such possible contingencies.

ARTICLE 22

Article 22 delineates the forms of assistance which the Committee may grant, including the making of technical studies, the provision of experts, technicians and skilled laborers, the training of personnel, the supplying of equipment not available to the requesting State, the provision of low-interest or interest-free loans, or "in exceptional cases and for special reasons" the granting of non-repayable subsidies.

ARTICLE 23

This Article makes specific provision for international assistance to national or regional centers for the training of personnel in the various skills required for identification and protection of the natural and cultural heritage.

ARTICLE 24

Article 24 requires that international assistance "on a large scale" be preceded by detailed scientific, economic and technical studies, including a consideration of the means for making use of resources available to the requesting State.

ARTICLE 25

This Article makes clear that, as a general rule, only part of the cost of any project should be borne by the international community, and that the requesting State should contribute a substantial portion of the resources necessary to the extent it is able to do so.

ARTICLE 26

This Article requires that the Committee and the recipient State enter into an agreement for each project for which international assistance is to be granted defining the conditions under which the project is to be carried out. The recipient State is required to protect and maintain the property involved in accordance with the terms of that agreement.

ARTICLES 27–28

These Articles encourage Parties to undertake educational and information programs to promote public appreciation for and knowledge of their heritage sites, possible dangers to them, and the role played by the international community in granting assistance under the Convention.

ARTICLE 29

This Article provides for reports by Parties to the Committee and to the UNESCO General Conference, and by the Committee to the General Conference, on actions taken to apply and implement the Convention.

ARTICLES 30–38

These Articles constitute the Final Clauses for the Convention, and make standard provisions for ratification and accession, entry into force, denunciation, revision and other administrative details. The Convention will enter into force three months after the date of ratification or accession by twenty States. It may be denounced at any time, effective twelve months thereafter.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that supporting data be inserted in the RECORD at this point in explanation of the convention.

There being no objection, the excerpt from the committee report was ordered to be printed in the RECORD, as follows:

PURPOSE

The primary purpose of this Convention is to create international machinery for the identification and protection of natural and cultural areas of outstanding universal value which constitute the common heritage of mankind. For this purpose, the Convention establishes a World Heritage Committee to develop and maintain lists of areas of outstanding importance and a World Heritage Fund to provide international assistance for the protection and conservation of these areas.

BACKGROUND

This Convention was negotiated under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO). It is the direct result of a resolution adopted by the Sixteenth session of the UNESCO General Conference meeting of 1970. This resolution entrusted the Director General of UNESCO with the task of drafting a convention for the protection of monuments and cultural sites of universal value. Pursuant to this decision, the UNESCO Secretariat produced and circulated a draft convention on July 20, 1971.

In commenting on the UNESCO draft convention, the United States Government stated its support for a single World Heritage Convention which would include both cultural and natural areas. In February, 1972, the United States submitted to UNESCO a draft convention, drawing on both the UNESCO draft and a proposal prepared by the Intergovernmental Working Group of the U.N. Conference on the Human Environment.

In April 1972, UNESCO submitted a revised draft. This draft was referred to the UNESCO General Conference, October 17–November 21, 1972. In the interim, it was overwhelmingly endorsed by the U.N. Conference on the Human Environment, held in Stockholm in June, 1972. On November 16, 1972, the UNESCO General Conference adopted the present Convention.

The Convention was submitted to the Senate on March 28, 1973.

MAJOR PROVISIONS

The Convention consists of a short preamble and 38 articles. The following is an article-by-article analysis supplied by the Department of State in its letter of submittal.

ARTICLE 1

The Article defines "cultural heritage" for the purposes of the Convention to include monuments, works of architecture, monumental sculpture and painting, groups of which have "outstanding universal value" from a historical, aesthetic, scientific or ethnological point of view.

ARTICLE 2

This Article defines "natural heritage" for the purposes of the Convention to include geological, physical and biological formations, habitats of threatened species of wildlife, and other natural areas of "outstanding universal value" from a scientific, aesthetic or conservationist viewpoint.

ARTICLE 3

Article 3 emphasizes the primary responsibility of each State Party to the Convention to identify and delineate those areas and sites within its territory which fall within the definitions in Articles 1 and 2.

ARTICLE 4

The Article recognizes that each Party has a duty to identify and protect its own areas falling within the cultural and natural heritage of mankind to ensure its transmission to future generations, and to provide such financial, technical and scientific resources as may be necesstary to fulfill this duty to the extent of its own ability or through technical assistance it may be able to obtain.

ARTICLE 5

Article 5 describes with greater particularity the measures which Parties are expected to undertake to protect areas of the cultural and natural heritage within their own territories. Among such measures, to the extent of each State's ability, are: the adoption of a general policy of integrating the protection of the cultural and natural heritage into the life of the community and public planning; the establishment of technical and administrative staffs to preserve these areas; the development of scientific and technical research and expertise to identify and counteract dangers thereto; the adoption of appropriate legal, financial, administrative, and technical measures to identify, restore and protect this heritage; and the establishment of national and regional centers to encourage the training and scientific research necessary for these purposes.

ARTICLE 6

This Article recognizes that the areas described in Articles 1 and 2 constitute a heritage of mankind as a whole which the international community should assist and protect, and that each Party should undertake, including by provision of technical assistance, to assist others in this effort and to refrain from deliberate actions which might damage any areas in the cultural and natural heritage situated on others territory. The Article recognizes the sovereignty of each State over its territory and property rights protected by its legislation.

ARTICLE 7

This Article recognizes that international protection of the world cultural and natural heritage should be effected through an international system of co-operation and assistance, as provided in subsequent articles.

ARTICLE 8

Article 8 establishes an Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called the World Heritage Committee, within the UNESCO framework. The Committee would be composed of representatives of 15 Parties elected by all Parties meeting in general assembly during the ordinary session of each UNESCO General Conference. The size of the Committee would be increased to 21 members after at least 40 States have become Parties. In electing the Committee, equitable representation is to be given to the various regions and cultures of the world.

Representatives of the Rome Centre, ICOMOS, IUCN and other appropriate intergovernmental or non-governmental organizations may be invited to attend Committee meetings in an advisory capacity.

ARTICLE 9

This Article prescribes the term of office of members of the Committee, which extends from the end of the session of the UNESCO General Conference in which they are elected to the end of the third subsequent session (a period of 6 years). However, one-third of the initial membership of the Committee is to be replaced at the end of the first subsequent session and another one-third at the end of the second subsequent session, so that in the future one-third of the Committee would stand election at each session of the General

Conference. The Article also requires Parties to select as their representatives persons qualified in the field of natural or cultural heritage.

