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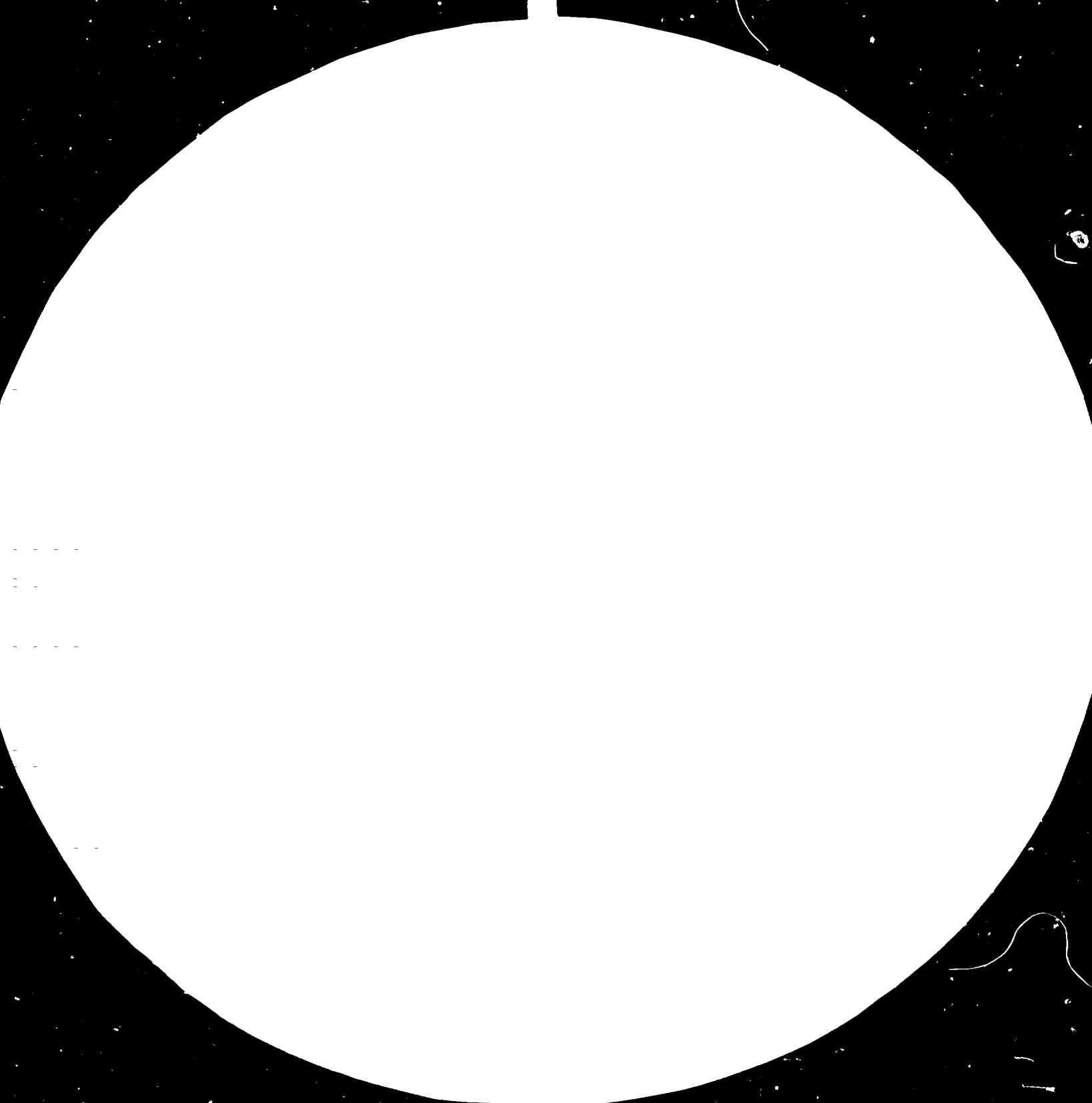
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United Nations Industrial Development Organization

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4 August 1983

ENGLISH

Ministerial-Level Plenipotentiary Meeting on
the Establishment of the International Centre
for Genetic Engineering and Biotechnology

Madrid, Spain, 7-13 September 1983

DRAFT

S T A T U T E S

of the

INTERNATIONAL CENTRE FOR
GENETIC ENGINEERING AND BIOTECHNOLOGY*

prepared by

the UNIDO Secretariat

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3 August 1983

INTRODUCTION

In establishing the International Centre for Genetic Engineering and Biotechnology (ICGEB) the participating governments will have to agree on and subscribe to an instrument forming the legal basis for the structure and operation of the ICGEB. In order to prepare the process of consultations and to facilitate decisions by participating states on this issue, the basic principles of such an instrument were outlined in the Draft Memorandum of Understanding/Guiding Principles (UNIDO/ID/WG.382/1) and submitted to the High-level Meeting in Belgrade in December 1982. The document was prepared by the UNIDO Secretariat on the basis of the recommendations in the Report of Experts on the Establishment of the ICGEB (UNIDO/ID.254).

The Belgrade Meeting discussed the Guiding Principles as outlined in document ID/WG.382/1 and felt that they were broadly acceptable, subject to the revisions necessitated by the concept of affiliated centres and other views expressed in the meeting (see paragraphs 27-36 of document ID/WG.382/7).

The Belgrade Meeting decided that the ICGEB be established "soonest possible" and that a Ministerial-level Plenipotentiary Meeting be held which should resolve outstanding issues on the establishment of the ICGEB and should agree on and subscribe to the final legal instrument for establishing the ICGEB (paragraph 51 and 66 of document UNIDO/ID/WG.382/7). In order to accelerate the developments it also decided that further work on the draft statutes of the ICGEB to the Ministerial-level Plenipotentiary Meeting should be carried out by UNIDO Secretariat taking into account the results of informal consultations with interested Permanent Representatives to UNIDO (paragraph 71 of document ID/WG.382/7).

The UNIDO Secretariat transmitted the Draft Statutes, dated 15 March 1983, together with Annotations, dated 17 March 1983, to interested Permanent Missions and asked them for comments. Those comments, suggestions and proposals which were received and discussed by the end of July, were taken into account in finalizing the present Draft Statutes together with some further improvements which were deemed necessary, e.g. draft provisions on the assessment of Members (Article 11). Special attention is drawn to the Addendum 1 of this document which contains further proposals as to the selection of a formula for the assessment of Members. Furthermore, the provision of entering into force of the Statutes (Article 20) has been designed in such a form that the decisions of the Belgrade Meeting concerning the urgency for the establishment of the Centre

be properly reflected in its Statutes on the one hand, and that the financial viability of the ICGEB is ensured on the other. In this regard attention is drawn to paragraph 2 of Article 21 by which the provisional application of the Statutes has been foreseen until such time as they may enter into force. Participating countries are requested to ascertain with their national authorities, before attending the Madrid Meeting, whether their national laws permit the provisional entering into force of an international agreement.

