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**LEGAL OPINION ON THE SUSPENSION OF A MEMBER STATE
FROM THE EXERCISE OF PRIVILEGES AND RIGHTS OF MEMBERSHIP
UNDER ARTICLE XIX.B OF THE STATUTE**

On 21 September 1988, the delegate of Mexico requested - on behalf of the Group of 77 - a legal opinion on the difference between the expulsion and the suspension of a Member State and on the procedures which would have to be followed in order to restore full privileges and rights to a suspended Member State.

The attached legal opinion is being distributed in response to a request made by the delegate of Mexico on 23 September 1988, during the 312th plenary meeting of the General Conference.

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Unlike the Charter of the United Nations and the constituent documents of some other international organizations, the Agency's Statute does not provide for a Member State to be expelled from the Agency.

Article XIX.B of the Statute, however, provides for suspension of a Member State from the exercise of the privileges and rights of membership. Suspension is a joint action by the Board of Governors and the General Conference. It is effected by a decision of the General Conference acting upon a recommendation by the Board of Governors.

The Statute does not delineate the privileges and rights which would be affected by suspension. It could be stated that the suspended Member State would lose the privileges and rights clearly associated in the Statute with membership. Thus, a suspended Member State would lose its right to be represented and to vote in the General Conference. It would not be eligible for election to the Board of Governors, nor would it be eligible to receive technical and financial assistance from the Agency or to receive reports and documents which are routinely provided by the Secretariat to the Agency's Member States. Other privileges which could be implied from the practice of the Agency and from previous decisions of the General Conference to be generally attributable to membership are the award of research contracts, the purchase by the Agency of equipment and materials and the hosting of Agency-sponsored meetings.

Article XIX.B, as indicated above, deals only with suspension from the exercise of privileges and rights of membership and does not purport to affect the obligations of a State as a Member State of the Agency. It therefore implies the continuation of the bond of membership. The suspended State would continue to be a Member State of the Agency. As such it would continue to be bound by the obligations assumed under the Statute by Member States. Examples

are the obligation to pay its assessed contribution to the Regular Budget (Article XIV) and the obligation to accord the Agency the legal capacity and the privileges and immunities which are necessary for the exercise of its functions (Article XV).

Bilateral and multilateral agreements which have been concluded by the Agency or under its auspices with a suspended Member State would continue to remain in force. Membership of the Agency, or the enjoyment of the privileges and rights thereof, has not been a condition for the conclusion or continuation in force of any such agreements. Thus, for example, safeguards agreements in existence with a suspended Member State would remain in force. Similarly, the adherence of a suspended Member State to any of the multilateral conventions concluded under the auspices of the Agency would not be affected by the suspension.

Suspension could be viewed as a means of applying additional pressure to a State in order to induce it to comply with the provisions of the Statute. It would not close the door for subsequent reconciliation and restoration of the privileges and rights of membership. It is thus, by definition, of a temporary character and could be lifted once the reasons underlying it no longer existed. This is unlike expulsion, which would require a new application for membership. In contrast to the constituent documents of some other international organizations, which contain a specific procedure for restoration of suspended privileges and rights, the Statute is silent on the matter. However, as the Statute requires action by both the Board and the General Conference in order to effect a suspension, it could be assumed that the same procedure, involving the two Policy-making Organs, would also apply in the case of restoration of suspended privileges and rights. The Statute and the Rules of Procedure of the General Conference and the Board of Governors do not list the restoration of privileges and rights as a matter requiring a two-thirds majority. However, the said Rules do provide for a determination of additional questions or categories of questions which would require to be decided by a two-thirds majority.