ARTICLE 10

This Article provides for the adoption by the Committee of its own Rules of Procedure, and permits it to create such consultative bodies or to engage in such public or private consultations as it finds necessary for the performance of its functions.

ARTICLE 11

Article 11 provides for the creation of a World Heritage List of areas within the natural and cultural heritage of mankind, and a List of World Heritage in Danger of areas requiring special immediate international efforts to avert man-made or natural dangers.

The World Heritage List consists of those natural and cultural areas which the Committee deems to be of universal outstanding value. The List is drawn up, kept up to date and published by the Committee on the basis of criteria developed by the Committee and periodic inventories submitted by each Party of natural and cultural areas located in its territory which fall within the definitions in Articles 1 and 2. The inclusion of an area on the List requires the consent of the State in whose territory it is located.

The List of World Heritage in Danger is also maintained and published by the Committee, and consists of those areas on the World Heritage List for which the Committee finds major protective operations are necessary and for which international assistance has been requested. Areas may be placed on the "Danger List" as a result of any of a number of serious and immediate threats, including human developments, natural calamities, abandonment or changes in ownership, or accelerated natural deterioration. Before refusing a request for inclusion of an area on the "Danger List", the Committee is required to consult with the Party on whose territory the area is located.

ARTICLE 12

This Article recognizes that the mere fact that an area does not appear on one of the Lists provided in Article 11 does not necessarily mean that it lacks outstanding universal value for other purposes.

ARTICLE 13

This Article provides for the consideration by the Committee of requests for international assistance for natural and cultural areas, and delegates to the Committee decisions on the use for this purpose of the resources of the Fund established under Article 15. The Committee is directed to determine an order of priorities for its decisions in this regard, bearing in mind the relative importance of the areas requiring protection, the urgency of the work to be done, and the relative ability of States to protect their own areas through their own resources. In the performance of these functions, the Committee is authorized to call upon and cooperate with the Rome Centre, ICOMOS, IUCN and other international and national governmental and non-governmental organizations with similar objectives.

Decisions of the Committee are to be taken by two-thirds of the members present and voting.

ARTICLE 14

This Article provides for the appointment of a Secretariat by the UNESCO Director-General to assist the Committee in its duties, and requires the Director-General to utilize the services of the organizations mentioned in Article 13 in preparing for the meetings of the Committee and in implementing its decisions.

ARTICLE 15

Article 15 establishes a Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called the "World Heritage Fund", as a trust fund in conformity with UNESCO Financial Regulations. The resources of the Fund are to include contributions of the Parties, contributions, gifts and bequests of other States, United Nations bodies, and public or private bodies or individuals, and income from Fund resources. Political conditions may not be attached to contributions to the Fund, but contributions designated for a specific program may be accepted if the Committee has approved the program. Fund resources may only be used for purposes designated by the Committee.

ARTICLE 16

Article 16 makes provision for compulsory contributions by Parties to the Fund on a biannual basis in amounts determined by the Parties meeting in general assembly on the basis of "a uniform percentage applicable to all States". In no case are such contributions to exceed 1% of a State's contribution to the Regular Budget of UNESCO. One percent of the contribution of the United States to the Regular Budget of UNESCO for 1973 amounts to $155,045.

However, Article 16(2) provides that any Party may, at the time of deposit of its instrument of ratification, acceptance or accession, declare that it will not be bound by this provision for compulsory contributions. States which make such a declaration agree that they will undertake to make voluntary contributions to the Fund on a regular basis to assist the Committee to plan its operations effectively, and that its voluntary contributions "should not be less than the contributions which they should have paid if they had been bound" by the compulsory contribution requirement.

Any Party which is in arrears with its compulsory or voluntary contributions, as the case may be, would not be eligible for membership on the World Heritage Committee.

ARTICLE 17

This Article requires Parties to consider or encourage the establishment of public and private foundations to invite donations to the fund.

ARTICLE 18

This Article pledges Parties to lend their assistance to international fund-raising campaigns conducted by the Fund.

ARTICLE 19

Article 19 provides that any Party may request international assistance for any areas in the cultural or natural heritage within its territory. The submission of appropriate information and documentation is required.

ARTICLE 20

This Article provides that international assistance under the Convention may only be granted for the protection of areas entered on one of the lists maintained by the Committee under Article 11, for the identification of potential heritage areas, and for the training of specialists in the disciplines required for the identification and protection of such areas.

ARTICLE 21

This Article directs the Committee to establish procedures for the consideration and content of requests, including information on the operation proposed, the cost expected, the degree of urgency involved and the reasons why the requesting State's resources are not adequate to meet all expenses. Requests based upon natural disasters are to be given priority attention, and the Committee is to establish a reserve fund to meet such possible contingencies.

ARTICLE 22

Article 22 delineates the forms of assistance which the Committee may grant, including the making of technical studies, the provision of experts, technicians and skilled laborers, the training of personnel, the supplying of equipment not available to the requesting State, the provision of low-interest or interest-free loans, or "in exceptional cases and for special reasons" the granting of non-repayable subsidies.

ARTICLE 23

This Article makes specific provision for international assistance to national or regional centers for the training of personnel in the various skills required for identification and protection of the natural and cultural heritage.

ARTICLE 24

Article 24 requires that international assistance "on a large scale" be preceded by detailed scientific, economic and technical studies, including a consideration of the means for making use of resources available to the requesting State.

ARTICLE 25

This Article makes clear that, as a general rule, only part of the cost of any project should be borne by the international community, and that the requesting State should contribute a substantial portion of the resources necessary to the extent it is able to do so.

ARTICLE 26

This Article requires that the Committee and the recipient State enter into an agreement for each project for which international assistance is to be granted defining the conditions under which the project is to be carried out. The recipient State is required to protect and maintain the property involved in accordance with the terms of that agreement.

ARTICLES 27–28

These Articles encourage Parties to undertake educational and information programs to promote public appreciation for and knowledge of their heritage sites, possible dangers to them, and the role played by the international community in granting assistance under the Convention.

ARTICLE 29

This Article provides for reports by Parties to the Committee and to the UNESCO General Conference, and by the Committee to the General Conference, on actions taken to apply and implement the Convention.