While drafting the Statutes it was anticipated that mainly those states participating in the Ministerial-Level Plenipotentiary Meeting will sign the Statutes at the end of that conference, and that further states will sign later when the instrument has been deposited with the Secretary-General of the United Nations as depositary. Hence, the text of Article 20, Article 22 and the final clause was drafted accordingly.

The Addendum 2 to this document contains the up-dated Annotations, previously dated 17 March 1983, in explanation of the text of the Statutes wherever it was deemed necessary.

Draft

S T A T U T E S

of the

INTERNATIONAL CENTRE FOR GENETIC ENGINEERING AND BIOTECHNOLOGY

PREAMBLE

STATES, PARTIES TO THESE STATUTES

Recognizing the need for applying genetic engineering and biotechnology for the benefit of mankind,

Urging that the potential of genetic engineering and biotechnology should be utilized to solve the pressing problems of development in the developing countries in industrial and other sectors,

Being aware of the need for international co-operation in this field, particularly in research, development and training,

Emphasizing the urgency of strengthening the scientific and technological capabilities of developing countries in this field,

Recognizing the important role that an International Centre would play in the application of genetic engineering and biotechnology for development,

Bearing in mind that the High-level Meeting held on 13-17 December 1982 in Belgrade, Yugoslavia, recommended that an International Centre for Genetic Engineering and Biotechnology of high excellence be established soonest possible, and

Recognizing the initiative taken by the Secretariat of UNIDO for the promotion and the preparation of the establishment of such a Centre;

HAVE AGREED on the following:

Article 1

Establishment and Seat of the Centre

1. An International Centre for Genetic Engineering and Biotechnology (hereinafter referred to as 'the Centre') is hereby established as an international institution.
2. The Seat of the Centre shall be at

Article 2

Objectives

The objectives of the Centre shall be:

- (a) To promote international co-operation in applying genetic engineering and biotechnology for the benefit of mankind;
- (b) To assist developing countries in strengthening their scientific and technological capabilities in the field of genetic engineering and biotechnology;
- (c) To stimulate and assist activities at regional and national levels in the field of genetic engineering and biotechnology;
- (d) To develop and promote application of genetic engineering and biotechnology for solving problems of development in developing countries; and
- (e) To serve as a forum of exchange of information, experience and know-how among scientists and technologists of participating countries.

Article 3

Functions

In fulfilment of its objectives, the Centre shall generally take necessary and appropriate action, and in particular shall:

- (a) Carry out research and development including pilot plant activities in the field of genetic engineering and biotechnology;
- (b) Train at the Centre and, as needed, arrange the training elsewhere of scientific and technological personnel from developing countries;
- (c) Provide, upon request, advisory services to Members to develop their national technological capacity;
- (d) Promote interaction between the scientific and technological communities of the participating countries through programmes to enable visits of scientists and technologists to the Centre, and through programmes of associateship and other activities;
- (e) Convene expert meetings to strengthen the activities of the Centre;
- (f) Promote networks of national and international institutions as appropriate to facilitate activities such as joint research programmes, testing and sharing of results, pilot-plant activities, information and material exchange;
- (g) Promote the establishment of highly qualified research centres to serve as Affiliated Centres, and promote existing international or regional networks of laboratories active in applied microbiology and microbial genetics, or in biotechnology and bioengineering to serve as Affiliated Networks;
- (h) Carry out a programme of bioinformatics to support in particular research and development and application;
- (i) Collect and disseminate information on fields of activities of concern to the Centre.

Article 4

Membership

1. Membership of the Centre shall be open to States members of the United Nations or a specialized agency or the International Atomic Energy Agency which associate themselves with the objectives and principles of the Centre.
2. States may become Members in accordance with paragraph 1 and 2 of Article 20, and after the Statutes have entered into force, in accordance with paragraph 3 of Article 20 after their request for membership has been approved by the Board.
3. Founding States of the Centre shall be the States including the Host State, which have signed the Statutes in the Plenipotentiary Meeting.

Article 5

Organs

1. The organs of the Centre shall be:
 - (a) The Board of Governors,
 - (b) The Council of Scientific Advisers,
 - (c) The Director.
2. Other subsidiary organs may be established by the Board of Governors in accordance with Article 6.

Article 6

Board of Governors

1. The Board of Governors shall consist of representatives of all Members of the Centre. In nominating their representatives, Members shall pay due regard to their administrative capability and scientific background.

2. Taking into account the initiative of the Secretariat of UNIDO, its contribution to the preparatory work for the establishment of the Centre and the role it could play in furthering the aims and objectives of the Centre, the Head of UNIDO or his representative shall be an ex-officio Member of the Board.
3. In addition to exercising other functions specified in these Statutes, the Board shall:
 - (a) Determine the general policies and principles governing the activities of the Centre;
 - (b) Admit the new Members to the Centre;
 - (c) Approve the work programme and the budget after having taken into account the recommendations of the Council of Scientific Advisers, adopt the financial regulations of the Centre and decide on any other financial matter, particularly the mobilization of resources for the effective operation of the Centre;
 - (d) Grant on a case-by-case basis the status of an Affiliated Centre to research centres in Member States and of an Affiliated Network to international or regional groups of laboratories;
 - (e) Establish, in accordance with Article 14, rules which regulate patents, licensing, copyrights and other rights to intellectual property, including the transfer of results emanating from the research work of the Centre to Members;
 - (f) Upon recommendation of the Council, take any other appropriate action to enable the Centre to further its objectives and carry out its functions.
4. The Board shall hold a regular session once a year, unless it decides otherwise. Regular sessions shall be held at the seat of the Centre unless otherwise determined by the Board.
5. The Board shall adopt its own rules of procedures.
6. A majority of the Members of the Board shall constitute a quorum.

7. Each Member of the Board shall have one vote. Decisions shall be made preferably by consensus, otherwise by a majority of the Members present and voting.
8. Representatives of the United Nations, the specialized agencies and the International Atomic Energy Agency, as well as of intergovernmental organizations may, upon invitation of the Board, participate as observers in its deliberations. For this purpose, the Board shall establish a list of organizations that have relationship with and have expressed interest in the work of the Centre.
9. The Board may establish subsidiary organs on a permanent or ad hoc basis, as may be necessary for the effective discharge of its functions, and shall receive reports from such organs.

Article 7

Council of Scientific Advisers

1. The Council shall consist of up to ten eminent scientists and technologists in the substantive fields of the Centre and the Director. The members of the Council shall be elected by the Board upon advice of the Director. Due regard shall be paid to the importance of electing the members on as wide a geographical basis as possible. The Director shall serve as a Member Secretary of the Council.
2. The members of the Council shall hold office for a period of three years and be eligible for reappointment for another period of three years.
3. The Council shall elect a chairman from among its members.
4. In addition to exercising other functions specified in these Statutes or delegated to it by the Board, the Council shall:
 - (a) Examine the draft work programme and the budget of the Centre and make recommendations to the Board;
 - (b) Review the implementation of the approved work programme and make appropriate report to the Board;

- (c) Elaborate on the medium- and long-term prospectives of the Centre's programmes and planning including specialized and new fields of research and make recommendations to the Board;
 - (d) Assist the Director on all substantive, scientific and technical matters concerning the activities of the Centre, including the co-operation with Affiliated Centres and Networks;
 - (e) Approve safety regulations for the research work of the Centre.
5. (a) The Council shall hold regular sessions twice a year, unless it decides otherwise.
- (b) Sessions shall be held at the seat of the Centre, unless otherwise determined by the Council.
6. The Heads of Affiliated Centres and one representative for each Affiliated Network may participate in an observer's capacity in the deliberations of the Council.

Article 8

The Director and the Staff

1. The Director shall be appointed by the Board upon recommendation of the Council and shall hold office for a period of five years. The Director may be re-appointed for a further period of five years after which he shall not be eligible for reappointment. The Director should be a personality of the highest possible standing and respect in the scientific and technological field of the Centre. Due regard shall also be given to the experience of the candidate in the management of a laboratory and a multidisciplinary team of scientists.
2. The staff shall comprise a Deputy Director, Heads of Departments and other professional, technical, administrative, clerical personnel including manual workers as the Centre may require.

3. The Director shall be the chief scientific/administrative officer and the legal representative of the Centre. Subject to directives of the Board or the Council, the Director shall have the overall responsibility and authority to direct the work of the Centre. The Director shall be responsible for the appointment, organization and functioning of the staff. The Director may establish a consultation mechanism with senior scientists of the Centre concerning the evaluation of scientific results and current planning of scientific work.
4. In the performance of their duties the Director and the staff shall not seek or receive instructions from any government or from any authority external to the Centre. They shall refrain from any action that might reflect on their position as international officials responsible only to the Centre. Each Member undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and not to seek to influence them in the discharge of their responsibilities.
5. The staff shall be appointed by the Director under regulations recommended by the Council and approved by the Board. The conditions of service of staff shall conform as far as possible to those of the United Nations common system. The paramount consideration in the employment of the staff and in determining the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity.
6. The Director shall act in that capacity at all meetings of the Board and its subsidiary organs and shall perform such other functions as are entrusted to the Director by these organs.

Article 9

Affiliated Centres and Networks

1. In pursuance of sub-paragraph (g) of Article 3, the Centre shall develop a system of Affiliated Centres and Affiliated Networks to fulfil the objectives of the Centre.

2. The Board shall establish the criteria for granting the status of an Affiliated Centre to research centres in Member States and decide upon the extent of formal relationship of Affiliated Centres to the organs of the Centre.
3. The Board shall establish criteria for granting the status of Affiliated Networks to such international or regional groups of laboratories which have special potential for strengthening the activities of the Centre.

Article 10

Financial Matters

1. The financing of the Centre shall in general consist of:
 - (a) Initial contributions for launching the Centre;
 - (b) Annual contributions by the Members preferably in convertible currency;
 - (c) General and special voluntary contributions, including gifts, bequests, subventions and funds in trust from Members, non-member states, the United Nations, its specialized agencies, the International Atomic Energy Agency, the United Nations Development Programme, intergovernmental and non-governmental organizations, foundations, institutions and private persons; and
 - (d) Any other sources.
2. The Host State shall make available to the Centre the necessary infrastructure (land, buildings, furniture, equipment, etc.) as well as other contributions for the operation of the Centre in the initial years of its operation.
3. The Director shall prepare and submit to the Board through the Council a draft programme of work for the following fiscal period together with the corresponding financial estimates.
4. The fiscal period of the Centre shall be the calendar year.

Article ii

Assessment and Auditing

1. The annual contributions of Members shall be calculated on the basis of a scale of assessment established every three years by the Board by the majority of all Members upon the recommendation of the Council, and shall be based on the average net national income at factor cost of each Member for the three latest preceding calendar years for which statistics are available.^{1/}
2. The Board may decide, by the majority of all Members, to take into account any special circumstances of a Member and adjust its contribution accordingly. In applying this provision the term "special circumstances" shall include, in particular, a situation in which the per capita national income of a Member is less than an amount which the Board shall establish or one by which any Member is required to contribute more than per cent of the aggregate amount of contributions assessed by the Board in accordance with the scale referred to in paragraph 1 of this Article.
3. States which become Member of the Centre after 31 December shall make a special contribution towards capital expenditure and current operational costs for the year in which they become member. The amount of this special contribution shall be established by the Board by the majority of all Members.
4. Contributions made in accordance with the provisions of paragraph 3 of this Article shall be applied in reducing the contributions of other Members unless otherwise decided by the Board by the majority of all Members.

^{1/} Further options concerning the assessment of Members are presented in document UNIDO/ID/WG.397/4/Add.1.

5. If, after these Statutes have entered into force, a State becomes or ceases to be a Member of the Centre, the scale of assessment referred to in paragraph 1 of this Article shall be modified. The new scale shall take effect as from the beginning of the following fiscal period.
6. The Director shall notify Members of the amount of their annual contributions and of the dates on which payment shall be made.
7. The Board shall appoint auditors to examine the accounts of the Centre. The auditors shall submit a report on the annual accounts to the Board through the Council.
8. The Director shall furnish the auditors with such information and assistance as they may require to carry out their duties.

Article 12

Headquarters Agreement

The Centre shall conclude a headquarters agreement with the Host Government.
The provisions of such agreement shall be subject to the approval of the Board.

Article 13

Legal Status, Privileges and Immunities

1. The Centre shall have juridical personality.
2. The Centre, its property and assets wherever located shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.
3. The headquarters of the Centre shall be inviolable. The property and assets of the Centre wherever located shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive administrative, judicial or legislative actions.
4. The Centre, its property, assets, income and transactions shall be exempt from all taxation including custom duties, prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Centre for its official use. The Centre shall also be exempt from any obligation relating to the payment, withholding, or collection of any tax or duty.
5. Representatives of the Members shall enjoy such privileges and immunities as are provided for by Article IV of the Convention on Privileges and Immunities of the United Nations.
6. Officials of the Centre shall enjoy such privileges and immunities as are provided for by Article V of the Convention on Privileges and Immunities of the United Nations.