ARTICLES 30–38

These Articles constitute the Final Clauses for the Convention, and makes standard provisions for ratification and accession, entry into force, denunciation, revision and other administrative details. The Convention will enter into force three months after the date of ratification or accession by twenty States. It may be denounced at any time, effective twelve months thereafter.

ENTRY INTO FORCE

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession. No country has deposited an instrument of ratification to date.

DECLARATION

The Secretary of State recommends that the Senate give advice and consent to ratification of this Convention subject to a declaration under Article 16(2) that the United States shall not be bound by the provisions of Article 16(1), which require compulsory contributions to the World Heritage Fund in amounts determined by the Parties meeting in general assembly.

The State Department believes that compulsory contributions, as limited by Article 16, are unlikely to provide anything more

than a small portion of the funds necessary to carry out this work, and it is better to rely on voluntary contributions from States and private bodies and individuals for this purpose.

COMMITTEE ACTION

On July 26, 1973, the Committee on Foreign Relations conducted a public hearing on the Convention. At that time, Mr. John A. Busterud, a Member of the Council on Environmental Quality, presented the Administration's position in favor of the Convention.

On July 31, 1973, and October 11, 1973, the Committee considered the Convention in executive session. On the latter date, it was ordered reported favorably (by voice vote), subject to the declaration mentioned above.

In recommending that the Senate give its advice and consent to ratification, it is the understanding of the Committee that the State Department will eventually attempt to finance the U.S. share of the "World Heritage Funds" through private contributions rather than appropriated funds. The Committee encourages the Department to take the appropriate steps necessary to achieve this goal.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the convention be considered as having passed through its various parliamentary stages up to and including the resolution of ratification.

The PRESIDING OFFICER. Without objection, the convention will be considered as having passed through its various parliamentary stages, up to and including the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention Concerning the Protection of the World Cultural and Natural Heritage, done at Paris on November 23, 1972, subject to a declaration under Article 16(2) that the United States shall not be bound by the provisions of Article 16(1) (Ex. F, 93–1).

The PRESIDING OFFICER (Mr. HASKELL). Without objection, the declarations to the resolutions of ratification on Executive S92–2 and F93–1 are agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the four treaties occur on Tuesday next at the hour of 2:30 p.m., and that there be one rollcall vote and that that one rollcall vote appear in the RECORD as four rollcall votes on the four treaties, thus saving 45 minutes of the time of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONFIRMATION OF NOMINATIONS

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate proceed to the consideration of certain nominations now at the desk, which were reported earlier today, one from the Committee on Labor and Public Welfare, and three from the Committee on the Judiciary.

The PRESIDING OFFICER. Without objection, it is so ordered.

ACTION AGENCY

The legislative clerk read the nomination of Harry J. Hogan, of Maryland, to be an Assistant Director of the ACTION agency.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

The legislative clerk read the nomination of J. Raymond Bell, of New York, to be a member of the Foreign Claims Settlement Commission of the United States.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

The legislative clerk read the nomination of Charles R. Work, of the District of Columbia, to be Deputy Administrator for Administration of the Law Enforcement Assistance Administration.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

U.S. MARSHAL FOR SOUTHERN DISTRICT OF MISSISSIPPI

The legislative clerk read the nomination of Thomas Arny Rhoden, of Mississippi, to U.S. marshal for the southern district of Mississippi.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the President be notified of the confirmation of these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

FORMER SENATOR FRANK CARLSON OF KANSAS

Mr. DOLE. Mr. President, I was saddened to learn this morning that my predecessor in the Senate, Frank Carlson, and his wife, were involved in an automobile accident last night in Concordia, Kans. I am happy to report to my colleagues, however, that neither Senator Carlson nor Mrs. Carlson were seriously injured, though the Senator did suffer a fractured leg and Mrs. Carlson a fractured wrist. Reports from the hospital indicate that both are responding well to treatment in St. Joseph's Hospital in Concordia.

I am certain many of my colleagues who served with Senator Carlson in the Senate would like to join in wishing both he and Mrs. Carlson a speedy recovery from this unfortunate accident.

For the information of well-wishers, the address is: Senator Frank Carlson, St. Joseph's Hospital, 115th and 3rd Streets, Concordia, Kans. 66901.

QUORUM CALL

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CASE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TOWARD A NEW BEGINNING

Mr. CASE. Mr. President, on the op ed page of the New York Times today appears an excellent article written by the distinguished senior Senator from Maryland (Mr. MATHIAS). I ask unanimous consent to have the article printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TOWARD A NEW BEGINNING

(By CHARLES MCC. MATHIAS, JR.)

WASHINGTON.—If Lord Macaulay had been in Washington during the last week he would never have written that "Your Constitution is all sail and no anchor." The Constitution not only demonstrated its holding power, but also its capacity to inspire men and women in high places and humble places to rush forward and tend the anchor chains.

But even the best anchor has to be set by a crew that knows how, when and where to act. The American people are usually able to rely on the fact that such men are generated by the pressure of great events. In this crisis Americans have again been well served by four such men, John J. Sirica, Elliot Richardson, Archibald Cox and William Ruckelshaus. The impact of their actions on events was controlling because they had two simple goals in view—to do what was right and what was constitutional. They were strong because of the Constitution and the Constitution was strong because of them.

The same simple goals should guide us through the rest of the tangle the nation is in. What is right and what is wrong is not a question for calculation or manipulation. To seek to do what is right is not a novel experience for Americans. It is an old custom that could be revived for the bicentennial.

To obey the explicit injunctions of the Constitution is an equally honored practice that should be observed as a canon of American citizenship without exception.

These principles would be too obvious and too simplistic if it were not for the fact that we have seen what happens when four men follow them in contrast to what happens when others do not. Consider, for instance, the damage to the nation when the Fourth Amendment is ignored by clandestine police, when a secret war is conducted without the sanction of Congress and when the coordinate branches of Government lose the respect for each other which is the matrix of the Constitution.

There is a difference in America today because John Sirica and Archibald Cox respected the Constitution and because Elliot Richardson and William Ruckelshaus knew that it was right to keep their word. That difference may be the beginning of a new era

of loyalty to the Constitution, the laws and the best traditions of our history.

What is the way to start this new era? I think we need to finish the house-cleaning that Elliot Richardson and Archibald Cox have begun. But to complete the job we need a special officer with no entangling loyalties or interests. It is not right for any institution to investigate or prosecute itself and it is not constitutional to concentrate excessive power in a single office of government without the balancing and countering action of another independent force.