7. Experts of the Centre shall enjoy the same privileges and immunities as are provided for officials of the Centre in paragraph 6 hereinbefore.
8. All persons undergoing training or taking part in a scheme for the exchange of personnel at the headquarters of the Centre or organized elsewhere within the territory of the Members in pursuance of the provisions of these Statutes shall have the right of entry into sojourn, or exit as is necessary for the purpose of their training or the exchange of personnel. They shall be granted facilities for speedy travel and visas where required shall also be granted promptly and free of charge.
9. The Centre shall co-operate at all times with the appropriate authorities of the Host State and other Members to facilitate the proper administration of justice, secure the observance of national laws and prevent the occurrence of any abuse in connection with privileges, immunities and facilities mentioned in this Article.

Article 14

Publications and Rights to Intellectual Property

1. The Centre may publish any results of its research activities provided such publication does not contravene with its general policy regarding rights to intellectual property approved by the Board.
2. All rights, including title, copyright and patent rights, in any work produced or developed by the Centre shall be vested in the Centre.
3. It shall be the policy of the Centre to obtain patents or interests in patents on results of genetic engineering and biotechnology developed through projects of the Centre.
4. Access to intellectual property rights concerning the results emanating from the research work of the Centre shall be granted only to Members.
5. The Centre shall use its patent and other rights, and any financial or other benefits associated herewith, to promote the development, production and wide application of biotechnology in the interest of developing countries.

Article 15

Relations with other Organs

In undertaking activities and in pursuance of its objectives, the Centre may seek as appropriate co-operation with other States not parties to these Statutes, the United Nations and its subsidiary organs, the specialized agencies of the United Nations and the International Atomic Energy Agency, governmental and non-governmental organizations, national scientific institutes and societies.

Article 16

Amendments

1. Any Member may propose amendments to the Statutes. Texts of proposed amendments shall be promptly communicated by the Director to all Members and shall not be considered by the Board until ninety days after the dispatch of such communication.
2. An amendment shall come into force when it is approved by the Board by a two-thirds majority of all Members.

Article 17

Withdrawal

Any Member may withdraw at any time after five years of membership and after the expiration of the first five years from the date of the entry into force of these Statutes upon giving one year's written notice to the Depositary.

Article 18

Liquidation

In case of termination of the Centre the State in which the Centre's headquarters are located, shall be responsible for the liquidation, unless otherwise agreed upon by the Members at the time of termination. Except as otherwise decided by the Members, the surplus shall be distributed among those States which are Members of the Centre at the time of the termination in proportion to all payments made by them from the date of their becoming Members of the Centre. In the event of a deficit, this shall be met by the existing Members in the same proportions as their contributions.

Article 19

Settlement of Disputes

Any dispute between two or more Members concerning the interpretation or application of these Statutes, which is not settled through negotiations between the parties concerned or, if needed, through the good offices of the Board, shall be submitted, at the request of any party to the dispute, to the International Court of Justice, unless the Members concerned agree on another mode of settlement within three months from the date on which the Board states that the dispute cannot be settled through the good offices of the Board.

Article 20

Signature, Acceptance and Accession

1. These Statutes shall be open for signature by all States specified in paragraph 1 of Article 4 at the Meeting of Plenipotentiaries held in Madrid on 12-13 September 1983, and thereafter at United Nations Headquarters in New York until the date of their entry into force in accordance with Article 21.

2. These Statutes shall be subject to acceptance by signatory States.
The appropriate instruments shall be deposited with the Depositary.

3. After the entry into force of these Statutes in accordance with Article 21, States specified in paragraph 2 of Article 4 that have not signed the Statutes may accede to them by depositing instruments of accession with the Depositary.

Article 21

Entry into Force

1. These Statutes, apart from the Annex, shall enter into force when at least 25 States, including the Host State of the Centre, have deposited instruments of acceptance and, after having ascertained among themselves that sufficient financial resources are available, some of them notify the Depositary that these Statutes shall enter into force.

2. Until the entering into force of the Statutes in accordance with paragraph 1 hereinbefore, they shall be applied provisionally upon signature.

Article 22

Depositary

1. The Secretary-General of the United Nations shall be the Depositary of these Statutes.

2. In addition to notifying the States concerned, the Depositary shall also notify the Director of all matters affecting the Statutes.

Article 23

Authentic Texts

These Statutes shall be authentic in Arabic, Chinese, English, French, Russian and Spanish.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries having been duly authorized thereto, have signed the Statutes:

Done at, this day of September 1983, in a single original which shall be deposited with the Secretary-General of the United Nations who shall transmit certified copies to all signatory and acceding States.

ANNEX

Preparatory Committee

- A. A Preparatory Committee shall come into existence upon signature of the Statutes by the founding States as defined in sub-paragraph 3 of Article 4. The Preparatory Committee shall be composed of one representative each of those founding States. The representative shall have a background in fields relevant to the planned activities of the Centre. The Head of UNIDO or his representative shall be the Executive Secretary of the Preparatory Committee. The Preparatory Committee shall remain in existence until these Statutes come into force and the first session of the Board of Governors has convened.
- B. The expenses of the Preparatory Committee may be met by initial contributions or by advances of them to be made by the founding Members in accordance with sub-paragraph 1 (a) of Article 10.
- C. The Preparatory Committee shall:
1. Elect its own officers, adopt its own rules of procedure, meet as often as necessary, and determine its own place of meeting.
 2. Appoint a project leader and a local co-ordinator assisted by a small local committee to handle problems at the site of the Centre. The local co-ordinator shall work under the supervision of the project leader.
 3. Make arrangements for the first session of the Board of Governors, including the preparation of a provisional agenda, draft rules of procedure and a list of observers' organizations, such session to be held as soon as possible after the entry into force of these Statutes in accordance with Article 21.
 4. Prepare studies, reports and recommendations for the first session of the Board and the first session of the Council on subjects of concern to the Centre requiring immediate attention, inter alia:
 - (a) the financing of the Centre including its draft financial regulations;
 - (b) the programmes and budget for the first year of the Centre;
 - (c) technical problems relevant to advance planning of the Centre's operations;

(d) the recruitment of the staff of the Centre, including its draft staff rules; and

(e) the preparation of the draft of the Centre's Headquarters Agreement.

D. In the performance of its functions the Preparatory Committee shall be assisted by the UNIDO Secretariat.



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United Nations Industrial Development Organization

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Ministerial-Level Plenipotentiary Meeting on
the Establishment of the International Centre
for Genetic Engineering and Biotechnology

Madrid, Spain, 7-13 September 1983

PROPOSED OPTIONS FOR THE
ASSESSMENT OF MEMBERS
of the
INTERNATIONAL CENTRE FOR
GENETIC ENGINEERING AND BIOTECHNOLOGY
(Article 11 of the Draft Statutes)*

Note prepared by
the UNIDO Secretariat

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C o n t e n t s

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1. Introduction

During the informal consultations between the UNIDO Secretariat and Permanent Representatives to UNIDO on the Draft Statutes, the following four options concerning the assessment of Members emerged:

Article 11

Assessment and Auditing

Paragraph 1:

Option 1

The annual contribution of each Member to the Regular Budget of the Centre shall be assessed each year by the Board for the following year by allocating it proportionally to a factor equal to the contribution of the Member to the Regular Budget of the United Nations in the preceding year.

Option 2

The annual contribution of each Member to the Regular Budget of the Centre shall be assessed each year by the Board for the following year by allocating it proportionally to a factor based on the contribution of the Member to the Regular Budget of the United Nations Organization in the preceding year.

Members which contributed to the Regular Budget of the United Nations:

- (a) more than three per cent shall have a factor equal to four;
- (b) more than one but less than three per cent shall have a factor equal to two;
- (c) more than 0.15 but less than one per cent shall have a factor equal to one;
- (d) less than 0.15 per cent shall have a factor equal to 0.1.

Option 3

The annual contribution of each Member to the Regular Budget of the Centre shall be assessed each year by the Board for the following year on the basis of a formula recommended by the Preparatory Committee which shall take into account the contribution of each Member to the Regular Budget of the United Nations, based on its most recent scale of assessment.

Option 4

The annual contribution of each Member to the Regular Budget of the Centre during the first five years shall be based on the amount pledged by each Member for those five years. The annual contribution after the first five year period shall be assessed each year by the Board for the following year on the basis of a formula recommended by the Preparatory Committee which shall take into account the contribution of each Member to the Regular Budget of the United Nations, based on its most recent scale of assessment.

New paragraph related to all Options

The Board shall assess the contribution of those Members which are not Members of the United Nations by comparing their net average national income for the three last calendar years for which statistics are available with such national income of Members of the United Nations.

2. Explanations

- (a) Option 1 is a formula by which the ratio of contributions to the Regular Budget of the Centre of any two Members remains the same as the ratio of the contributions of those same Members to the Regular Budget of the United Nations.
- (b) Option 2 divides the contributions of Members of the United Nations in four categories. By using the proposed factors the ratio of contributions between major and minor contributors to the budget of the Centre will thus be significantly reduced compared with the same ratio in the United Nations. The contributions of Members within the same category will be the same.

- (c) Option 3 could be considered as the most "liberal" proposal which would leave the establishment of a formula for the assessment entirely to the Preparatory Committee and the Board.
- (d) Option 4 covers a situation, by which Members would pledge their contributions for the first five years of the operation of the Centre. After this period of time the Board would have to decide on a formula of assessment recommended by the Preparatory Committee along the same lines as proposed in Option 3.

3. Example of Assessment

In order to illustrate the difference between Option 1 and 2, the following is an example of assessment for the case in which 15 ^{1/} hypothetical countries would become members of the Centre:

Country	Hypothetical Contribution to UN	Option 1		Option 2	
		Factor Allocation	Percentage of Contribution to Centre Budget	Factor Allocation	Percentage of Contribution to Centre Budget
A	10.0	10	45.2	4	23.1
B	4.0	4	18.1	4	23.1
C	1.7	1.7	7.7	2	11.6
D	1.3	1.3	5.9	2	11.6
E	1.2	1.2	5.4	2	11.6
F	0.8	0.8	3.6	1	5.8
G	0.7	0.7	3.2	1	5.8
H	0.6	0.6	2.7	1	5.8
I	0.6	0.6	2.7	1	5.8
J	0.5	0.5	2.3	1	5.8
K	0.3	0.3	1.4	1	5.8
L	0.2	0.2	0.9	1	5.8
M	0.1	0.1	0.4	0.1	0.6
N	0.05	0.05	0.2	0.1	0.6
O	0.05	0.05	0.2	0.1	0.6
15	--	22.1	--	17.3	--

^{1/} This number of countries was chosen in order to simplify the table.



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Ministerial-Level Plenipotentiary Meeting on
the Establishment of the International Centre
for Genetic Engineering and Biotechnology

Madrid, Spain, 7-13 September 1983

ANNOTATIONS

to the

DRAFT STATUTES

of the

INTERNATIONAL CENTRE FOR
GENETIC ENGINEERING AND BIOTECHNOLOGY*

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1. General Background

The Draft Statutes have been prepared on the basis of the Draft Memorandum of Understanding and Guiding Principles of the International Centre for Genetic Engineering and Biotechnology (document ID/WG.382/1, dated 15 September 1982), presented by the UNIDO Secretariat to the High-Level Meeting on the Establishment of the International Centre for Genetic Engineering and Biotechnology at Belgrade, Yugoslavia, 13 - 17 December 1982. The comments which participating States made at that meeting have been taken into account. Those comments are essentially reflected in the Report of the Belgrade Meeting (document ID/WG.382/7, dated 1 February 1983), particularly in its paragraphs 27 - 36, 71 and in paragraph 4 of its Addendum as well as in the Conclusions and Recommendations of the Meeting, particularly under paragraph 51 (iii) and (v), and paragraph 52 of the Report. Since the Memorandum of Understanding and the Guiding Principles were prepared on the basis of the UNIDO Experts Report on the Establishment of an International Centre for Genetic Engineering and Biotechnology (ICGEB) (document UNIDO/IS.254 of 9 November 1981), the findings and recommendations of this Report were also considered as a guide for the preparation of the Draft Statutes.

Furthermore, in preparing these Draft Statutes, the establishing legal instruments of other international research institutes and the practices developed by them have been reviewed and certain basic provisions of those instruments taken into consideration where appropriate. The extensive formal and informal exchange of views which took place in Belgrade among and between participating States, the UNIDO experts and the Secretariat has also served as a guide.

In pursuance of the decision of the Belgrade Meeting (see paragraph 71 of document ID/WG.382/7), informal consultations were held with the interested Permanent Missions to UNIDO, the results of which were included in the present revised Statutes and reflected in these Annotations where appropriate.

2. Scope, contents and title of the Statutes

The uniqueness of the envisaged Centre and the urgent need for its establishment would require that the establishing instrument not be rigid or too detailed so that further improvements could be made once the Board of Governors representing the Members of the Centre had assumed its functions. Basic principles of the establishment of the Centre and its operation could either be realized by

including certain provisions in the rules of procedure of the Board, or by amendments to the Statutes as foreseen in Article 16. In accordance with the wishes of participating States of the Belgrade Meeting, the denomination "Draft Statutes" was provisionally chosen as the title for the establishing instrument of the Centre (see paragraph 71 of the Report). This title may still be changed in accordance with the wishes of States and international practice.