The Congress must, therefore, find a way to re-establish the office of special prosecutor on a firmer and more independent basis than before. The public must know that those who place the Constitution above personal interest will be vindicated. That is the first step toward restoring a government under law.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I assume that this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATORS AND FOR TRANSACTION OF ROUTINE BUSINESS ON TUESDAY, OCTOBER 30.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, after the two leaders or their designees have been recognized under the standing order, the junior Senator from West Virginia (Mr. ROBERT C. BYRD) be recognized for not to exceed 15 minutes; that he be followed by the assistant Republican leader, the distinguished Senator from Michigan (Mr. GRIFFIN), for not to exceed 15 minutes; and that thereafter there be a period for the transaction of routine morning business for not to exceed 1 hour, with statements therein limited to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Tuesday next is as follows:

The Senate will convene at the hour of 12 o'clock meridian. After the two leaders or their designees have been recognized under the standing order, the junior Senator from West Virginia (Mr. ROBERT C. BYRD) will be recognized for not to exceed 15 minutes. The distinguished Senator from Michigan (Mr. GRIFFIN), the assistant Republican leader, will then be recognized for not to exceed 15 minutes.

There will then be a period for the transaction of routine morning business for not to exceed 1 hour, with statements therein limited to 5 minutes each.

At the hour of 2:30 p.m. the Senate will go into executive session to consider the following treaties beginning with Calendar Order No. 18 and going through Calendar Order No. 21: Executive S, 92d Congress, 2d session, Patent Cooperation Treaty and Annexed Regulations; Executive E, 93d Congress, 1st session, Strasbourg Agreement concerning the International Patent Classification; Executive R, 93d Congress, 1st session, Statutes of the World Tourism Organization; and Executive F, 93d Congress, 1st session, Convention Concerning the Protection of the World Cultural and Natural Heritage.

Those four votes will occur concurrently with one rollcall vote. The yeas and nays have not yet been ordered, but they will be ordered on that vote on Tuesday. One rollcall vote will count as four rollcall votes, thus saving 45 minutes of the Senator's time.

Upon the disposition of the four treaties by way of one rollcall vote the Senate will return to legislative session. The hour then will be 2:45 p.m. At that time debate will ensue with respect to the vote to override the Presidential veto on S. 1317. There is a time limitation for debate of 1 hour and 45 minutes, to be equally divided between Mr. FULBRIGHT and the distinguished Republican leader or his designee.

At the conclusion of the 1 hour and 45 minutes, or to be precise, at the hour of 4:30 p.m., the Senate will proceed to vote on the override of the Presidential veto. By the Constitution that will be a yea-and-nay vote.

So there will be at least five rollcall votes in the offing for Tuesday next.

Other business that has been cleared for action may be taken up. Messages from the House may be taken up at any time, they being privileged matters; conference reports agreed to in conference may be called up, they being privileged matters. Other rollcall votes could occur, therefore, on Tuesday.

By way of further comment on the program for next week, I would assume that subsequent to Tuesday the Senate would be continuing to await action on appropriation bills by the other body and conference reports, and so forth.

ORDER FOR ADJOURNMENT FROM TUESDAY, OCTOBER 30, 1973, TO THURSDAY, NOVEMBER 1, 1973

Mr. ROBERT C. BYRD. Mr. President, therefore, I ask unanimous consent that when the Senate completes its business on Tuesday, it stand in adjournment until 12 o'clock meridian on Thursday.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. The distinguished majority leader may wish to vacate this order depending on what the outlook is by the time Tuesday is reached, but I think this would adequately allow for the transaction of any necessary business on the floor of the Senate on Thursday and perhaps Friday, if necessary. Conferences could meet and conference reports could be acted upon.

AUTHORIZATION FOR CERTAIN ACTION TO BE TAKEN DURING THE ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until 12 o'clock meridian on Tuesday next, the distinguished President pro tempore and the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions, if there be any.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until 12 o'clock meridian on Tuesday next the Secretary of the Senate be authorized to receive messages from the House of Representatives and the President of the United States, if there be any.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT TO TUESDAY, OCTOBER 30, 1973

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock meridian on Tuesday next.

The motion was agreed to; and at 1:25 p.m., the Senate adjourned until Tuesday, October 30, 1973, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate October 26, 1973:

DEPARTMENT OF JUSTICE

Rex K. Bumgardner, of West Virginia, to be U.S. marshal for the northern district of West Virginia for the term of 4 years, (reappointment).

Gaylord L. Campbell, of California, to be U.S. marshal for the central district of California for the term of 4 years, (reappointment).

Leon T. Campbell, of Tennessee, to be U.S. marshal for the middle district of Tennessee for the term of 4 years, (reappointment).

James T. Lunsford, of Alabama, to be U.S. marshal for the middle district of Alabama for the term of 4 years (reappointment).

Leon B. Sutton, Jr., of Tennessee, to be U.S. marshal for the Eastern District of Tennessee for the term of 4 years, (reappointment).

George R. Tallent, of Tennessee, to be U.S. marshal for the Western District of Tennessee for the term of 4 years, (reappointment).

James W. Traeger of Indiana to be U.S. marshal for the Northern District of Indiana for the term of 4 years, (reappointment).

Jams E. Williams, of South Carolina, to be U.S. marshal for the District of South Carolina for the term of 4 years, (reappointment).

IN THE MARINE CORPS

Maj. Jack R. Lousma, U.S. Marine Corps, for permanent promotion to the grade of lieutenant colonel in the U.S. Marine Corps, in accordance with article II, section 2, clause 2, of the Constitution.

IN THE AIR FORCE

The following-named officers for promotion in the Regular Air Force, under the appropriate provisions of chapter 835, title 10, United States Code, as amended. All officers

are subject to physical examination required by law.

LINE OF THE AIR FORCE

Captain to major

Abby, Darwin G., xxx-xx-xxxx
Abel, Franklin G., xxx-xx-xxxx
Abraham, Gary W., xxx-xx-xxxx
Ackerman, Ronald R., xxx-xx-xxxx
Acosta, Jorge A., Jr., xxx-xx-xxxx
Adame, Frederick P., Jr., xxx-xx-xxxx
Adams, George T., xxx-xx-xxxx
Adams, James L., xxx-xx-xxxx
Adams, Robert R., xxx-xx-xxxx
Adamson, Derry A., xxx-xx-xxxx
Adcock, Eddie M., xxx-xx-xxxx
Adee, Donald P., xxx-xx-xxxx
Adelman, Philip J., xxx-xx-xxxx
Aglio, Carl J., xxx-xx-xxxx
Ahl, Gilbert W., xxx-xx-xxxx
Albershart, Thomas B., xxx-xx-xxxx
Albrecht, Peter H., xxx-xx-xxxx
Albright, Edward L., xxx-xx-xxxx
Alexander, James W., xxx-xx-xxxx
Alexander, Norman C., xxx-xx-xxxx
Alford, James M., xxx-xx-xxxx
Alie, Jean R., xxx-xx-xxxx
Allee, Paul R., xxx-xx-xxxx
Allen, Archie G., xxx-xx-xxxx
Allen, Ernest G., Jr., xxx-xx-xxxx
Allen, James C., xxx-xx-xxxx
Allen, Lacy A., xxx-xx-xxxx
Allen, Lawrence W., xxx-xx-xxxx
Allen, Michael C., xxx-xx-xxxx
Allen, Robert L., xxx-xx-xxxx
Allison, Gary G., xxx-xx-xxxx
Allmann, Lee R., xxx-xx-xxxx
Allsman, Gerald F., xxx-xx-xxxx
Alnwick, Kenneth J., xxx-xx-xxxx
Alspaugh, James D., xxx-xx-xxxx
Anderson, Allen S., xxx-xx-xxxx
Anderson, Calvin C., xxx-xx-xxxx
Anderson, George W., Jr., xxx-xx-xxxx
Anderson, Gerald H., xxx-xx-xxxx
Anderson, Harold W., xxx-xx-xxxx
Anderson, Jackie L., xxx-xx-xxxx
Anderson, Paul J., Jr., xxx-xx-xxxx
Andrews, Leonard E., xxx-xx-xxxx
Angle, Theodore E., xxx-xx-xxxx
Angliss, William W., xxx-xx-xxxx
Ankley, Donald C., xxx-xx-xxxx
Anselmo, Robert J., xxx-xx-xxxx
Aparicio, Arthur J., Jr., xxx-xx-xxxx
Apel, Larry A., xxx-xx-xxxx
Archer, James A., xxx-xx-xxxx
Arelland, Gustavo D., xxx-xx-xxxx
Arnold, John K., III, xxx-xx-xxxx
Arter, Gerald R., xxx-xx-xxxx
Arthur, Paul M., xxx-xx-xxxx
Ashbaugh, Maurice D., Jr., xxx-xx-xxxx
Ashworth, Pratt D., xxx-xx-xxxx
Asterita, Anthony J., xxx-xx-xxxx
Athas, Charles P., xxx-xx-xxxx
Atkins, Benny J., xxx-xx-xxxx
Ator, Robert A., xxx-xx-xxxx
Augustine, Leonard J., xxx-xx-xxxx
Austin, James L., xxx-xx-xxxx
Austin, Jimmie T., xxx-xx-xxxx
Austin, Roger J., xxx-xx-xxxx
Austin, William R., II, xxx-xx-xxxx
Auten, Jimmie D., xxx-xx-xxxx
Autsch, Fritz A., xxx-xx-xxxx
Avery, Richard D., xxx-xx-xxxx
Avis, Bertram, xxx-xx-xxxx
Ayres, James H., xxx-xx-xxxx
Baak, Jerome A., xxx-xx-xxxx
Babione, William P., xxx-xx-xxxx
Bablo, Adelbery G., xxx-xx-xxxx
Babos, Sandor, xxx-xx-xxxx
Bacheller, Burton P. C., II, xxx-xx-xxxx
Baddley, Benny H., xxx-xx-xxxx
Baer, John E., xxx-xx-xxxx
Baggette, Harold D., xxx-xx-xxxx
Bagley, Thomas J., III, xxx-xx-xxxx
Bailey, Glenn B., xxx-xx-xxxx
Bailey, Jack E., xxx-xx-xxxx
Bailey, Jerry T., xxx-xx-xxxx
Bailey, Richard, xxx-xx-xxxx
Bailey, Thomas F., xxx-xx-xxxx
Bailey, William G., xxx-xx-xxxx
Bainbridge, Thomas A., xxx-xx-xxxx
Baker, Arthur D., xxx-xx-xxxx
Baker, George W., xxx-xx-xxxx
Baker, James P., xxx-xx-xxxx
Baker, Kenneth N., xxx-xx-xxxx
Baker, Mary E., xxx-xx-xxxx
Baker, Ozrow E., xxx-xx-xxxx
Balas, George R., xxx-xx-xxxx
Baldassano, Robert S., xxx-xx-xxxx
Baldock, Jessie C., xxx-xx-xxxx
Baldwin, Claude R., xxx-xx-xxxx
Baldwin, Rey D., xxx-xx-xxxx
Ball, Billy D., xxx-xx-xxxx
Ballou, James R., xxx-xx-xxxx
Barber, Lawrence W., xxx-xx-xxxx
Barks, Francis W., xxx-xx-xxxx
Barnes, Warren S., xxx-xx-xxxx
Barnes, Wymon J., xxx-xx-xxxx
Barnhart, Rodger L., xxx-xx-xxxx
Barnhill, Howard M., xxx-xx-xxxx
Baron, David A., xxx-xx-xxxx
Barr, John E., Jr., xxx-xx-xxxx
Barrett, Donald L., xxx-xx-xxxx
Barth, Roland E., xxx-xx-xxxx
Bartine, Harris V., xxx-xx-xxxx
Bartine, Jon C., xxx-xx-xxxx
Bartlett, Robert R., xxx-xx-xxxx
Bartrand, Louis E., xxx-xx-xxxx
Bartunek, Robert D., xxx-xx-xxxx
Bassett, David H., xxx-xx-xxxx
Batchelder, Diane, xxx-xx-xxxx
Bates, Franklin D., xxx-xx-xxxx
Batson, Buren T., Jr., xxx-xx-xxxx
Batten, Virgil F., xxx-xx-xxxx
Batton, James L., xxx-xx-xxxx
Baty, Richard S., xxx-xx-xxxx
Bauermeister, Kurt E., xxx-xx-xxxx
Baumann, Carl W., xxx-xx-xxxx
Bay, Jerry L., xxx-xx-xxxx
Bean, Donald W., xxx-xx-xxxx
Beathard, Donald D., xxx-xx-xxxx
Beatty, John D., xxx-xx-xxxx
Beauchamp, Ray H., xxx-xx-xxxx
Beaulieu, Leo J., xxx-xx-xxxx
Beckham, Wesley E., Jr., xxx-xx-xxxx
Beckner, Stanley G., xxx-xx-xxxx
Beekman, Ralph E., xxx-xx-xxxx
Beezley, Ronnie W., xxx-xx-xxxx
Beland, Richard J., xxx-xx-xxxx
Belcher, Jesse P., xxx-xx-xxxx
Bell, James R., xxx-xx-xxxx
Bell, Thomas M., xxx-xx-xxxx
Bellanca, Thomas J., xxx-xx-xxxx
Bellg, Bruce J., xxx-xx-xxxx
Bender, Eduard, xxx-xx-xxxx
Bender, Walter W., xxx-xx-xxxx
Benfield, Garland W., xxx-xx-xxxx
Bennett, Forrest H., Jr., xxx-xx-xxxx
Bennett, Frank J., xxx-xx-xxxx
Bennett, Russell H., xxx-xx-xxxx
Berg, Donald J., xxx-xx-xxxx
Bergmann, Joseph I., xxx-xx-xxxx
Berle, Terence H., xxx-xx-xxxx
Bernard, Albert R., Jr., xxx-xx-xxxx
Bernard, Gregory L., xxx-xx-xxxx
Bernard, Samuel T., xxx-xx-xxxx
Bernholtz, Joseph C., xxx-xx-xxxx
Bessette, Carol S., xxx-xx-xxxx
Bessette, Duane G., xxx-xx-xxxx
Bevans, John P., xxx-xx-xxxx
Bexten, Richard C., xxx-xx-xxxx
Bezek, George M., xxx-xx-xxxx
Biancur, Andrew W., xxx-xx-xxxx
Biehle, Kenneth H., xxx-xx-xxxx
Biesiadecki, Richard J., xxx-xx-xxxx
Biggs, Dennis M., xxx-xx-xxxx
Billings, John H., xxx-xx-xxxx
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Acostamelendez, Antonio E., xxx-xx-xxxx
Adelmann, Eugene R., xxx-xx-xxxx
Aldredge, Moratio R., III, xxx-xx-xxxx
Alexander, Raymond H., xxx-xx-xxxx
Altenburg, John F., xxx-xx-xxxx
Anderson, Edgar R., Jr., xxx-xx-xxxx
Armbrustmacher, Vernon W., xxx-xx-xxxx
Beck, Roger A., xxx-xx-xxxx
Borden, Lester L., xxx-xx-xxxx
Brath, William F., xxx-xx-xxxx
Bryson, Andrew L., xxx-xx-xxxx
Buethe, Robert A., Jr., xxx-xx-xxxx
Conrad, Larry L., xxx-xx-xxxx
Dichsen, Donald V., xxx-xx-xxxx
Dryden, Richie S., xxx-xx-xxxx
Ellenbogen, Charles, xxx-xx-xxxx
Fox, Raymond M., Jr., xxx-xx-xxxx
Gaffney, Clyde M., xxx-xx-xxxx
Gilpin, Eugene L., xxx-xx-xxxx
Gohman, James D., xxx-xx-xxxx
Haynes, Max G., xxx-xx-xxxx
Hemsell, David L., xxx-xx-xxxx
Howard, Jack B., xxx-xx-xxxx
Jackson, Arnold J., xxx-xx-xxxx
Johnson, Don E., xxx-xx-xxxx
Kish, Leslie S., xxx-xx-xxxx
Maioriello, Richard P., xxx-xx-xxxx
Martin, Benjamin G., Jr., xxx-xx-xxxx
Munson, Herbert G., xxx-xx-xxxx
Parker, Edward H., Jr., xxx-xx-xxxx
Pittman, James A., xxx-xx-xxxx
Ramsay, James G., Jr., xxx-xx-xxxx
Saylor, Jack L., xxx-xx-xxxx
Shotton, Francis T., Jr., xxx-xx-xxxx
Signorino, Charles E., xxx-xx-xxxx
Singleton, Charles M., xxx-xx-xxxx
Smith, Dwight D., xxx-xx-xxxx
Sonntag, Richard W., Jr., xxx-xx-xxxx
Stoner, John C., xxx-xx-xxxx
Tchou, Howard P., xxx-xx-xxxx
Terry, Ward M., xxx-xx-xxxx
Thorshov, Jon R., xxx-xx-xxxx
Touhey, John E., xxx-xx-xxxx
Troxler, Raymond G., xxx-xx-xxxx
Wagner, Grant H., xxx-xx-xxxx
Walker, Ronald E., xxx-xx-xxxx
Willis, Marshall R., xxx-xx-xxxx
Wunder James F., xxx-xx-xxxx
Zeller, Myron J., xxx-xx-xxxx