3. Objectives and Functions (Articles 2 and 3)

In comparison with the Guiding Principles and the Draft Statutes of 15 March 1983, the text of Article 2 (Objectives), remains basically unchanged including sub-paragraph (c), which reflects in a broad and flexible manner the wishes of participating States in regard to the assistance which the Centre is expected to provide for the establishment of a system of Affiliated Research Centres at the regional and the national levels (see paragraph 52 of the Report). The sequence of sub-paragraphs (a)-(e) as in the draft of 15 March 1983 was changed in order to reflect the recommendation of the informal consultations that the establishment of the Centre and through it the international co-operation in the field of genetic engineering and biotechnology should be primarily for the benefit of developing countries. Further proposals of the Belgrade Meeting and results of the informal consultations on this particular issue were considered in the reformulation of the "Functions" (Article 3), especially in sub-paragraphs (c), (f) and (g), and in the drafting of the new Article 9. Special attention is drawn to the inclusion in sub-paragraph (g) of "Affiliated Networks" of existing international and regional networks of laboratories into the series of institutes with which the Centre is to co-operate.

4. Membership (Article 4)

Since the experience the UNIDO experts gained during their fact-finding mission (see Chapter III on page 7 of document UNIDO/IS.254) and the results of the Belgrade Meeting have confirmed that a number of countries have a strong interest in establishing the Centre, the article on Membership provides for as wide a participation as possible within the frame of States Members of the United Nations and its specialized agencies. The third paragraph of this Article on "Founding States" has been included in order to make a distinction between those States

which decide to participate in the establishment of the Centre as early as possible, and those who would like to join only later. All Members shall, however, have equal rights except that Founding States are to form the Preparatory Committee provided for in the Annex to the Statutes. The formal requirements for becoming a Member of the Centre as foreseen in paragraph 2 are linked with the legal provisions of Article 20, and correspond in their basic features to international practice.

5. Organs (Article 5)

The organizational structure of the Centre emerged from the recommendations of the experts (see Chapter VII on page 17 of document UNIDO/IS.254), subject to certain slight modifications as to the number of participants in the main organs and the names of those organs. It is considered that at least initially all Members of the Centre should be Members of the Board. Should the Board in due course feel that it has become too large for discharging its functions effectively, it may consider establishing a General Assembly, with the Board itself having a limited number of elected Members as suggested by the UNIDO experts (see paragraph 58 of document UNIDO/IS.254). Alternatively the Board could establish a subsidiary organ. The title "Director" for the chief administrative officer of the Centre was chosen in accordance with the recommendations of the experts in paragraphs 61 and 62 of document UNIDO/IS.254.

6. Board of Governors (Article 6)

(a) The Board is the supreme organ of the Centre and should, therefore, have the authority to decide on basic matters such as the research and administrative policy of the Centre (sub-paragraph 3a); the admission of new Members (sub-paragraph 3b); and the approval of the work programme and the corresponding budget (sub-paragraph 3c). It is also considered essential to empower this organ with the approval of detailed regulations on issues of intellectual property rights which will emerge from the work of the Centre (see recommendation in paragraph 4 of the Addendum to the Report of the Belgrade Meeting) and cannot be clearly foreseen and spelt out now (see sub-paragraph 3e of Article 6). However, in Article 14 the framework of the Centre's general policy on these issues is included, leaving further details for the consideration and decision of the Board in due course.

Such a concept was, e.g. also applied by the States which established the European Molecular Biology Laboratory.^{1/} A similar approach was taken by the International Institute for Applied Systems Analysis.^{2/}

(b) Because of the specialized nature of the Centre it was felt essential during the informal consultations that the members of the Board should have particular experience in the administration of such an institute and its scientific fields of activity. Hence, the second sentence of paragraph 1 was added to cover this point.

(c) As to the procedure for taking decisions by the Board it was felt necessary to aim primarily at reaching a consensus. Only if this fails should formal voting on the basis of a majority of Members present and voting be considered (paragraph 6).

(d) Because of the interest in and the strong support for the establishment of the Centre expressed by intergovernmental organizations like FAO, UNESCO, UNDP, ICRO, UNEP, the International Centre for Theoretical Physics of the IAEA, during the Belgrade Meeting it was considered necessary to provide for participation of these bodies in the meetings of the Board in an observer capacity (paragraph 7).

(e) As to the frequency of regular sessions of the Board once a year was deemed necessary especially during the first year of the existence of the Centre since many outstanding issues may have to be decided upon. An interval of two years, as suggested during the informal consultations, instead of one between Board meetings seemed to be too long.

(f) In order to enable the Board, especially during its first session, to take decisions speedily, it was felt during the informal consultations that to include into the Statutes a provision on the quorum was an advantage (paragraph 6).

^{1/} See sub-paragraph 3a of Article VI of the establishing Agreement of this institute, its Patent Procedures contained in document EMBL/Fin. Com./82/13E and its Staff Rules related to Intellectual Property Rights in document EMBL/Fin.Com.75/31.

^{2/} See Article VI (10) and Article XVII of its Charter.

(g) Following the deliberations of the Belgrade Meeting and the informal consultations, provision was made for the establishment of one or more subsidiary organs of the Board, which could meet more often between meetings of the Board and be entrusted with specific functions (paragraph 9 of Article 6). One of the subsidiary bodies could be, for example, an Executive Committee to be established on a permanent basis with restricted membership to assist the Board in performing certain functions.

(h) Attention is drawn to paragraph 6 of Article 8 by which the Director is to act in this function at all meetings of the Board and its subsidiary organs, except in the Council where the Director is to serve as a Member Secretary (see paragraph 1 of Article 7).

7. Council of Scientific Advisers (Article 7)

(a) The comments made in the Belgrade Meeting, particularly on the geographical composition of the Council of Scientific Advisers (see paragraphs 30,31 of the Report, and paragraph 4 of its Addendum) have been taken into consideration. As to the number of Members of this organ, the Secretariat was guided by the proposal of the UNIDO experts (see paragraph 59 of document UNIDO/IS.254). The formulation "up to ten" was chosen in order to leave it for the decision of the Board to elect also less than ten Members if it deems it appropriate. Although during the informal consultations one representative suggested the membership be expanded to 15, the Secretariat retained its earlier proposal primarily because membership of the Centre will probably be small in the beginning so that a group of 10 Scientific Advisers would correspond better to the initial membership of the Centre.