NURSE CORPS

Adams, Mary E., xxx-xx-xxxx
Anderson, Rhea S., xxx-xx-xxxx
Ault, Mary M., xxx-xx-xxxx
Babcock, Beth E., xxx-xx-xxxx
Bailes, Mary E., xxx-xx-xxxx
Barnard, Karen A., xxx-xx-xxxx
Beachert, Evelyn S., xxx-xx-xxxx
Bennett, Carol J., xxx-xx-xxxx
Bower, Ronald A., xxx-xx-xxxx
Bruner, Judith H., xxx-xx-xxxx
Chambless, Rosalie B., xxx-xx-xxxx
Chilton, Lucille L., xxx-xx-xxxx
Cieslak, Joanna, xxx-xx-xxxx
Corrado, Carol J., xxx-xx-xxxx
Costantino, Sadie S., xxx-xx-xxxx
Dubie, Carl T., xxx-xx-xxxx
Dye, Beverly J., xxx-xx-xxxx
Graves, Nancy L., xxx-xx-xxxx
Hancock, Margaret A., xxx-xx-xxxx
Harkins, Shari M., xxx-xx-xxxx
Hildock, Stephen R., xxx-xx-xxxx
Howard, Caryl J., xxx-xx-xxxx
Huskey, Dora F., xxx-xx-xxxx
Kendall, Nora M., xxx-xx-xxxx
Kirn, Georgia A., xxx-xx-xxxx
Knight, Dorothy M., xxxx
Knuth, Betty A., xxx-xx-xxxx
Korach, Margaret M., xxx-xx-xxxx
Kreth, Ernest H., Jr., xxx-xx-xxxx
Kujawa, Dolores M., xxx-xx-xxxx
Least, Frank T., xxx-xx-xxxx
Least, Thomas S., xxx-xx-xxxx
Lopalo, Salvatore, xxx-xx-xxxx
McElwee, Catherine F., xxx-xx-xxxx
Piccolella, Joseph A., xxx-xx-xxxx
Powell, Minnie M., xxx-xx-xxxx
Pulda, Roger L., xxx-xx-xxxx
Quirrion, Joann P., xxx-xx-xxxx
Reed, Constance, xxx-xx-xxxx
Reilly, Eileen T., xxx-xx-xxxx
Rudtsala, Eila M., xxx-xx-xxxx
Russell, Ann S., xxx-xx-xxxx
Sam, Alice M., xxx-xx-xxxx
Sharadin, William D., xxx-xx-xxxx
Shinn, Patsy F., xxx-xx-xxxx
Smith, Alvin W., Jr., xxx-xx-xxxx
Sturim, Constance R., xxx-xx-xxxx
Sukey, Edith G., xxx-xx-xxxx
Varela, Maria T., xxx-xx-xxxx
Wagner, Kathleen F., xxx-xx-xxxx
Weaver, Nancy A., xxx-xx-xxxx
Whitehurst, Shirley E., xxx-xx-xxxx
Whitley, Helen B., xxx-xx-xxxx
Wienecke, Marcella R., xxx-xx-xxxx

MEDICAL SERVICE CORPS

Bargamin, Taliaferro M., xxx-xx-xxxx
Bingham, Thomas W., xxx-xx-xxxx
Brady, John G., xxx-xx-xxxx
Cauley, Jerry D., xxx-xx-xxxx
Chapman, Samuel B., Jr., xxx-xx-xxxx
Conley, Raymond P., xxx-xx-xxxx
Cragin, Murray, xxx-xx-xxxx
Curtis, Keith W., xxx-xx-xxxx
Frient, Gerald J., xxx-xx-xxxx
Fry, David A., xxx-xx-xxxx
Gabriel, James E., xxx-xx-xxxx
Gemna, William R., xxx-xx-xxxx
Gorman, John A., xxx-xx-xxxx
Habbinga, Richard H., xxx-xx-xxxx
Hudock, Jack, xxx-xx-xxxx
Leopold, Gerald R., xxx-xx-xxxx
McNally, Paul M., xxx-xx-xxxx
Moore, Jerry L., xxx-xx-xxxx
Nantz, William C., xxx-xx-xxxx
Rider, George, xxx-xx-xxxx
Rieckhoff, Elmer C., xxx-xx-xxxx
Robison, Bobbie S., xxx-xx-xxxx
Sanders, Lewis D., xxx-xx-xxxx
Schumaker, Clarence J., Jr., xxx-xx-xxxx
Silliman, Charles L., xxx-xx-xxxx
Simpkins, George R., xxx-xx-xxxx
Sorem, David N., xxx-xx-xxxx
Strentzsch, Alfred I., Jr., xxx-xx-xxxx
Tibbetts, Thomas, xxx-xx-xxxx
Turner, Charles E., xxx-xx-xxxx
Vanrysselberge, John P., xxx-xx-xxxx
Williams, Robert S., xxx-xx-xxxx

VETERINARY CORPS

Burch, Louis T., xxx-xx-xxxx
Inman, Roger C., xxx-xx-xxxx
May, William O., Jr., xxx-xx-xxxx
Townsend, Lee R., xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

Archibald, Charles J., xxx-xx-xxxx
Coughlin, John J., xxx-xx-xxxx
Dougherty, Jerry P., xxx-xx-xxxx
Edwards, James D., xxx-xx-xxxx
Esters, Lavada, xxx-xx-xxxx
Friedmeyer, Martha S., xxx-xx-xxxx
Gokelman, John J., xxx-xx-xxxx
Good, Merrill R., xxx-xx-xxxx
Heckman, Gerald R., xxx-xx-xxxx
Hodge, Larry G., xxx-xx-xxxx
Lester, Joan B., xxx-xx-xxxx
Levinson, Lewis S., xxx-xx-xxxx
Lewis, Thayer J., xxx-xx-xxxx
Markland, Darryl T., xxx-xx-xxxx
Moody, Maynard G., xxx-xx-xxxx
Mulligan, Hugh F., II, xxx-xx-xxxx
Patterson, Lucille G., xxx-xx-xxxx
Perry, Euril W., xxx-xx-xxxx
Schulz, Victor B., xxx-xx-xxxx
Trumbo, Richard B., xxx-xx-xxxx
Wurmstein, John E., xxx-xx-xxxx

The following-named Air Force officers for reappointment to the active list of the Regular Air Force, in the grade indicated, under the provisions of sections 1210 and 1211, title 10, United States Code.

LINE OF THE AIR FORCE

To be colonel

Oliver, Hugh R., xxx-xx-xxxx.

To be lieutenant colonel

Elkin, Clarence S., xxx-xx-xxxx.
Thompson, Fred E., Jr., xxx-xx-xxxx.

To be major

Buie, Alton C., xxx-xx-xxxx.

To be captain

Walton, William H., xxx-xx-xxxx.
Howlett, Ronald H., xxx-xx-xxxx.

The following officers for promotion in the Air Force Reserve, under the provisions of Section 8376, title 10, United States Code and Public Law 92-129.

LINE OF THE AIR FORCE

Major to lieutenant colonel

Adcox, Alfred W., xxx-xx-xxxx.
Agnor, Albert S., III, xxx-xx-xxxx.
Barnes, Richard J., xxx-xx-xxxx.
Bruce, Robert B., xxx-xx-xxxx.
Brunton, Jack D., xxx-xx-xxxx.
Butcher, Donald S., xxx-xx-xxxx.
Butler, Henry M., III, xxx-xx-xxxx.
Cochran, John M., xxx-xx-xxxx.
Condon, James C., xxx-xx-xxxx.
Corrada, Candido J., xxx-xx-xxxx.
Colglazier, Benton W., xxx-xx-xxxx.
Craigo, Bobby L., xxx-xx-xxxx.
Fehrenkamp, Joseph D., xxx-xx-xxxx.
Hallesy, Robert P., xxx-xx-xxxx.
Hague, Wayne A., xxx-xx-xxxx.
Hayden, Kent D., xxx-xx-xxxx.
Jackson, William L. H., xxx-xx-xxxx.
Jefferson, Grover D., xxx-xx-xxxx.
Jenkins, Donnell B., xxx-xx-xxxx.
Kemmerling, Paul T., Jr., xxx-xx-xxxx.
Miller, Charles H., III, xxx-xx-xxxx.
Pastrana, Joaquin R., xxx-xx-xxxx.
Ramsey, Frank S., xxx-xx-xxxx.
Shows, Jesse L., xxx-xx-xxxx.
Stankelis, Anthony A., xxx-xx-xxxx.