(b) During the informal consultations it was proposed to involve also the Director in making proposals for the election of members by the Board (see second sentence of paragraph 1). Although some participating States suggested at the Belgrade Meeting full representation of Affiliated Centres in the Council, the Secretariat considered it too early to provide for this in the present Statutes. The development of such a mechanism should be left to the Board after the Members have obtained a clearer picture of the system of Affiliated Centres through detailed field studies (see paragraph 53 of the Belgrade Report), and after the Board has also

established the criteria for those Affiliated Centres (see Article 9 and sub-paragraph 3d of Article 6). However, in pursuance of a proposal made during the informal consultations the present text provides for observer status of representatives of Affiliated Centres and Networks.

(c) Since this organ is supposed to have a small membership it was not considered necessary to provide for the establishment of formal rules of procedure for this body. Provision was, however, made for the election of a chairman by the Members.

8. Director and the Staff (Article 8)

The five years' term of office of the Director derived from the consideration that the initial institutional and financial set-up of the Centre was based on a period of five years (see Chapter VIII on page 20 of document UNIDO/IS.254). In order to provide for a continuity of the management, the possibility of re-appointment of the Director is foreseen in paragraph 1. Whether reappointment should be open-ended or limited to one or more terms of office is a question which should be decided either by the Plenipotentiary Meeting or by the Board of Governors once ICGEB is established. As to the qualifications of the Director, the requests of participating states in the Belgrade Meeting were taken into account (see paragraph 32 of the Report). In accordance with international practice the definition of "staff" in paragraph 2 includes not only scientific but also clerical and manual worker personnel.

9. Affiliated Centres (Article 9)

In order to take into account the proposals made at the Belgrade Meeting on the establishment of Affiliated Centres, a new Article 9 was inserted which corresponds to sub-paragraph (g) of Article 3 on "Functions". Consequently it will be one of the duties of the Centre to promote Affiliated Centres. Furthermore, paragraph 2 of Article 9 was included in order to give the supreme organ of the Centre the authority to make more detailed decisions on the envisaged system of Affiliated Centres and their formal relationship to the Centre. As is also pointed out under Section 7 of these Annotations, the Secretariat considered it too early to propose the necessary statutory provisions of full membership

of Affiliated Centres in the organs of the Centre before detailed field studies have been prepared as requested by the Belgrade Meeting (see paragraph 53 of the Report). However, in accordance with the outcome of the informal consultations the granting of observer status to Affiliated Centres and Networks in the Council has been reflected in paragraph 6 of Article 7, and the establishing of criteria for granting such status to those Centres and Networks has been foreseen in paragraph 3 of Article 9.

10. Financial Matters (Article 10)

The financial resources of the Centre are divided into four main categories:

- (a) Initial contribution by founding Members;
- (b) Yearly contribution by Members preferably in convertible currency to finance the regular budget of the Centre;
- (c) General and special contributions by Members and non-Member States, international organizations and private persons; and
- (d) Any other source which could include e.g. income from the transfer of intellectual property to interested parties.

In addition to these contributions, it was understood that the Host State of the Centre will contribute in cash and in kind to the necessary infrastructure of the Centre and probably also a continuous share of the annual expenses, at least for the first five years.

11. Assessment and Auditing (Article 11)

The question whether the members should contribute equal or different yearly contributions to the budget and, in the latter case, upon which criteria a scale of assessment for member states should be based, is a matter which was not included in the Guiding Principles nor considered by the Belgrade Meeting. In the proposed text of this Article, different contributions are envisaged. The scale of assessment should in principle be established for a longer period of time, e.g. three years and could be based on the average net national income of each member state for the three preceding calendar years. This is the basic formula

by which members, e.g. of the European Molecular Biology Laboratory (EMBL) and the European Organization for Nuclear Research (CERN), are assessed. Hence, it was considered reasonable to follow the experience made by other international institutes concerning the method of assessment and propose a text along the lines of these principles. As in the case of EMBL and CERN provision was made to take into account special circumstances of Member States to adjust their contributions accordingly, e.g. in a situation in which the per capita national income of a Member State is less than an amount fixed by the Board of the Centre or in another one in which a Member State is required to contribute more than a certain percentage (e.g. 30 or 25 per cent) of the aggregate amount of contributions assessed by the Board in accordance with the above formula (see paragraph 2 of Article 11).

It may be mentioned also that the United Nations' scale of assessment is based primarily on national income expressed in US dollars adjusted downward (upward) by the low(high) per capita income allowance formula. However, high rates of unemployment or recession in some Member States and the high rate of domestic inflation in some industrialized as well as middle-income developing countries gave raise to the question of finding ways and means of increasing the fairness and equity of the scale of assessment. The United Nations Committee on Contributions is at present engaged in a thorough study on alternative methods of assessing the real capacity of Member States to meet their financial obligations with the United Nations and will present its proposals to the next session of the General Assembly.

In the case of the Centre, it cannot yet be foreseen how many Member States will establish it. Hence, it is conceivable that initial contributions of the founding Members will be individually agreed upon in advance during the Ministerial-Level Plenipotentiary Meeting. These contributions should cover the minimum operational costs of the Centre needed for a certain period of time, e.g. one, two or three years, until otherwise decided by the Board, also taking into account contributions from new members.

The Preparatory Committee, as foreseen in the Annex of the Statutes, should be put in charge of preparing a scale of assessment or any alternative method and of administering any advance contributions until the first meeting of the Board has been convened and a skeleton administrative staff of the Centre, including its Director, has assumed its functions.

Special attention is drawn to further options on the assesment of Members made during the informal consultations on the Draft Statutes. These proposals are included and explained in the Addendum to the document ID/WG.397/4 (Draft Statutes of the ICGEB).

12. Headquarters Agreement, Legal Status (Article 12 and 13)

(a) In accordance with usual practice the Centre will conclude a Headquarters Agreement with the Host State (Article 12). Such an Agreement contains detailed provisions on the international character of the Centre, its staff and its activities in the Host State. It also deals with particular privileges and immunities of the Centre and its staff without which the independent operation of the Centre would not be possible. A draft of such an Agreement was circulated for comments to those States which wished to host the Centre. They have in principle all agreed to it subject to a few problems in some of the countries - most of which may be solved - and subject to final negotiations and considerations by their Governments. The provisions of such a draft Agreement should be subject to the approval of the Board

(b) In Article 13, certain basic requirements as to the international status of the Centre and its staff have been included here whereas further details of this subject are dealt with in the Headquarters Agreement. Provision was also made for the privileges and immunities of representatives of Member States concerning their official functions with the Centre, particularly as regards meetings of the Board, its subsidiary organs and the Preparatory Committee. The privileges and immunities of representatives as well as officials and experts of the Centre are to correspond mutatis mutandis to the provisions of the United Nations Convention on Privileges and Immunities of 1946.