NURSE CORPS

Hilbert, Arlene M., xxx-xx-xxxx.
Kelly, Gerald W., xxx-xx-xxxx.
Sartorius, Edith G., xxx-xx-xxxx.
Willis, Elvira G., xxx-xx-xxxx.

MEDICAL SERVICE CORPS

Coyne, Edna R., xxx-xx-xxxx.

The following persons for appointment as Reserves of the Air Force (Medical Corps), in the grade indicated, under the provisions of section 593, title 10, United States Code, with a view to designation as medical officers under the provisions of section 8067, title 10, United States Code.

MEDICAL CORPS

To be colonel

Strate, Gerald H., xxx-xx-xxxx.

To be lieutenant colonel

Jackson, Arnold J., xxx-xx-xxxx.
Markham, Sanford M., xxx-xx-xxxx.
Williams, Robert X., xxx-xx-xxxx.
Wunder, James F., xxx-xx-xxxx.

The following person for appointment as a temporary officer in the United States Air Force (Medical Corps), in the grade indicated, under the provisions of sections 8444 and 8447, title 10, United States Code, with a view to designation as a medical officer under the provisions of section 8067, title 10. United States Code.

MEDICAL CORPS

To be lieutenant colonel

Griswold, Neil L., xxx-xx-xxxx.

The following person for appointment as a Reserve of the Air Force in the grade of Lieutenant Colonel, Line of the Air Force, under the provisions of Section 593, Title 10, United States Code.

LINE OF THE AIR FORCE

To be lieutenant colonel

Burdett, Wilson A., xxx-xx-xxxx.

The following officer for appointment in the Reserve of the Air Force (Line of the Air Force) in the grade of Colonel, under the provisions of Sections 593 and 8351, Title 10, United States Code.

LINE OF THE AIR FORCE

Colonel

Nelson, John A., xxx-xx-xxxx.

The following persons for appointment as Reserves of the Air Force, in the grade indicated (Line of the Air Force), under the provisions of Sections 593 and 1211, Title 10, United States Code.

LINE OF THE AIR FORCE

To be colonel

Herrold, Ralph H., xxx-xx-xxxx.

To be lieutenant colonel

Walker, John B., xxx-xx-xxxx.

The following officer for appointment in the Reserve of the Air Force (ANGUS), in the grade of Colonel (Line of the Air Force) under the provisions of Sections 593, 8351, and 8392, Title 10, United States Code.

LINE OF THE AIR FORCE

To be colonel

Funston, George A., xxxx.

Col. John P. Wittry, xxx-xx-xxxx FR, for appointment as permanent professor, U.S. Air Force Academy, under the provisions of section 9333B, title 10, United States Code.

The following officers for appointment in the Regular Air Force, in the grade indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

To be first lieutenant (medical)

Chasen, Marvin M., xxx-xx-xxxx.
Cogburn, Bobby E., xxx-xx-xxxx.
England, Douglas M., xxx-xx-xxxx.

To be captain (dental)

Schrader, James A., xxx-xx-xxxx.

To be first lieutenant (dental)

Hand, Ronald E., xxx-xx-xxxx.

CONFIRMATIONS

Executive nominations confirmed by the Senate, October 26, 1973:

ACTION AGENCY

Harry J. Hogan, of Maryland, to be an Assistant Director of the ACTION Agency.

DEPARTMENT OF JUSTICE

Charles R. Work, of the District of Columbia, to be Deputy Administrator for Administration of the Law Enforcement Assistance Administration.

Thomas Arny Rhoden, of Mississippi, to be U.S. marshal for the southern district of Mississippi for a term of 4 years.

FOREIGN CLAIMS SETTLEMENT COMMISSION

J. Raymond Bell, of New York, to be a member of the Foreign Claims Settlement Commission of the United States for a term of 3 years from October 22, 1971.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

EXTENSIONS OF REMARKS

WASHINGTON REPORT

HON. JAMES R. GROVER, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 25, 1973

Mr. GROVER. Mr. Speaker, during the year I have taken the occasion at frequent intervals to address myself to some of the important issues and problems of the day. I take this occasion to submit for the RECORD a number of these newsletters which are, in effect, position statements:

FEDERAL CUTBACK

(Feb. 22, 1973)

A process which began 40 years ago, back in the days of the New Deal—the uncontrolled growth of the federal government—is coming to an end. If President Nixon is to succeed in his avowed purpose to funnel much of the power out of Washington and back to local government, he will need not only my help, but yours.

A $256-million proposed budget for this fiscal year, $31-billion above the present budget, would hardly appear to be a cutback of federal power. But the screams of log-rolling, pork barrel bureaucrats can be heard from the banks of the Potomac to Hawaii's tourist-filled shores. What's even worse, the President is talking about cutbacks in federal jobs, including a cut of 46,000 over the next year in the Executive Department. Those who have been schooled in the philosophy of the New Deal, the Fair Deal, the Great Society, etc. know that it's a law of nature that federal spending always goes up and that federal payrolls grow.

Quite naturally, each of us will complain about cuts made in our favorite programs while applauding other slashes being attempted by the President. I am determined, for example, to continue my efforts to have the President free the $6-billion in funds which he has impounded in the field of pollution controls. This is not a wasteful program and should have top priority. This money, approved last year, would be of inestimable aid to Suffolk's Southwest Sewer District, and similar projects.

If he didn't see it clearly before, Mr. Nixon discovered during his first four years that the federal bureaucracy is like an octopus which, when you cut off one arm, grows two more in some other place. But he has not given up the fight and I think this could be his most important contribution to our welfare. If, as he says, he intends to get the government off our backs and its hand out of our pockets, he will have earned our gratitude. And he will most certainly have my help.

CRIMINAL CODE REFORM

(Apr. 5, 1973)

One of the most massive efforts in Congressional history—the attempt to rewrite and recodify the federal criminal code—is now underway. Upon its success rests, to a great extent, our hopes for the maintenance of an orderly society.