13. Publications and Rights to Intellectual Property (Article 14)

This article provides for certain basic policies on scientific results emanating from the research work of the Centre. The issues involved are, particularly, the problems of publication, proprietary rights to intellectual property and patent policy. These provisions were formulated on the basis of policies and practice developed over the last two decades by the United Nations, as well as

by its specialized agencies and international research institutes. The issue of the transfer of results to Members of the Centre, especially raised by a participating State of the Belgrade Meeting (see paragraph 4 of the Addendum to the Report), has been dealt with in a new paragraph 4. As mentioned already in detail under sub-paragraph (a) of Section 6 of these Annotations, it was, however, considered practical and reasonable to leave the preparation of detailed provisions on these matters to the deliberations of the Board as provided for in sub-paragraph 3 (e) of Article 6. It may be mentioned that such an approach is not unprecedented and was chosen similarly, e.g. by the European Molecular Biology Laboratory and the International Institute for Applied Systems Analysis. Paragraph 5, finally, provides for the overall policy of using the results of the work of the Centre in the interest of developing countries.

14. Amendments and Withdrawal (Articles 16 and 17)

(a) Paragraph 1 of Article 16 follows the usual practice. As for paragraph 2, the Secretariat reviewed the relevant provision of several international institutes; only EMBL and CERN provide for unanimous approval of amendments. Following the results of the informal consultations this Article now provides for a two-thirds majority of all Members of the Centre. By choosing "all Members" instead of those "present and voting" it was thought to render formal notifications of acceptance of amendments by the Member States unnecessary.

(b) Upon the suggestion of a participating State of the Belgrade Meeting (see paragraph 34 of the Report), the duration of these Statutes was to be restricted to ten years. The informal consultations revealed, however, that such a restriction was not practical and would even mislead interested countries as to the purpose of establishing the Centre. Hence, by deleting the provision on "Duration", the existence of the Centre became unlimited.

(c) The withdrawal clause (Article 17) remains unchanged, compared with the Guiding Principles, and provides for withdrawal only after the first five years of the Centre's existence. Such a barrier had to be inserted in order not to endanger the smooth operations of the Centre and its financing which was designed for an initial period of five years. In order to ensure further stability of

membership during the initial years it has in addition been foreseen that withdrawal is excluded before membership of at least five years of the Member concerned has elapsed.

15. Liquidation (Article 18)

During the informal consultations it became apparent that a provision on liquidation in the event that the Centre ceases to exist was needed. In principle, the text of this new Article follows international practice. Special consideration was given to the question of whether only the Centre itself, having a legal personality of its own, should be responsible for any deficit which may occur once the Centre is liquidated, or whether the Members are liable for these debts. In formulating the text the latter alternative was chosen although it was pointed out at the informal consultations that such a clause may not reflect common practice.

16. Settlement of Disputes (Article 19)

Following international practice the consultations felt it essential to include a minimum provision on the question of how disputes among the Members should be settled. It was thought that the supreme organ of the Centre, the Board of Governors, would be an appropriate forum to assist Members in settling their disputes, if negotiations between the parties to the dispute have failed. Through such a procedure the rather lengthy and costly settlement through formal arbitration procedure by the International Court of Justice could hopefully be avoided in most cases.

17. Signature, Acceptance and Accession (Article 20)

(a) This provision which was not yet contained in the Guiding Principles provides for a normal procedure concerning the binding effects of an international agreement, namely signing of the instrument by Plenipotentiaries after its adoption and, where needed, final acceptance by the States in accordance with their national requirements. The date from which the Statutes will be open for signature, was chosen as the last two days of the Ministerial-Level Plenipotentiary Meeting, namely the 12th and 13th of September 1983. Thereafter, the Statutes may be signed at United Nations Headquarters in New York.

(b) After entry into force of the Statutes, States may only become Members of the Centre by submitting a formal instrument of accession with the Depositary.

18. Entry into Force (Article 21)

This provision was not yet contained in the Guiding Principles. The proposal made in the text dated 15 March 1983 has been amended during the informal consultations.

(a) Taking into account the strong interest in being associated with the Centre, expressed by several States during the Belgrade Meeting and afterwards, and following the views expressed during the informal consultations it was considered reasonable to provide in this draft for a definite number of States to accept the Statutes before they should enter into force. In addition, the entry into force has been bound to the condition that at least some of the accepting States are able to finance, e.g. either a full-fledged Centre or a certain percentage of the Centre's estimated operational costs of the first years and indicate this to the Depositary.

(b) Furthermore, in order to do everything possible to fulfill the recommendations of the Belgrade Meeting, namely to establish the Centre "soonest possible" it is foreseen in paragraph 2 of Article 21 that the Statutes may be applied provisionally until their entering into force in accordance with paragraph 1. The informal consultations revealed that it may be difficult for some countries to accept such a provision since their legislation/constitution does not provide for the provisional entering into force of international agreements; other participants, however, did not foresee any such handicap. Interested States are, therefore, advised to clear this point with their national authorities before attending the meeting in Madrid.

19. Depositary (Article 22)

Following the practice of the United Nations a provision has been included to authorize the Secretary-General of the United Nations to act as Depositary, namely to receive the formal notifications of signatory States, e.g. the instruments of acceptance, to inform the other signatories and the Director of the receipt

of those instruments or any other legal matter relevant to the formal establishment of the Centre and to keep the original of the establishing instrument.

20. Authentic Texts (Article 23)

The Guiding Principles and the Draft Statutes, dated 15 March 1983, provided only for the English text being the sole authentic text of the Statutes. However, in pursuance of the views expressed during the informal consultations the authentic texts will be in all official languages of the United Nations or its General Assembly, namely Arabic, Chinese, English, French, Russian and Spanish.

21. Preparatory Committee (Annex)

(a) As a transitional measure for the smooth establishment of the Centre following the closure of the Plenipotentiary Meeting, it was considered essential to provide for an organ which ought to be entrusted with further preparatory work. Since it can be assumed that several States including the Host State are prepared to sign the Statutes at the end of the Plenipotentiary Meeting, those States shall form the Preparatory Committee which will remain in existence until the Statutes come into force and thereafter, until the first meeting of the Board of Governors has been convened. The duties of this Committee entail mostly the preparation of matters which will be the subjects of prime concern for the decision of the Board once it convenes for its first session.

(b) It derives from paragraph A in conjunction with Article 21 that the Annex will enter into force separately from the main establishing instrument of the Centre, namely at the moment when the Plenipotentiaries of the founding States sign the Statutes. Since the Preparatory Committee will cease to exist once the main instrument for establishing the Centre enters into force and the first meeting of the Board has been convened, it was considered reasonable to add an Annex and thus to separate the governing provisions of this Committee from the main instrument and to demonstrate thereby its transitional character. As an alternative it is also conceivable that the establishment of a Preparatory Committee and its rules of procedure are included in a separate resolution to be adopted by the Plenipotentiary Meeting.

